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SENSITIVE

22 February 2023

The Honourable Alan Wilson KC
Reviewer
Review of the *Public Interest Disclosure Act 2010*By email: PIDActReview@justice.qld.gov.au

Dear Mr Wilson KC

Submission to the *Review of the Public Interest Disclosure Act 2010* (review)

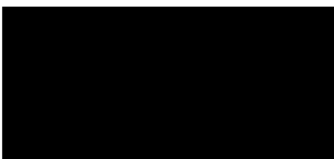
Thank you for the opportunity to make a submission to the review.

Our submission, which is attached, draws upon our:

- role as the oversight agency for the *Public Interest Disclosure Act 2010* (PID Act)
- 2017 review of the PID Act
- standards issued pursuant to s 60 of the PID Act
- integrity agency functions under the *Ombudsman Act 2001*.

If you have any queries about our submission, please do not hesitate to contact me.

Yours faithfully


Anthony Reilly
Queensland Ombudsman and
Inspector of Detention Services**Enc. Submission by the Queensland Ombudsman**



Submission

Review of the *Public Interest Disclosure Act 2010*



Submission by the Office of the Queensland Ombudsman
22 February 2023

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Introduction

- [1] Our submission to the review is based on the following:
- our role under the *Public Interest Disclosure Act 2010* (PID Act) as the oversight agency for the PID Act
 - our 2017 review of the PID Act conducted pursuant to section 62 of the PID Act
 - the PID standards that we issued in 2019 pursuant to s 60 of the PID Act
 - the PIDs that we receive as complaints made to us under the *Ombudsman Act 2001* (Ombudsman Act).

Oversight agency

- [2] The PID Act designates the Office of the Ombudsman as its oversight agency. Our oversight agency functions include:
- monitoring the management of PIDs
 - reviewing the way in which public sector entities deal with PIDs
 - performing an education and advisory role for public sector entities
 - publishing an annual report on the operation of the PID Act.
- [3] We welcome the opportunity to continue to exercise this function after the review. Appendix 2 highlights strategies implemented by the Office to give effect to its oversight functions.

2017 review

- [4] In 2017, as required by s 62 of the PID Act, the Office undertook a review of the operation of the Act which was tabled by the Attorney-General in Parliament on 27 February 2017 (the 2017 review).
- [5] The 2017 review made 40 recommendations about many matters relevant to the current review. Unless otherwise stated in our response to the current review's issues paper, we support the recommendations of the 2017 review, and the analysis and reasoning upon which those recommendations were based. Examples of recommendations that we consider would benefit from reconsideration include:
- removing the capacity for any person to make a PID under s 12 (rec. 4)
 - establishing an administrative redress scheme (rec. 33)
 - designating this Office as the external reviewer of PID assessments (rec. 36).

PID standards

- [6] In 2019 our Office issued PID standards pursuant to s 60 of the PID Act. The PID standards complement the PID Act by setting out detailed requirements for PID management programs; assessing, investigating and dealing with PIDs; and PID data recording and reporting.
- [7] Many of the requirements in the PID standards were recommended as amendments to the PID Act in the 2017 review (see Appendix 1).

- [8] We look forward to the current review's observations about the effectiveness of the PID standards, and whether some of the matters contained in the standards should be incorporated as provisions of the PID Act.

PID role under the Ombudsman Act

- [9] When we receive a complaint about the administrative actions of a public sector entity under the Ombudsman Act, we assess whether it is a PID. We may decide to investigate the matter ourselves, or we may refer the matter to another public sector entity pursuant to s 31 of the PID Act, such as the public sector entity about which the complaint is made, or the Crime and Corruption Commission if it relates to corrupt conduct. We also provide advice to individuals about PIDs; and will investigate complaints about administrative actions relating to PIDs, such as initial assessments by agencies.

Initial observations

Are the objects of the PID Act being achieved?

- [10] The 2017 review made the following observation about whether the objects of the PID Act were being achieved:

Based on the PID data reported by agencies, there is evidence that the objects of the PID Act are being achieved. Disclosers are exercising their rights under the PID Act to bring to light allegations about wrongdoing and thereby attract the protections available under the Act. While some complaints are received from disclosers by this Office, under the Ombudsman Act 2001, about the assessment or investigation of PIDs by public sector entities, the numbers are small by comparison with the total PIDs reported in the database.

Agencies, particularly State Government departments and statutory authorities are, overall, demonstrating through the entry of data into the PID database that PIDs are being identified, assessed, investigated and actioned. The number of PIDs reported by local governments raises concerns about potential under-reporting. Public sector entities also demonstrate their commitment to effectively managing PIDs through their engagement with the Office, including attendance at PID Coordinator network meetings and participation in training workshops. The Office receives a small but wide range of enquiries from PID Coordinators and managers within public sector entities seeking guidance about correct interpretation and application of the PID Act. (p.20)

- [11] Based on our experience since the 2017 review, we consider the above observations remain valid today. A further source of information to support this view has been the results of the PID self-assessment audit process coordinated by our Office in 2020 and 2021. The results of each audit, which have been publicly reported in the 2020-21 and 2021-22 PID annual reports, show that while there is room for improvement there is a heartening level of compliance by public sector entities with many of the system design elements of the PID Act and PID standards.
- [12] We note, however, that we are not able to provide definitive assurances as to the quality of assessment and investigation of all individual PIDs, or the support provided to disclosers in all individual cases across the public sector. Public concerns about the treatment of some 'whistleblowers' have surfaced in recent years. Consideration of the how the PID Act contributed, if at all, to these problems may assist the review to identify issues to remedy.

Positive features of the PID Act to retain

- [13] Positive features of the current PID Act include:
- objects
 - broad approach to types of PIDs and those who may make a PID
 - 'multiple pathways' approach for making of disclosures
 - various requirement for CEOs such as:
 - making procedures about assessing and dealing with PIDs
 - informing disclosers about various matters

- keeping records and giving information to the oversight agency
- range of protections available to disclosers
- existence of an oversight agency function
- use of standards to address procedural matters.

[14] While there is room for improvement to each of the above, we consider they are features of the PID Act that should be retained.

Priorities for reform

[15] Aspects of the PID Act that we consider to be priorities for reform include:

- making the PID Act easier to understand and apply
- expanding who may make a PID to include contractors and volunteers
- exclude PIDs that solely concern personal workplace grievances unless there is a public interest element involved
- providing for the assessment of PIDs – as well as reasons for decision and arrangements for external review
- establishing a clear requirement that agencies must assess and minimise the risk of reprisal
- establishing a clear requirement that agencies must investigate a PID and take appropriate corrective action where wrongdoing is revealed
- improving the effectiveness of remedies for reprisal.

Responses to the issues paper

- [16] In this section we provide responses to questions set out in the appendix to the issues paper. The subheadings below align with the numbering of the questions in the appendix.

Issues Paper - Part 1

Policy objectives of the PID Act

Question 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?

- [1.1] We note recommendation 1 of the 2017 review that the objects of the PID Act remain valid and do not require amendment.
- [1.2] The objective of ensuring appropriate consideration to the interests of persons who are the subject of a PID is appropriate, but would be improved by extending it to other persons affected by disclosures such as witnesses.

Question 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?

