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**To:** PID Act Review  
**Subject:** Submission to the His Honour Alan Wilson KC on the Review of the Public Interest Disclosure Act 2010 (PID Act)

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Your Honour

I am making this submission as a private citizen and not in any official capacity.

I do not request that my submission remain confidential. I think it is important, and in the public interest, that there is an open and informed discussion in Queensland about whistleblowing.

I hold roles in the Queensland public service in an ethics function of a department and also on the management committee of a voluntary professional development and networking organisation, the Corruption Prevention Network Queensland (CPNQ).

The views expressed in this submission are my own personal views and do not reflect the views of my employing department or the CPNQ.

For the past 20 years I have been involved in the administration of the PID Act and the previous *Whistleblowers Protection Act 1994*.

I think there are a number of areas where the PID Act could be improved to better fulfill its purpose and I will set these out below.

#### Policy objectives of the PID Act

I think section 3(d) of the PID Act should be amended by inserting the following words: "and others involved in the management or investigation" after the words: "persons making" .

The new section 3(d) would then read "to afford protection from reprisals to persons making and others involved in the management or investigation of public interest disclosures."

Such added wording would reinforce the idea that witnesses, managers, support persons and others involved in PIDs would also be protected from reprisal. Such an amendment is in keeping with the spirit and intent of the PID Act and in particular section 40 of the Act concerning reprisal.

I think there is a lot of confusion amongst people in general about what the term "public interest disclosure" means. In my experience people are more familiar with the term whistleblowing or whistleblower. I recommend the title of the Act be changed to: "Public Interest Disclosure Act (Whistleblowers Protection ) Act". The name change would help people to better understand the purpose and intent of the PID Act.

#### What is a PID

I think the use of the terms "substantial and specific" in sections 12 and 13 of the PID Act causes confusion and problems/subjectivity in the assessment of PIDs. If those terms are to be continued to be used I recommend they be defined in the PID Act dictionary and examples provided of the types of substantial and specific matters envisaged as constituting PIDs.

## Who can make a PID

I think the scope of public officers needs to be broadened to include contractors, volunteers and other working in or for the Government, irrespective of the nature of their engagement. Such a change would better protect people's human rights, especially their ability to participate in public life and better achieve the purpose and intent of the Act in facilitating the reporting of wrongdoing.

## Experiences of people who witness and report wrongdoing

I think it is imperative that anyone involved in a PID matter be provided with the best support possible, including if necessary specialised psychological counselling and support. Public agencies may need to engage external specialist professionals to assist those involved in PIDs.

## Making, receiving and identifying PIDs

I think it is important that there are multiple internal and external pathways to report PIDs.

I think managers need a lot of support and intensive training to help them in performing their role as potential receivers and onward reporters of PIDs.

## Protections for disclosers, subject officers and witnesses

I think all parties involved in PIDs experience difficulties and detriment, especially the stress and anxiety of knowing they are involved in a matter that has potentially very serious consequences and that they must maintain strict confidentiality.

I think that it is very difficult to prove reprisal occurs or has occurred beyond reasonable doubt. Perhaps some civil and/or administrative scheme (discipline) with appropriate penalties for persons and agencies may work better.

Managing PIDs may mean agencies need to take action to manage risks and manage people (suspension, transfer work location/function temporarily, work from home etc.) and the actions taken may not be seen as fair by those involved and could potentially damage career aspirations/reputations and workplace relationships.

It is very difficult, especially in smaller workplaces, to maintain confidentiality of PIDs. As noted above, agencies may need to take action to manage risks and people and if people aren't fully informed of reasons why action has been taken rumours and inuendoes emerge.

## Remedies

I think the remedies in the PID Act are complex and people would need professional legal advice and support to enforce their rights.

I think there could be a greater role for the oversight agency in settling disputes involving disclosers and others and the agency managing the PID.

## Oversight agency

I think it is unusual that with over 80% of PIDs involving corrupt conduct that the Ombudsman is the oversight agency when it does not have jurisdiction to deal with such matters.

## Practical considerations

In my humble opinion any change to the structure, form and content of the Act will be ineffective without the necessary cultural change and support from within the sector, led from the most senior levels as identified in

Professor Coaldrake's report "Let the sunshine in – Review of culture and accountability in the Queensland public sector.

Key to achieving lasting positive change in any organisation, and certainly in government, is culture. And culture is shaped by leaders at all levels – the Premier of the day, ministers, MPs, Directors-General and senior executives. Their tone will be a precondition for success, whether that 'tone' be in the form of modelling behaviour, policy ambition and encouraging a contest of ideas, supporting the community in times of crisis, or the manner in which authority is exercised and the voice of the public heard. This Final Report canvasses areas where that tone has not reached the required pitch. In every case, whether the trivialising of parliamentary committees, lack of independence needed by integrity bodies or lack of clarity about decision making, this can be reversed by a commitment to openness, supported by accountability. Any good government, clear in purpose and open and accountable in approach, should have fewer integrity issues.

Part of the problem is an identifiable loss of capacity in the public service which has been accelerated by what is now an overreliance on external contractors and consultants. All of these matters are compounded by a culture too tolerant of bullying, unwilling to give life to unfashionable points of view and dominated by the occupational hazard of all governments, short-term political thinking. This has become ever more frustrating for the community.

This Review aspires to influence a cultural shift which encourages openness from the top, starting with Cabinet processes and a resulting shared focus on identifying and dealing with the challenges Queensland faces. Investing in good people and supporting them with an integrity system that enables a fair workplace committed to quality outcomes will help to rebuild the nobility of public service. Our best young people, indeed the best young people from around the world, should aspire to be part of Queensland's public sector, serving the needs of the community, and a government committed to identifying and enacting a long-term strategy for the State.

The strict confidentiality and other obligations imposed on people and agencies by the PID Act are necessary to manage alleged serious wrongdoing matters in as fair, thorough and as discreet a manner as possible.

However, the downside of all the secrecy is that in the absence of openness and transparency about these matters people "fill in the gaps" and harmful urban mythologies arise that can have a chilling effect on people coming forward to report matters.

I think we need to address a lot of the fear and mythology about PIDs by having very often, open and frank discussions/training about PIDs (de-identified as necessary). I think we need to normalise PIDs as being a necessary and important duty of all people who work in and for the public sector and ensure disclosers feel valued and honoured as much as possible. We need to be honest in telling people that these processes are difficult, to ensure fairness and due process, but that there will be support and protection from any possible reprisal.

My recommendation would be for leadership in the sector to courageously embrace PIDs and be very public about stating their numbers and outcomes of PIDs as a badge of honour, not a statistic to be feared or ashamed of.

I hope these comments assist with the Review.

I would be happy to further discuss these comments with the Review team

Regards

Jim Meyers