

February 2023 - PID Act Review
Submission from Sunwater Limited
Confidential

| Question | Sunwater Response |
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| Policy objectives of the PID Act | |
| 1. Are the objects of the PID Act valid and is the Act achieving these objects? Has the PID Act been effective in uncovering wrongdoing in the public sector? | Sunwater considers that the objects of the PID Act remain valid and do not require amendment. |
| 2. Is the title of the legislation suitable? Should any other terms, such as 'whistleblower' or 'wrongdoing', be included in the title or used in the legislation? | Sunwater considers that the common term of 'whistleblower' would provide additional clarity and visibility for the regime. Sunwater notes however, that because it is also subject to the Commonwealth whistleblower regime under the Corporations Act, a difference in title is appropriate (e.g. Public Interest Whistleblower). |
| 3. Are changes needed to ensure public confidence in the integrity of the PID regime? | No comment. |
| 4. Are any changes needed to the PID Act to make it more compatible with the Human Rights Act 2019? | No comment. |
| What is a Public Interest Disclosure? | |
| 5. What types of wrongdoing should the PID regime apply to? Should the scope be narrowed or broadened? Why and how? | Sunwater considers that, for government owned corporations, a focus on corrupt conduct remains appropriate. |
| 6. Should a PID include disclosures about substantial and specific dangers to a person with a disability or to the environment? Why or why not? | Sunwater has no recent experience in receiving a PID of this nature. It is not clear however, why such specific grounds are separately captured as PIDs or whether these solely remain appropriate. It is also not clear why these are 'any person' PIDs for a government owned corporate that is otherwise subject to limited PIDs by employees (i.e., corrupt conduct). |
| 7. Is there benefit in introducing a public interest or risk of harm test in the definition of a PID? | No comment. |
| 8. Should a person be required to have a particular state of mind when reporting wrongdoing to be protected under the PID regime? Are the current provisions appropriate and effective? | Sunwater considers that the 'honestly believes' threshold is appropriate. |
| Who can make a Public interest disclosure? | |

| Question | Sunwater Response |
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| 9. Who should be protected by the PID regime? Should the three categories of disclosers (public officer, employees of government owned corporations or Queensland Rail, and any person) be retained? Why or why not? | Sunwater considers that the categories relevant to government owned corporations are appropriate. |
| 10. Should the definition of public officer be expanded to include those performing services for the public sector whether paid or unpaid, for example volunteers, students, contractors and work experience participants? Should former public officers be covered? | No comment. |
| 11. Should relatives of disclosers, or witnesses be eligible to make PIDs? Should they, or anyone else, be entitled to protection under the PID regime? | Sunwater considers that, for government owned corporations, the existing categories remain appropriate. |
| 12. Should different arrangements apply to role reporters? Why and how? | Sunwater considers that this would be beneficial for roles that are inherently involved in identifying potential wrongdoing matters (e.g. human resources, internal audit). |
| Experiences of people who witness and report wrongdoing | |
| 13. How would you describe your experience in reporting wrongdoing under the PID Act? Do you have any suggestions for improvements? | Not applicable. |
| 14. What factors impacted your decision to report or not report wrongdoing? Did you encounter any barriers or obstacles during the process? How can the PID regime encourage disclosers to come forward? | Not applicable. |
| 15. Were you supported effectively during the process? Would alternative or additional support have been helpful? | Not applicable. |
| 16. Did you feel your disclosure was taken seriously, assessed in a timely way, investigated fairly and addressed appropriately? | Not applicable. |
| Making, receiving and identifying PIDs | |
| 17. Are the requirements for making, receiving and identifying PIDs appropriate and effective? | Sunwater considers that the requirements are appropriate and effective. |
| 18. Who should be able to receive PIDs? Do you support having multiple reporting pathways for disclosers? Is there a role for a clearing house or a third party hotline in receiving PIDs? | Sunwater considers that, in the first instance, PIDs should be encouraged to be made to the subject entity, to facilitate prompt attention and investigation. Sunwater has no objection however to an additional public agency (such as the Auditor General) being the recipient of a PID. |
| 19. At what point in time should the obligations and protections under the PID regime come into effect? | Sunwater considers that an entity should have the requisite time to first assess the disclosure as to its merits and also determine whether it is a PID. |