- [1.3] We note recommendation 2 of the 2017 review that the title of the PID Act should be amended to incorporate both the terms 'whistleblower' and 'public interest disclosure'.
- [1.4] Whilst we have no strong contrary views to recommendation 2, it is worth acknowledging that this recommendation was in the context of the earlier legislation titled the *Whistleblower Protection Act 1994* that had only been repealed in 2010. Six years on from the 2017 review, the term 'public interest disclosure' is now well known and widely used in the public sector. However, there is no doubt that the term 'whistleblower' is still widely used by the media and members of the public.
- [1.5] If the word 'whistleblower' is incorporated in to the title of the PID Act, then the text of the same Act should provide some explanation as to its meaning (which would presumably be the same as a PID).

Question 3. Are changes needed to ensure public confidence in the integrity of the PID regime

- [1.6] To ensure public confidence, the PID regime needs to achieve the PID Act's objectives. All of the suggestions made in this submission seek to further those objectives.

Question 4. Are any changes needed to the PID Act to make it more compatible with the Human Rights Act 2019?

- [1.7] Section 58(1) of the *Human Rights Act 2019* provides that it is unlawful for a public entity to act or make a decision in a way that is not compatible with human rights, or to make a decision without giving proper consideration to a human right relevant to the decision.
- [1.8] Public entities are required to make decisions about PID related matters in accordance with the above s.58(1).
- [1.9] There can be a range of human rights relevant to a PID decision depending upon the subject matter of the PID. More broadly, however, the 2019 European Union Whistleblower Directive provides at clause 31 that ‘Persons who report information about threats or harm to the public interest obtained in the context of their work-related activities make use of their right to freedom of expression.’
- [1.10] There may be benefit in including a similar provision in the PID Act to the above to highlight one of the core human rights factors relevant to all PID decisions.

Issues Paper - Part 2

What is a public interest disclosure?

Question 5. What types of wrongdoing should the PID regime apply to? Should the scope be narrowed or broadened? Why and how?

- [2.1] The types of wrongdoing to which the PID regime applies, as set out in ss 12 and 13 of the PID Act, should be retained.
- [2.2] The types of wrongdoing that can be disclosed under the PID Act are broadly equivalent to other jurisdictions, although with nuanced differences in scope and using various terminology (see for example the definition of ‘serious wrongdoing’ at s 10 of the *Protected Disclosures (Protection of Whistleblowers) Act 2022* New Zealand (PD Act NZ), definition of ‘disclosable conduct’ at s 29 of the *Public Interest Disclosure Act 2013 Cth* (Commonwealth PID Act), and the meaning of ‘improper conduct’ at s 4 of the *Public Interest Disclosures Act 2012 Vic* (PID Act Vic)).
- [2.3] Analysis of the types of wrongdoing identified by public sector entities in PIDs reported to the oversight body in the previous two financial years showed a significant proportion of matters concerned misuse of information (including breach of privacy or confidentiality). Whether there would be benefit in broadening the scope of matters that can be reported to specifically include serious misuse of information (such as in the PID Act Vic and the PD Act NZ), is a question the reviewer may wish to consider.
- [2.4] As discussed below, there would be benefit in broadening the scope of disclosures that employees of GOCs or a rail government entity can make, to provide greater protections, rather than limiting them to reporting corrupt conduct and reprisal.

Question 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?

- [2.5] Yes, we consider that both types of disclosures should be retained in the PID regime. We are not aware of any concerns about their current inclusion.
- [2.6] A good explanation of the reasons for including disclosures about dangers to a person with a disability at the time can be found at p.13 of the explanatory notes to the *Whistleblowers Protection Bill 1994*. The recent hearings of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability show that similar reasons continue to apply today.

Question 7. Is there benefit in introducing a public interest or risk of harm test in the definition of a PID?

- [2.7] We support recommendation 7 of the 2017 review, and the reasoning for the recommendation at pages 29 - 31 of the 2017 review report, that section 13(1)(ii) of the PID Act should be amended to exclude PIDs that solely concern personal workplace

grievances, but permit the exercise of discretion on the part of a proper authority to accept a disclosure if, in the circumstances, it is reasonable to do so.

- [2.8] Section 26(2) of the *Public Interest Disclosure Act 2022 NSW* (the 2022 NSW PID Act), excludes personal grievances where there are no implications beyond the individual or the grievance relates to reasonable management action.
- [2.9] The Commonwealth Public Interest Disclosure Amendment (Review) Bill 2022 would, if passed, amend the Commonwealth PID Act, by excluding disclosures about ‘personal work-related conduct’ (see s 3 and s 4).

Question 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?

- [2.10] We support the retention of a ‘state of mind’ provision in the PID Act.
- [2.11] Article 32 of the 2019 European Union Whistleblower Directive provides a good explanation of the need for ‘state of mind’ provisions:
- To enjoy protection under this Directive, reporting persons should have reasonable grounds to believe, in light of the circumstances and the information available to them at the time of reporting, that the matters reported by them are true. That requirement is an essential safeguard against malicious and frivolous or abusive reports as it ensures that those who, at the time of the reporting, deliberately and knowingly reported wrong or misleading information do not enjoy protection. At the same time, the requirement ensures that protection is not lost where the reporting person reported inaccurate information on breaches by honest mistake.
- [2.12] The requirement in the PID Act for a discloser to have an honest belief on ‘reasonable grounds’ is similar to the requirements at s 26(1) of the 2022 NSW PID Act. The Commonwealth PID Act requires the discloser ‘believes on reasonable grounds’ they are reporting disclosable conduct (see s 26(1)(c)).
- [2.13] In the PID Act Vic, s 9 requires a discloser ‘reasonably believes’ the information ‘shows or tends to show’ wrongdoing, but at s 26(3)(ii) (a section which deals with assessments by the Independent Broad-based Anti-corruption Commission (IBAC)), requires IBAC to determine if the discloser ‘believes on reasonable grounds’ that the information shows or tends to show wrongdoing. Section 9 of the PD Act NZ protects a disclosure if the discloser ‘believes on reasonable grounds’ that the information shows wrongdoing, and ‘does not disclose it in bad faith’.

Issues Paper - Part 3

Who can make a public interest disclosure?

Question 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?

Any person

- [3.1] Recommendations 4 of the 2017 review provided that the PID Act should be amended to remove the capacity for **any person** to make a PID about health or safety of a person with a disability or danger to the environment, by repealing s 12(1)(a), (b) and (c).
- [3.2] In the light of 6 years of experience as the oversight agency, we have concerns about recommendation 4, and consider that caution should be exercised in pursuing it.
- [3.3] The objects of the PID Act are to promote the public interest by facilitating disclosures of wrongdoing in the public sector. Clearly, members of the public will often have important information about such wrongdoing to disclose.
- [3.4] There are other examples of jurisdictions where members of the public may make disclosures. Under s 5 of the *Public Interest Disclosure Act 2018 SA*, any person can make a disclosure of 'environmental and health information'. Any person can make a disclosure of 'improper conduct' under the PID Act Vic (see s 9(1)), and the definition of 'improper conduct' includes 'a substantial risk to the health or safety of one or more person' and 'a substantial risk to the environment' (see s 4).
- [3.5] If the current review is satisfied that there are other schemes available in Queensland to members of the public to make disclosures about conduct of public sector entities (such as public sector entity service delivery complaint processes or complaints to the Crime and Corruption Commission) that are sufficient to achieve the PID Act objective of facilitating disclosures, then there may be no need to retain s 12.
- [3.6] If the review is not so satisfied, then caution should be exercised before removing the capacity for any person to make a PID.
- [3.7] A particularly important group to consider in this regard are vulnerable members of the public, including those with a disability and their carers, who rely on public sector entities (or their contracted service providers) for the provision of critical services such as housing, health or education. The relationship between recipients of services and government service providers can be one of dependency, a situation that may reduce their willingness to make disclosures. For example, they may fear detriment in the form of reduced services. Having the protections of the PID Act available to them may serve to encourage them to make disclosures by reducing their apprehension of reprisal, and provide some assurance that their concerns will be investigated.

Government Owned Corporations

- [3.8] In relation to the special arrangements for government owned corporations (GOCs) and Queensland Rail, we consider the underlying principle ought to be that all employees of all public sector agencies should be able to access all of the rights and protections of the PID Act.
- [3.9] However, we acknowledge other policy considerations may prevent the application of this principle in some cases. A rationale for treating government owned corporations differently to other government bodies is set out at p.15 of the explanatory notes to the *Whistleblowers Protection Bill 1994*.
- [3.10] On a related front, we note that following passage of amendments to the *Corporations Act 2001*, from 1 July 2019, GOCs became subject to the whistleblower protection obligations in Part 9.4AAA of the Corporations Act, as well the PID Act. GOCs are treated differently to other public sector entities under the PID Act, for example, in relation to the types of wrongdoing that an employee of a GOC can disclose and be protected.
- [3.11] It is acknowledged that seeking to simultaneously comply with two legislative regimes, notwithstanding they share the same broad objectives, is undoubtedly more onerous for GOCs than working with a single regime.
- [3.12] Section 19(10) of the PID Act is 'declared to be a Corporations legislation displacement provision' in relation to s 1317AE of the Corporations Act. Arguably, the wording of s 19(10) of the PID Act and accompanying 'Note' do not provide a clear and comprehensible statement of GOCs compliance requirements.
- [3.13] The 2022 NSW PID Act at s 12 provides clarity for public sector entities by providing that they are only bound by the state PID legislative obligations and not also the Corporations Act obligations. A similar amendment to the PID Act would reduce the complexity for GOCs which currently are endeavouring to comply with both the Corporations Act and the PID Act. However, if this proposal were implemented, it would be appropriate to broaden the type of PIDs GOC employees can make (beyond only corrupt conduct and reprisal) so as to more closely replicate the type of PIDs they can make under the Corporations Act (for example, enabling GOC employees to make PIDs under all elements of s 13). Further consultation with GOCs about these matters is warranted.

Question 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?

Volunteers, student, contractors

- [3.14] We support recommendation 9 of the 2017 review, and the reasoning for the recommendation at pages 34 – 38 of the 2017 review report, that the definition of 'public officer' at s 7 of the PID Act should be amended to encompass all persons performing duties in and for public sector entities, whether paid or unpaid, so as to include volunteers, contractors (including the employees of organisations engaged under contracts for

service), trainees, students and others in employment-like arrangements in the public sector.

- [3.15] In further support of recommendation 9, we note the observations about the role of contracted service delivery providers government in the *Let the sunshine in: Review of culture and accountability in the Queensland public sector* report published in June 2022 (e.g. at p.26), and its recommendation 13 that the Ombudsman be provided with authority to investigate complaints against private organisations carrying out functions on behalf of the government.
- [3.16] We also note that the recently reviewed New South Wales and New Zealand PID legislation both extend PID coverage beyond employees to contractors, subcontractors, volunteers, and employees of public sector entities under contracts contracted to deliver public services to the list of those who could make a PID (see s 14 of the 2022 NSW PID Act), and contractors and volunteers (see s 8 of the PID Act NZ).
- [3.17] If contractors are to be included in the PID Act scheme, then we suggest considering the inclusion in the PID Act of a provision based on s 82 of the NSW PID Act, which requires PID Act obligations to be included in service delivery contracts entered into with service providers.

Former public servants

- [3.18] We also continue to support recommendation 10 of the 2017 review, and the reasoning for the recommendation at pages 38 – 39 of the 2017 review report, that the PID Act should be amended to provide that the Act continues to apply to a ‘public officer’ for up to 12 months after separation from employment (or termination of their appointment as a contractor, or the end of their engagement as a volunteer, student or similar), for the purpose of making a PID and receiving the protections under the PID Act.
- [3.19] The Commonwealth PID Act extends the protections of the Act to a person who is or has been a ‘public official’ (see s 26).
- [3.20] The PD Act NZ includes ‘former employees’ on the list of ‘employees’ who can make a PID defines ‘discloser’ to include individuals who were formerly employees, contractors or volunteers (see s 8 definition of employees).
- [3.21] By virtue of permitting a disclosure by ‘a natural person’ the PID Act Vic also permits disclosures by former public officers (see s 9).

Question 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?

- [3.22] If the issue raised by question 11 is the ability of ‘relatives of disclosers or witnesses’ to make PIDs of reprisal if they are subjected to harm because the person they are related to was a discloser or a witness, then arguably this is already provided for at s 12(1)(d) which permits any person to make a PID of reprisal. The definition of reprisal at s 40 includes both detriment to a person who themselves is a discloser or a person who has been subjected to detriment because ‘someone else’ made a PID. This has the effect of protecting relatives of disclosers and witnesses.

Question 12. Should different arrangements apply to role reporters? Why and how?

- [3.23] We support recommendation 8 of the 2017 review that the PID Act should be amended to expressly state that a disclosure by a public officer includes a disclosure of information falling within the definition of a PID that is made by the officer in the ordinary course of the officer's performance of their duties.
- [3.24] However, we do not support the PID Act providing for different arrangements for the protection of 'role reporter' disclosers. Those arrangements should instead be based on an assessment of risk in the particular circumstances of the individual, and be a proportionate and appropriate response. Likewise, what is 'appropriate support' for a particular discloser (see s 28(1)(a)), is best determined based on their personal needs, rather than whether they are a 'role reporter'.
- [3.25] In this regard, see the quoted section of the feedback from the then Department of Natural Resources and Mines and Department of Energy and Water Supply in the 2017 review report discussion (p. 33) of this issue:
- It is considered that the current provisions are appropriate, whereby risk assessment for reprisal is applied accordingly, and therefore allows for a proportionate and appropriate management and response. The appropriate management is considered a matter for the PID Coordinator, or contact officer, to consult with the disclosure [sic], consider the context and particulars, and manage this appropriately. Restricting or change provisions specific for role-related PIDs may limit protections that were otherwise appropriate or required for that particular case, and rather maintaining the provisions allows for flexible and appropriate management.
- [3.26] See also PID Standard No.2/2019 which provides guidance for agencies about risk assessment for reprisal (p.10).
- [3.27] Despite this, there may be justification for a different approach with respect to ongoing communication and feedback to all disclosers, including 'role reporters'. The Office regularly receives enquiries from agencies seeking guidance on whether they are required to communicate with a 'role reporter', and whether a discloser can 'opt out' of ongoing communication about the progress of the PID (refer to PID Standard 2/2019) or outcome advice (refer to s 32). In some cases, disclosers have no personal interest in the progress or outcome of their disclosure, and agencies (particularly smaller agencies) with limited resources may benefit from reducing the administration of unwanted communication.
- [3.28] An option to consider is including a provision in the PID Act that requires an agency to advise a person that they will be provided with updates and outcome advice unless the discloser communicates in writing that they understand the communication they are entitled to but consent not to receive it.

Issues Paper - Part 4

Experiences of persons witnessing and reporting wrongdoing

- [4.1] The Office, in its capacity of the oversight agency, is not able to provide firsthand answers to questions 13 to 16.