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| 20. Should the PID legislation require a written decision be made about PID status as recommended by the Queensland Ombudsman? What would the implications be for agencies? | Sunwater does consider that a subject entity should be able to make a decision about PID status. Sunwater considers that the current requirements are otherwise appropriate in terms of informal communications. |
| 21. Are the provisions for disclosures to the media and other third parties appropriate and effective? Are there additions or alternatives that should be considered? | No comment. |
| 22. Should the PID process for government owned corporations or Queensland Rail be different to those for public sector entities? Why or why not? Are the current arrangements appropriate and effective? | Sunwater considers that the current arrangements are appropriate. As a commercial entity, grounds for public interest disclosures should be limited and specific to particular areas of concern (e.g. allegations of corrupt conduct). The more general grounds applicable solely to public agencies (maladministration that adversely affects a person's interests in a substantial and specific way and a substantial misuse of public resources) are not considered appropriate for a commercial entity otherwise governed by the GOC Act and the Corporations Act. Further, Sunwater, as a government owned corporation, is also subject to the Commonwealth Whistleblower regime, which has broad scope in the disclosures it protects. |
| Managing, investigating and responding to PIDs | |
| 23. Are the requirements for managing, investigating and responding to PIDs appropriate and effective? | Sunwater considers that they are appropriate and effective. |
| 24. Are agencies able to provide effective support for disclosers, subject officers and witnesses? Are any additional or alternate powers, functions or guidance needed? | Sunwater considers that they are effective. |
| 25. Should the PID Act include duties or requirements for agencies to: <ul style="list-style-type: none"> • take steps to correct the reported wrongdoing generally or in specific ways? • provide procedural fairness to the discloser, subject officer and witnesses? • assess and minimise the risk of reprisals? | Sunwater considers that the relevant provisions are appropriate. |
| 26. Should a discloser be able to opt out of protections afforded under the Act, such as the requirement to receive information or be provided support? Should this only apply to role reporters, or to any type of discloser? | In the case of role reporters, Sunwater considers that this may be appropriate. |

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| Protections for disclosers, subject officers and witnesses | |
| 27. Are the current protections for disclosers, subject officers and witnesses appropriate and effective? Should additional or alternative protections be considered? | Sunwater considers that they are appropriate and effective. |
| 28. Are the current provisions about confidentiality adequate and fit for purpose? Should any improvements be considered? | Sunwater considers that they are adequate and fit for purpose, subject to providing flexibility to permit an entity to adequately assess and investigate a matter. |
| 29. Is the definition of reprisal appropriate and effective? Do any issues arise in identifying, managing and responding to reprisals? | No comment. |
| 30. Is there a role for an independent authority to support disclosers in Queensland? If so, what should its role be? | No comment. |
| Remedies | |
| 31. Are the remedies available to disclosers under the PID Act reasonable and effective? Are any changes needed? | No comment. |
| 32. Do the evidentiary requirements for remedies need amendment? | No comment. |
| 33. Are the provisions permitting complaints to the Queensland Human Rights Commission appropriate and effective? What role should alternative dispute resolution play in resolving disputes? | No comment. |
| 34. Do you support an administrative redress scheme for disclosers who consider they have experienced reprisals? | No comment. |
| Role of the oversight agency | |
| 35. Are the Queensland Ombudsman's functions and powers suitable and effective for the purpose of the oversight body? | No comment. |
| 36. Are there any conflicts between the Queensland Ombudsman's advisory and review functions for PIDs? If yes, how could these be managed or resolved? | No comment. |
| 37. Do the roles of integrity bodies overlap during the PID process? Are changes needed or do the existing arrangements work effectively? | No comment. |
| 38. Are the Standards published by the Queensland Ombudsman effective? Are changes needed? | No comment. |
| 39. Do you agree with the recommendations of the Queensland Ombudsman's 2017 review? | No comment. |
| Practical Considerations | |

| Question | Sunwater Response |
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| 40. Should the PID legislation be more specific about how it interacts with any other legislation, process or scheme? | No comment. |
| 41. Should the PID legislation include incentives for disclosers? If so, how should they operate? | No comment. |
| 42. Are current arrangements for training and education about the PID Act effective? How could they be improved? | No comment. |
| 43. How could an effective PID scheme provide for the needs of First Nations Peoples, culturally and linguistically diverse people and those in regional or remote communities? | No comment. |
| 44. Is the PID Act accessible and easy to understand? How could the clarity of the Act be improved? | No comment. |