Issues Paper - Part 5

Making, receiving and identifying PIDs

Question 17. Are the requirements for making, receiving and identifying PIDs appropriate and effective?

- [5.1] The requirements for making, receiving and identifying PIDs are set out in the PID Act and PID standard 1/2019 – Public Interest Disclosure Management Program and PID standard 2/2019 – Assessing, Investigating and Dealing with Public Interest Disclosures.
- [5.2] Although s 28 of the PID Act requires chief executive officers of public sector entities to establish reasonable procedures about certain important things such as how PIDs are to be made, assessed, investigated and dealt with, it does not clearly articulate some of the fundamental duties of agencies in relation to PIDs such as:
- assess disclosures to ascertain if they are PIDs
 - assess and minimise the risk of reprisal to a discloser of a PID
 - investigate PIDs and ensure corrective action is taken to address wrongdoing.
- [5.3] We consider that a clear assertion of these three fundamental aspects of the PID regime in the PID Act in *Chapter 3 Obligations of entities to whom disclosures may be made* would be beneficial.

Making PIDs

- [5.4] As explained in our answer to Question 18 below, we support a ‘multiple pathways’ approach to making PIDs.
- [5.5] To support the ‘multiple pathways’ approach endorsed in recommendation 11 of the 2017 review, it recommended information and training to public sector officers as follows:
- **Recommendation 12**
Section 28(1) of the PID Act should be amended to require that chief executive officers of public sector entities ensure that public officers are provided with information about their rights and responsibilities under the PID Act.
 - **Recommendation 13**
Section 28(1) of the PID Act should be amended to require that chief executive officers of public sector entities ensure that supervisors, managers and other officers with responsibility for receiving and assessing disclosures are provided with appropriate training to fulfil their responsibilities.
- [5.6] Both recommendations have been implemented by the PID standards (see Appendix 1).

Assessing PIDs

- [5.7] Importantly, the 2017 review recommended that the PID Act be amended to provide authority to public sector entities to assess PIDs, and related issues such as statements of reasons, timeframes, and access to review as follows:

- **Recommendation 15**
The PID Act should be amended to provide specific authority for chief executive officers of public sector entities to take reasonable steps to assess disclosures before determining whether the disclosure is a PID, whether the entity should decide no action is required in accordance with s 30 or whether referral of the disclosure is required in accordance with s 31. This should include consultation with the discloser (where practicable), and other public sector entities.
- **Recommendation 16**
Section 65(3) of the PID Act should be amended to clarify that making a record of confidential information or disclosing it to someone else is permitted for the purpose of taking reasonable steps to assess disclosures, including consultation with other public sector entities.
- **Recommendation 17**
The PID Act should be amended to provide that chief executive officers of public sector entities may assess a disclosure and determine whether the disclosure is a PID in accordance with the PID Act.
- **Recommendation 18**
The PID Act should be amended to require a chief executive officer, who has assessed a disclosure, to provide the discloser with a written decision informing them whether the disclosure has been assessed as a PID in accordance with the PID Act, including reasons for the decision and information about the discloser's review rights.
- **Recommendation 19**
The PID Act should be amended to require the chief executive officer of a public sector entity to complete the assessment of a disclosure, and communicate in writing the outcome of that assessment to the discloser, within one month of receipt of the disclosure.

[5.8] Recommendations 15, 17 and 18 have been fully implemented by the PID standards, while recommendation 16 and 19 have been partially implemented (see Appendix 1).

[5.9] In addition to considering whether it supports the arrangements required by the PID standards, we request that this review consider whether they should be included in the PID Act rather than in the PID standards. An example of a strong candidate for inclusion in the PID Act is the provision of authority to chief executive officers of public sector entities to assess a disclosure and determine whether the disclosure is a PID in accordance with the PID Act. Arguably the requirement to provide a statement of reasons, and timeframes should also be legislated. We would be pleased to discuss this issue further with the review team.

Question 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?

[5.10] Recommendation 11 of the 2017 review provides that the PID Act should continue to provide multiple pathways for a PID to be made and allow disclosers to choose to whom

they make their disclosure. This approach has been incorporated in to the relevant PID standards. We continue to strongly endorse this view for the reasons set out in the 2017 review.

- [5.11] The recently amended 2022 PID Act NSW includes multiple pathways for making a PID (see for example s 27 and s 28 which identify to whom a ‘voluntary’ PID may be made).
- [5.12] The Commonwealth PID Act provides a table listing internal and external recipients of different types of disclosures (see s 26) and an expansive definition of ‘authorised internal recipient’ (see s 34) which encompasses a range of options, both internal and external to an agency.
- [5.13] Likewise, the PID Act Vic lists a large number of options for disclosers to make a PID (see s 13 and s 14).
- [5.14] The PD Act NZ permits a discloser to make a PID to ‘their organisation or an appropriate authority’ (see s 11) and defines ‘appropriate authority’ broadly (see s 25), as well as including a schedule with a detailed list of agencies with particular responsibility for specific issues.
- [5.15] The effectiveness of a ‘clearing house’ in receiving and responding to PIDs will rely on clear protocols for responding to PIDs, comprehensive training for contact staff in identifying PIDs and possible PIDs, and confidential referral pathways (for example direct to the PID Coordinator of the relevant agency).

Chief executive officers with boards

- [5.16] Issues can arise in relation to the practical protection of CEOs under the PID Act when making a PID about the conduct of an officer of their own public sector entity who is responsible for decisions about their employment (for example, a local council CEO making a PID about a Mayor, the CEO of a statutory body or GOC making a PID about the chair of the board of that entity).
- [5.17] Presently the PID Act provides at s 17(3)(c) that ‘if the proper authority that is a public sector entity has a governing body – a member of the governing body’. An option for consideration is that a proper authority for public sector entities that have a governing body also be the director-general of the department that has portfolio responsibility for the Act under which the public sector entity is established.

Question 19. At what point in time should the obligations and protections under the PID regime come into effect?

- [5.18] In order for the protections of the PID regime to be effective, they need to come in to effect from the time that the disclosure is made. If the protections only come in to effect at the time that the disclosure is assessed to be a PID, then the discloser will not have access to those protections in the period between when they make the disclosure and when it is assessed as a PID.
- [5.19] Applying the above principle is relatively straightforward for the protections available to disclosers at ss 36, 37, and 38 of the PID Act. However, we acknowledge that the situation is more complex in relation to the application of the s 41 offence of reprisal.

[5.20] A failure by an agency to recognise or appropriately respond to a PID should not negate the protections available to a discloser. In the case of *Baragan v State of Queensland & Ors [2022] QCAT 202*, the tribunal member noted that:

[168] There is no evidence that Mr Dunlop treated the complaint about Mr Everett and Mr Fairhurst as a public interest disclosure. It was not recorded or referred to Ethical Standards Command.

[169] I do not consider that the failure of a person, properly in receipt of a public interest disclosure under s 17 of the PID Act, to recognise the disclosure as a public interest disclosure, strips it of its character and force.

Question 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?

[5.21] Yes - see our continuing support for recommendations 17 and 18 of the 2017 review listed above.

[5.22] Providing written decisions, including reasons for decision, is widely accepted as good administrative practice. Benefits include ‘focusing the mind’ of the decision-maker to enhance the quality of decisions; establishing a record of the decision; and better understanding for the recipient of why a decision was made.

[5.23] Relevant to note is that s 30 of the PID Act already requires public sector entities to give reasons for deciding not to investigate or deal with a disclosure; and s 32 of the PID Act already requires public sector entities to give information in writing to a discloser about the action proposed to be taken in response to the disclosure.

Question 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?

[5.24] See above.

Issues Paper - Part 6

Managing, investigating and responding to PIDs

Question 23. Are the requirements for managing, investigating and responding to PIDs appropriate and effective?

- [6.1] Requirements for managing, investigating and responding to PIDs are set out in the PID Act, PID standard 2/2019 – Assessing, Investigating and Dealing with Public Interest Disclosures, and associated procedures issues by chief executive officers.
- [6.2] As observed, we consider that the PID Act should clearly articulate some of the fundamental duties of agencies in relation to PIDs such as:
- assess disclosures to ascertain if they are PIDs
 - assess and minimise the risk of reprisal to a discloser of a PID
 - investigate PIDs and ensure corrective action is taken to address wrongdoing.
- [6.3] While the PID standards implement many of the recommendations of the 2017 review, a relevant recommendation that has not been implemented in the standards is Recommendation 20. This provides that the PID Act should be amended to require the chief executive officer of a public sector entity to provide a status report on the management of a PID to the discloser every two months, commencing from the date the discloser was informed that the disclosure had been assessed as a PID, until the PID has been resolved/closed or action finalised. We acknowledge that providing a status report every two months may impose undue administrative burden on public sector entities.

Question 24. Are agencies able to provide effective support for disclosers, subject officers and witnesses? Are any additional or alternate powers, functions or guidance needed?

- [6.4] From anecdotal evidence obtained through agency enquiries and discussion at training sessions, the nature and effectiveness of support provided to disclosers as required under s 28(1) of the PID Act varies according to the size, nature and geographic spread of the agency; the knowledge and expertise of the agency's officers responsible for PID management; the resources available to the agency; and whether the discloser is located in a regional or remote area.

Question 25. Should the PID Act include duties or requirements for agencies to:
(a) take steps to correct the reported wrongdoing generally or in specific ways?
(b) provide procedural fairness to the discloser, subject officer and witnesses?
(c) assess and minimise the risk of reprisals?

(a) take steps to correct the reported wrongdoing generally or in specific ways?

[6.5] PID standard 3/2019 – Public Interest Disclosure Data Recording and Reporting (at p.4) requires public sector entities to disclose information about the steps taken to correct the reported wrongdoing as follows:

- date investigation of PID commenced
- date investigation of PID completed
- outcome of investigation
- if investigation discontinued, an explanation
- resolution action taken by the entity
- date outcome of investigation communicated to discloser.

As stated above, we consider that PID Act should be amended to clearly establish that agencies must Investigate PIDs and ensure corrective action is taken to address wrongdoing. However, we do not consider it necessary for the PID Act to codify how the investigation should be undertaken, or to list examples of corrective actions (as per s 66 of the PID Act NSW).

(b) provide procedural fairness to the discloser, subject officer and witnesses?

[6.6] PID standard 2/2019 has implemented recommendation 27 of the 2017 review that s 28 of the PID Act should be amended to include a requirement that the chief executive officer of a public sector entity must establish reasonable procedures to ensure that procedural fairness is accorded to all parties (including the discloser, subject officer and witnesses) in the conduct of assessment and investigation of PIDs.

(c) assess and minimise the risk of reprisals?

[6.7] PID standard 2 also requires a public sector entity to assessing the risk of reprisal to disclosers, witnesses and others and to subsequently develop a risk management plan. Both are important steps in the management of PIDs.

[6.8] Section 61 of the recently amended New South Wales PID Act includes a requirement that a public sector entity must take steps to assess and minimise the risk of reprisal to disclosers. Section 62 attaches liability to the public sector entity for injury, damage or loss arising from a failure to implement s 61.

[6.9] We consider that similar provisions should be inserted in the PID Act to support the PID Act's objective to "afford protection from reprisals to person making public interest disclosures".

Issues Paper - Part 7

Protections for disclosers, subject officers and witnesses

Question 27. Are the current protections for disclosers, subject officers and witnesses appropriate and effective? Should additional or alternative protections be considered?

- [7.1] We refer you to the 2017 review and its discussion of the reasons for recommendations about improvements for the above parties at recommendations 26 to 29 and also recommendation 31.
- [7.2] Recommendation 27 has been partially implemented by PID standards 1 and 2 (see Appendix 1)
- [7.3] The protections available to disclosers would be improved by including a clear requirement in the Act that agencies must assess and minimise the risk of reprisal for disclosures of PIDs.

Question 28. Are the current provisions about confidentiality adequate and fit for purpose? Should any improvements be considered?

- [7.4] We refer you to the 2017 review and its discussion of the reasons for recommendation 31.

Question 29. Is the definition of reprisal appropriate and effective? Do any issues arise in identifying, managing and responding to reprisals?

- [7.5] Section 40(5) of the PID Act provides that the making of a disclosure must be a 'substantial' ground for the reprisal. Some other jurisdictions have opted for a lower level of 'contributing' ground, for example, the New South Wales PID Act definition of a detrimental action offence at s 33.
- [7.6] Adopting the lower threshold of 'contributing' ground would support achieving the objectives of the PID Act to 'afford protection from reprisals to person making public interest disclosures'.
- [7.7] Section 13(3) of the Commonwealth PID Act makes explicit that reasonable action taken to protect a person from detriment is not a reprisal. This may be a useful clarification and provides some assurance for agencies.
- [7.8] In the *State of Queensland (Queensland Police Service) v Workers' Compensation Regulator & Anor [2021] QIRC 366*, the QIRC found that investigating whether a disclosure was 'false or misleading' (refer to s 66 of the PID Act), does not amount to a reprisal action. Similarly, the 2022 NSW PID Act at s 32 provides that lawful action taken to investigate serious wrongdoing and other misconduct is not detrimental action. A similar provision could usefully be added to the PID Act to remove any doubt.

Question 30. Is there a role for an independent authority to support disclosers in Queensland? If so, what should its role be?

- [7.9] At a pragmatic level, it is also difficult to conceive how a single independent authority could provide support to the many thousands of officers who have made PIDs, and do so across the many hundreds of agencies that constitute Queensland's public sector, especially given the different governance arrangements, structure and size of agencies.
- [7.10] There may, however, be cause for an existing independent authority to have a capacity to support disclosers in situations where it has been assessed that the public sector entity about which the disclosure has been made is unlikely to properly protect the discloser from reprisal.

Issues Paper - Part 8

Remedies

Question 31. Are the remedies available to disclosers under the PID Act reasonable and effective? Are any changes needed?

- [8.1] The remedies available to disclosers under the PID Act reflect remedies available in other jurisdictions, such as a criminal offence of reprisal; and civil remedies of damages for reprisal and injunction to restrain reprisal. The Queensland PID Act offers other remedies such as complaints to the Queensland Human Rights Commission and recourse to the Queensland Industrial Relations Commission.
- [8.2] We support improving the accessibility of those remedies through the option proposed in the issues paper of providing that costs can only be ordered against disclosers in limited circumstances (p.21 issues paper).
- [8.3] As noted below, it may be beneficial to clarify the capacity of disclosers to access remedies available under the Industrial Relations Act.
- [8.4] The 2022 NSW PID Act at s 20 makes explicit that a PID remains a PID even if the alleged wrongdoing is not substantiated. Such a clarification would provide comfort to disclosers who do not have specific evidence to provide with their disclosure.

Question 32. Do the evidentiary requirements for remedies need amendment?

- [8.5] See above with respect to ‘contributory’ versus “significant’ grounds for reprisal in our response to question 29.
- [8.6] As the oversight agency, we do not have any particular expertise in the option of reversing the onus of proof in reprisal proceedings, and so do not offer a submission.

Question 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?

- [8.7] The low uptake of the alternative dispute resolution pathway offered by the Queensland Human Rights Commission may indicate that disclosers do not consider alternative dispute resolution (ADR) to be a suitable means of resolving PID disputes. ADR may not be suitable for PID disputes due to inherent power imbalance between employees and employers.
- [8.8] We look forward to any observations of the Queensland Human Rights Commission about this issue.

Question 34. Do you support an administrative redress scheme for disclosers who consider they have experienced reprisals?

- [8.9] Recommendation 33 of the 2017 review was that 'The PID Act should be amended to provide for an administrative redress scheme for disclosers, witnesses and other parties who have experienced detriment as a result of their involvement in the making, assessment or investigation of a PID'.
- [8.10] The goal of the recommendation was to overcome perceived deficiencies with accessing the existing remedies available through external bodies, such as the courts, available under the PID Act. The aim was to provide a simpler, easy to use remedy managed by public sector entities themselves.
- [8.11] An administrative redress scheme could, however, create its own complexities and issues if the options for redress were to include financial compensation - such as the relationship between an administrative redress scheme outcome and application for damages to a court; achieving quality and consistency of redress between agencies; and the risk of administrative redress being offered by public sector entities as an inducement to disclosers.
- [8.12] Our present view is that independent bodies such as the courts are best positioned to address the complex issues that arise in the consideration of applications for remedies such as damages for PID related matters.

Issues Paper - Part 9

Role of the oversight public sector entity

Question 35. Are the Queensland Ombudsman's functions and powers suitable and effective for the purpose of the oversight body?

- [9.1] As already noted, we are supportive of continuing to exercise our function as the oversight public sector entity for the Act.
- [9.2] As the oversight public sector entity, our functions include:
- monitoring the management of public interest disclosures (PIDs)
 - reviewing the way in which public sector entities deal with PIDs
 - performing an education and advisory role for public sector entities and
 - making standards about the way in which PIDs are dealt with
 - publishing an annual report on the operation of the PID Act.
- [9.3] Under the Ombudsman Act, we also provide external review of complaints about PID related actions, and provide advice to people considering making a PID.
- [9.4] The strategies used to perform these functions are described in detail in Appendix 2 and include management of a database containing information about PIDs across the public sector.
- [9.5] The level of resourcing of the oversight agency functions is the same as allocated to our Office when the function was transferred to us in 2013.
- [9.6] We consider that we have made efficient and effective use of these limited resources to discharge our oversight function. Feedback received from public sector entities during our strategic planning process in 2020 was very positive about oversight public sector entity function. Feedback about our PID training also indicates high levels of satisfaction. Recommendation 54 of the 2018 Strategic Review of the Office of the Queensland Ombudsman was that 'The Office of the Ombudsman is to be commended for the efficient and effective adoption of this new PID oversight role, implementation of new database, and the high praise and gratitude expressed for PID advice and assistance'.
- [9.7] In relation to the functions of the oversight agency, recommendation 38 of the 2017 review was that the PID Act be amended to make explicit that the oversight agency has authority to audit public sector entity compliance with the PID Act. Conducting audits would enable the oversight public sector entity to look more deeply at the way in which PIDs are being administered in public sector entities than is presently the case.
- [9.8] Presently, s 59(2) of the PID Act already gives the oversight agency a function to 'review' the way in which public sector entities deal with public interest disclosures generally, or particular public interest disclosures. Arguably, the term 'review' may be considered to be so similar to 'audit', as to not require amendment to give effect to recommendation 38.

Using the term 'audit' may also confuse the functions with the role of the Auditor-General, who conduct financial and performance audits of agencies.

- [9.9] Regardless of which term is preferred, it would be of benefit to clarify the powers that are available to conduct the reviews (or audits). A simple way to do so may be to state in the PID Act that the Ombudsman may use powers available for investigations under the *Ombudsman Act 2001* to support the conduct of a s 59(2) review.
- [9.10] Apart from legislation, the principal barrier to a program of audits (or 'reviews') is limited resourcing.

Question 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?

- [9.11] We support the first part of recommendation 36, that the PID Act should be amended to provide a right of external review where a discloser is dissatisfied with the outcome of a public sector entity's assessment and determination about whether a disclosure is a PID.
- [9.12] However, we encourage the review to explore all options available for allocation of responsibility to conduct such reviews.
- [9.13] As noted in the issues paper, there is an open question as to whether there is a potential conflict between the Office of the Ombudsman's role as the oversight public sector entity for the PID Act and a role as the external reviewer of PID assessments.
- [9.14] However, we acknowledge that the Ombudsman already provides a review function for PIDs under its *Ombudsman Act 2001* function of investigating complaints about administrative actions – which include actions about PIDs. Also, we recognise that the Office of the Information Commissioner manages a similar dual role.
- [9.15] The problems with our current review function is that the Ombudsman's legislated powers are only to make recommendations rather than binding decisions. Also, the Ombudsman does not usually publish the reasons for those recommendations except to the parties involved, or by report to parliament.
- [9.16] A tribunal with determinative powers that is experienced in publishing reasons may be a better forum for the external review function. Options for consideration include the Queensland Industrial Relations Commission and the Queensland Civil and Administrative Tribunal. Of relevance is that the Queensland Industrial Relations Commission already has jurisdiction for public service appeals generally under the *Public Service Act*, and PID matters under ss 46 and 48 of the PID Act.
- [9.17] If the review considered that the Ombudsman should continue to provide external review, we recommend that the PID Act be amended to include provision for the Ombudsman to make binding decisions and to publish reasons for the decisions.
- [9.18] The resourcing of providing such a review function would also need to be considered.

Question 37. Do the roles of integrity bodies overlap during the PID process? Are changes needed or do the existing arrangements work effectively?

[9.19] The issues paper appropriately highlights the central role that the Crime and Corruption Commission (CCC) plays in dealing with disclosures, as the large majority of PIDs are about corrupt conduct. As the Crime and Corruption Act requires all public sector entities (including the Ombudsman) to refer all suspected corrupt conduct to the CCC, it is inevitable that many PIDs will be referred to them. As the PID Act prohibits us from monitoring or reviewing the way in which the CCC exercises its functions, we have submitted any comments about how the CCC deals with PIDs after they are referred to them.

Question 38. Are the Standards published by the Queensland Ombudsman effective? Are changes needed?

[9.20] We look forward to public sector entity feedback about our standards.

Question 39. Do you agree with the recommendations of the Queensland Ombudsman's 2017 review?

[9.21] We support all of the recommendations of the 2017 review except where we have indicated otherwise in this submission.

Issues Paper - Part 10

Practical considerations

Question 40. Should the PID legislation be more specific about how it interacts with any other legislation, process or scheme?

[10.1] In pursuit of the PID Act object of affording protection against reprisals, it would seem worthwhile to clarify the relationship between the Industrial Relations Act and the PID Act so that disclosers have certainty about whether remedies under the Industrial Relations Act are available to them.

Question 41. Should the PID legislation include incentives for disclosers? If so, how should they operate?

[10.2] We do not support the PID legislation including incentives for disclosers. One reason is that it does not appear to be necessary, as there are already a significant number of PIDs made each year. Another reason is that an incentive scheme may undermine the integrity of the PID scheme, as disclosers may be considered to be pursuing financial reward rather than acting in good faith.

Question 42. Are current arrangements for training and education about the PID Act effective? How could they be improved?

[10.3] The issues paper has outlined the arrangements for staff training about PIDs. Some more information is provided in Appendix 2. As it is not possible for a single agency such as ours to train all public sector officers across the public sector, some responsibility for training must fall on agencies themselves. Arguably the limited resources available to our Office to provide PID training might be best focused on providing regular training opportunities to key roles such as PID coordinators and PID support officers, rather than endeavouring to offer general information to officers and managers. Under this approach, public sector entities would have responsibility for providing more general training to their own staff and managers, drawing on the knowledge of their PID coordinators, and the other support materials available from our website. To support this outcome, it may be beneficial for the Act to require chief executive officers of agencies to inform their officers about PIDs, and to ensure that their managers are sufficiently trained to receive and manage PIDs.

Question 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?

[10.4] As the oversight agency we have appreciated the opportunity to work with Indigenous councils to support their PID programs. We encourage the review team to liaise directly with Indigenous councils to understand any issues affecting the application of the PID regimes in their communities.

Question 44. Is the PID Act accessible and easy to understand? How could the clarity of the Act be improved?

- [10.5] As the oversight public sector entity, we regularly receive feedback from public sector officers about difficulties in reading and applying the PID Act, including aspects of the definition of a PID. In noting this problem, it is worthwhile to observe that one cause of the complexity of the definition of a PID is the lengthy definition of 'corrupt conduct' in the Crime and Corruption Act itself – however that is a matter outside the review's terms of reference.
- [10.6] Regardless, as noted earlier, we consider that a priority for the review should be to endeavor to make the PID Act and the definition of a PID easier to understand and apply.
- [10.7] Two relevant recommendations from the 2017 review are:
- **Recommendation 5**
The PID Act should be amended to define the information that may be disclosed as a PID in more specific and objective terms, and to include examples to assist in the interpretation and application of the Act.
 - **Recommendation 6**
The dictionary to the PID Act (Schedule 4) should be expanded to include definitions of 'substantial', 'specific' and any other key terms used to define information that may be disclosed under the Act.
- [10.8] Recommendations 5 and 6 provide worthwhile options, no doubt amongst many other good ideas, for achieving this objective. Given the merits of 'customer focused' design, the views of disclosers and the public sector officers tasked with conduct assessments (many of whom are not legally trained) should be a primary consideration. Benchmarking the current definition against other recently amended definitions as suggested in the issues paper is also worthwhile.
- [10.9] We also consider that there is an interesting debate to be had about which of the many issues dealt with through our PID standards ought to be included in the PID Act itself. Given the important public interest objectives of the PID Act, we consider it to be important that Parliament makes clear in legislation the key elements of its expectations as to how PIDs are dealt with by public sector entities.

Appendix 1 - Recommendations made in the 2017 review that have been addressed in the PID standards

[10.10] **Recommendation 12**

Section 28(1) of the PID Act should be amended to require that chief executive officers of public sector entities ensure that public officers are provided with information about their rights and responsibilities under the PID Act.

[10.11] *Comment:* This recommendation has been addressed through standard 1.3.4 'Implement a communication strategy' and standard 1.3.5 'Implement a training strategy' in Public Interest Disclosure Standard No. 1/2019 – Public Interest Disclosure Management Program (PID Standard 1/2019).

[10.12] **Recommendation 13**

Section 28(1) of the PID Act should be amended to require that chief executive officers of public sector entities ensure that supervisors, managers and other officers with responsibility for receiving and assessing disclosures are provided with appropriate training to fulfil their responsibilities.

[10.13] *Comment:* This recommendation has been addressed through standard 1.3.5 'Implement a training strategy' in PID Standard 1/2019. Standard 1.3.2 'Appoint a PID Coordinator' and standard 1.3.3 'Delegate PID responsibilities' also contribute to addressing this recommendation.

[10.14] **Recommendation 15**

The PID Act should be amended to provide specific authority for chief executive officers of public sector entities to take reasonable steps to assess disclosures before determining whether the disclosure is a PID, whether the entity should decide no action is required in accordance with s 30 or whether referral of the disclosure is required in accordance with s 31. This should include consultation with the discloser (where practicable), and other public sector entities.

[10.15] *Comment:* This recommendation has been addressed in part by standard 1.1.5 'Explain the procedure for receiving a PID' in PID Standard 1/2019. Standard 1.1.9 'Distinguish PID management responsibilities as a 'proper authority' from responsibilities as an employer' is also relevant.

[10.16] This recommendation is more specifically addressed through the following standards in Public Interest Disclosure Standard No. 2/2019 – Assessing, Investigating and Dealing with Public Interest Disclosures (PID Standard 2/2019):

- Standard 2.1.1 'Comply with assessment obligations'
- Standard 2.1.2 'Apply assessment criteria'
- Standard 2.1.4 'Forward information to proper authority'
- Standard 2.1.5 'Conduct referral risk assessment'
- Standard 2.3.1 'Document decision to take no action'

[10.17] **Recommendation 16**

Section 65(3) of the PID Act should be amended to clarify that making a record of confidential information or disclosing it to someone else is permitted for the purpose of taking reasonable steps to assess disclosures, including consultation with other public sector entities.

[10.18] *Comment:* This recommendation is addressed to a limited extent by standard 2.1.4 'Forward information to proper authority' and standard 2.1.5 'Conduct referral risk assessment' in PID Standard 2/2019.

[10.19] **Recommendation 17**

The PID Act should be amended to provide that chief executive officers of public sector entities may assess a disclosure and determine whether the disclosure is a PID in accordance with the PID Act.

[10.20] *Comment:* This recommendation is addressed in standard 2.1.1 'Comply with assessment obligations' and standard 2.1.2 'Apply assessment criteria' in PID Standard 2/2019.

[10.21] **Recommendation 18**

The PID Act should be amended to require a chief executive officer, who has assessed a disclosure, to provide the discloser with a written decision informing them whether the disclosure has been assessed as a PID in accordance with the PID Act, including reasons for the decision and information about the discloser's review rights.

[10.22] *Comment:* This recommendation has been addressed in standards 2.1.3 'Communicate assessment of possible PID' and standard 2.2.2 'Information provided to discloser' in PID Standard 2/2019.

[10.23] **Recommendation 19**

The PID Act should be amended to require the chief executive officer of a public sector entity to complete the assessment of a disclosure, and communicate in writing the outcome of that assessment to the discloser, within one month of receipt of the disclosure.

[10.24] *Comment:* This recommendation has been addressed in a very limited sense by standard 2.1.1 'Comply with assessment obligations', standard 2.1.3 'Communicate assessment of possible PID' and standard 2.2.1 'Receipt of the PID acknowledged' which each require actions to be taken 'as soon as practicable'.

[10.25] Standard 3.2.3 'Enter and update data regularly' in Public Interest Disclosure Standard No. 3/2019 – Public Interest Disclosure Data Recording and Reporting (PID Standard 3/2019) contributes to timely action on PIDs by requiring public sector entities to enter data about PIDs 'within 30 days of the assessment of the matter' and 'update data about PIDs ... within 30 days of the management of the PID being finalised'.

[10.26] **Recommendation 22**

Section 29(1) and (2) of the PID Act should be amended to require the chief executive officer of a public sector entity to which a disclosure is made or to which a disclosure is referred (under s 31 or s 34) to include key dates as part of the proper record of the disclosure, including the date the disclosure is received, the date the assessment of the disclosure is completed, the dates when any investigation is commenced and completed, and the date when the PID is resolved/closed or action finalised.

- [10.27] *Comment:* This recommendation has been addressed in standard 3.2.1 ‘Record required data’ in PID Standard 3/2019.
- [10.28] **Recommendation 24**
The PID Act should be amended to provide that the chief executive officer of a public sector entity managing or investigating a PID must consult the discloser (where practicable), before contacting the discloser’s public sector employer or other stakeholders for the purpose of undertaking a risk assessment regarding the risk of reprisal to the discloser.
- [10.29] *Comment:* This recommendation has been addressed in standard 2.4.2 ‘Assess the risk of reprisal to discloser and others’ and standard 2.4.5 ‘Protect non-employees from reprisal’ in PID Standard 2/2019.
- [10.30] **Recommendation 27**
Section 28 of the PID Act should be amended to include a requirement that the chief executive officer of a public sector entity must establish reasonable procedures to ensure that procedural fairness is accorded to all parties (including the discloser, subject officer and witnesses) in the conduct of assessment and investigation of PIDs.
- [10.31] *Comment:* This recommendation has been partly addressed through standard 1.1.6 ‘Assure protections and confidentiality obligations are met’ in PID Standard 1/2019 and standard 2.5.2 ‘Afford natural justice’ in PID Standard 2/2019.
- [10.32] **Recommendation 39**
Section 29(1) and (2) of the PID Act should be amended to require the chief executive officer of a public sector entity to keep a proper record for each disclosure of the support provided to a discloser as required by s 28(1)(a); if no action was taken under s 30, the grounds under s 30(1); whether a review was requested as permitted under s.30(3), and if so, on what grounds and details of the outcome.
- [10.33] *Comment:* This recommendation has been partly addressed in standard 3.2.1 ‘Record required data’, which requires public sector entities to report if an public sector entity PID Support Officer has been assigned to the discloser, the assessment decision (including if a decision under s 30), the grounds for making a decision under s 30, and ‘if discloser requested a review of decision to take no action’ the basis of such a review request and the outcome of the review.
- [10.34] **Recommendation 40**
Section 33 of the PID Act should be amended to make explicit that the chief executive officer of a public sector entity must give to the oversight public sector entity any or all information mentioned in s 29 for each disclosure within 30 working days of each disclosure being resolved/finalised.
- [10.35] *Comment:* This recommendation has been addressed in standard 3.2.1 ‘Record required data’ and standard 3.2.3 ‘Enter and update data regularly’.

Appendix 2 – Strategies implemented to give effect to PID Act oversight function

[10.36] Some of the key achievements in building public sector wide capacity to appropriately manage PIDs over the past five years include:

- **Quarterly program of Public Interest Disclosure public sector entity Network Training (PIDANT) sessions** – This was initially offered as both a face-to-face meeting in Brisbane, and a teleconference for regional and remote participants. Over the past three years, this has evolved to a video-conference format. Apart from the public health benefits, web delivery has increased and broadened participation, by offering equitable access to rural and remote agencies. Topics presented at PIDANT are geared to supporting PID Coordinators, and others involved in the management of PIDs, through guidance on interpreting and implementing the PID Act, exploration of precedent cases, practical strategies for protecting disclosers and managing reprisal, and improving the delivery of support to people involved in PIDs processes.
- **RaPID database** – The database was conceived, designed and developed as a bespoke public interest disclosure reporting tool. Implemented in October 2017, RaPID provides a secure, user-friendly, online tool for public sector entities to comply with the requirement to give the oversight public sector entity data, in accordance with s 33 of the PID Act. Data collected through RaPID enables the Office to monitor trends in PID management and facilitates annual reporting.
- **Monthly e-newsletter** – This publication presents updates on training availability, guidance on compliance with the PID Act and the Standards, case decisions and news and media relating to PID management.
- **PID standards** – Following a comprehensive review, considering submissions to the 2017 Review, experience of the Office in implementing the oversight function, and outcomes from academic research, a new suite of PID standards was drafted. Consultation with PID Coordinators, chief executives of all public sector entities and the shareholding Ministers of Government Owned Corporations (GOCs), established that there was wide support for the expanded standards. The new standards were gazetted on 1 March 2019, from which date they became mandatory for all public sector entities. Following further communication between the shareholding Ministers of GOCs and their respective boards, as required by s 60(7) of the PID Act, the standards became mandatory for all GOCs (apart from QIC) on 26 June 2020, and for QIC from 19 November 2021.
- **Guides and checklists** – To support public sector entities in implementing the new PID Standards, a suite of practical guides was published. These ‘checklists’ assist public sector entities in undertaking PID assessments, conducting risk assessment and risk protection planning, and delivering support to persons involved in a PID management process.
- **Instruction videos** – Our instructional videos, which are available on our website and through our YouTube channel, target all public sector officers (‘Rights and

responsibilities of employees’) and managerial and supervisory officers (‘Obligations of managers and supervisors’), to assist public sector entities to inform and train their employees about PIDs.

- Self-assessment audit** – The Self-assessment audit (SAA), an online audit tool in RaPID, was developed to both enable public sector entities to gauge their own compliance with the PID Standards, and generate data to allow more in-depth review of compliance with the PID Act. The SAA was administered in 2020 and 2021, with a response rate of 95.5 % (208 agencies) and 96.1% (205 agencies) respectively. Analysis of the data has provided evidence of how public sector entities deal with PIDs generally, and informed the development of advice and training strategies.
- Employee and public advice** – Information about how to make a PID, and the rights and responsibilities of disclosers, is given to members of the public contacting the Office. When appropriate, members of the Office’s Intake Team are trained to communicate relevant information to assist complainants who raise concerns that could amount to wrongdoing protected by the PID Act, including contacts from public sector employees.
- Public sector entity advice** – Advice is provided to public sector entity officers responsible for assessing and managing PIDs, and developing or implementing PID procedures. Without providing legal advice or directing a public sector entity, the Office’s PID Team offers advice to public sector entities on interpreting and implementing the PID Act, independently of the advice service for complainants. While a self-assessment checklist to allow entities to evaluate their PID procedures against the PID Standards is available on the website, the Office also reviews and provides feedback on public sector entity PID procedures on request.
- Training** – To reflect the requirements of the new PID Standards, our three core training modules focus on key responsibilities of public sector entity PID Coordinators – PID Assessment and Management, PID Risk Assessment and Risk Protection, and PID Support. These modules have been augmented by a range of shorter sessions to build awareness amongst senior executives. A comprehensive **training program** has been developed and delivered over the past five years, encompassing both ‘open’ sessions available to all agencies, managers/supervisors, professional staff (such as legal officers and HR personnel), as well as employees more generally and tailored ‘in-house’ training. A total of 287 training sessions, with 4,940 public sector entity officers present, have been delivered over the past five financial years. Considering the forced abandonment of face-to-face training for much of 2020-21, during which the Office re-developed its programs for online delivery, there has been a more-or-less steady increase in the reach of the Office’s PID training program over the period.

PID training delivery	2017-18	2018-19	2019-20	2020-21	2021-22	Total
Session numbers	26	80	62	35	84	287
Participant numbers	455	1,354	1,232	449	1,450	4,940