

Department of Resources Submission Review *Public Interest Disclosure Act 2010*

Department contact: Ms Tina Hocking, A/Human Resources Director

Email: [REDACTED]

Ph: [REDACTED]

Reference 3.1 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?

The objects of the PID Act remain valid and the legislation is a valuable tool to sculpt awareness of PIDs and requirements around management of PIDs. Experience indicates that PIDs are primarily identified by an agency in assessing a matter (in particular where corrupt conduct may be identified) rather than being readily and frequently identified by potential disclosers. This may indicate that the PID Act is relied on more heavily by agencies in identifying and managing PIDs than by disclosers, and potentially presents further opportunity for 'lay person' resources and awareness raising to support disclosers in actively uncovering wrongdoing in the public sector.

2. Is the title of the legislation suitable? Should any other terms, such as 'whistle blower' or 'wrongdoing', be included in the title or used in the legislation?

The title of the legislation adequately reflects the legislation objects; however, it is suggested that where layperson resources are available, inclusion of terms such as 'whistleblower' and 'wrongdoing' may be of benefit to promote understanding of the material.

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

It is considered that reporting of PID matters to the Qld Ombudsman would support public confidence, in particular having regard to the strict confidentiality around such matters. Further, agencies having PID information available to the public on internet sites, and a dedicated PID Coordinator reflects the commitments of agencies in this area.

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

The PID Act is considered to satisfactorily accord with Human Rights Act 2019 recognising an individual's rights to freedom of expression, taking part in public life, privacy and reputation, liberty and security of the person and a fair hearing.

Reference 3.2. 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?

The Qld Ombudsman recommendation that the PID Act be amended so that disclosures solely about personal workplace grievances are not protected except in specific circumstances such as if the grievance is indicative of a wider systemic issue appears on face value to be an efficient use of resources, as matters will still be addressed under other legislation such as PSC legislation and where relevant the Crime and Corruption Act. For consideration – rather than limitation to an employee grievance, a similar premise could be applied to matters that do not form an actual grievance (i.e., where an employee

<p>raises issues however state they are not a grievance, or where an agency identifies an issue rather than it forming a grievance). It is suggested that any amendment will need to include more prescriptive delineations around what would be considered a personal grievance and what constitutes wider systemic issues.</p>
<p>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?</p> <p>This will rely on the intent of the PID Act and if there is benefit to members of the public being able to more readily make PIDs. The removal of these factors will reduce the ability to have members of the public raise issues assessed as a PID. It is suggested that analysis of PIDs made by members of the public can inform this decision, however it may impair public confidence to have the definition more limited. In saying that, there would still be a responsibility for an agency to address any complaint appropriately, and this requirement may be more fully and appropriately captured in updates to sector complaint mechanisms.</p>
<p>7. Is there benefit in introducing a public interest or risk of harm test in the definition of a PID?</p> <p>The public interest test would potentially appear to be (without being privy to details as to what this entails) the most applicable at the immediate stage of assessing a PID, having regard to the amount of information that may exist, and the veracity of that information, in general at the outset of a matter (prior to any potential investigation).</p>
<p>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?</p> <p>It is generally difficult to objectively determine the discloser's state of mind and as such there is often an acceptance (unless there is evidence demonstrating this is not the case) that the disclosure has been made based on an honest belief. As with other legislation, the term 'reasonable' is open for interpretation and there can be tendency to 'err on the side of caution' to ensure PID provisions are applied. Removal of reference to a person's state of mind may make the assessment lend to the merits of the evidence/information provided; however, it is noted that PSC grievance directive (as it stands) also refers to an honest belief based on reasonable grounds, so consideration could be given to consistency.</p>
<p>Reference 3.3. Who can make a public interest disclosure?</p>
<p>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?</p> <p>No issues have been identified with the categorisation of the above.</p>
<p>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?</p> <p>The Qld Ombudsman recommendation is supported; it is considered expansion of the definition would be of benefit in ensuring all parties with direct involvement in the functions of a public sector department/entity be captured.</p>
<p>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?</p> <p>It is suggested that expanding the eligibility may reinforce one of the main objects of the PID Act (to promote the public interest by facilitating PIDs of wrongdoing in the public sector). However, in saying that, there would need to be attention given as to privacy requirements and veracity of information</p>

<p>where someone may provide information on behalf of or instead of the public officer. Further, the relative / witness may then be considered the discloser rather than the public officer so this may add complexity which would need to be clearly addressed in the legislation as to how reprisal and protections should be assessed.</p>
<p>12. Should different arrangements apply to role reporters? Why and how?</p> <p>Different arrangements should apply to role reporters. It could be reasonably expected that their needs will be different in addressing an issue and consideration of protections/risk of reprisal/ongoing communications and updates around the progress of a PID. The Issues paper suggestion of creating categories of disclosers and having separate arrangements for role reporters tailored to their position and circumstances is supported.</p>
<p>Reference 3.4. Experiences of people who witness and report wrongdoing <i>The Review acknowledges that people who report wrongdoing may be subject to confidentiality requirements outside the PID Act, such as a direction given under the Public Service Act 2008. Submitters to the Review should ensure they comply with any confidentiality requirements that apply to them.</i></p>
<p>13. How would you describe your experience in reporting wrongdoing under the PID Act? Do you have any suggestions for improvements?</p> <p>N/A</p>
<p>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?</p> <p>N/A</p>
<p>15. Were you supported effectively during the process? Would alternative or additional support have been helpful?</p> <p>N/A</p>
<p>16. Did you feel your disclosure was taken seriously, assessed in a timely way, investigated fairly and addressed appropriately?</p> <p>N/A</p>
<p>Reference 3.5. Making, receiving and identifying PIDs</p>
<p>17. Are the requirements for making, receiving and identifying PIDs appropriate and effective?</p> <p>The requirements as currently outlined in the legislation are clear in relation to making, receiving and identifying a PID.</p>
<p>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?</p> <p>To support the intent of the PID Act, the 'no wrong doors' approach supports disclosers in raising issues. However, where a disclosure is not directly made to an agency with whom that portfolio or employee sits, there may be a delay and confusion in relation to the appropriate authority to take action in relation to the PID. Further the issues paper identifies issues where a disclosure is made to multiple agencies – there is agreement with the Issues paper statement that considerations may include which agency is best to support the discloser and the extent of information which can be shared as part of the referral. A clearing house may be of benefit however will need clear direction on where to refer any disclosers to minimise delay and what will occur if multiple agencies are identified.</p>

<p>19. At what point in time should the obligations and protections under the PID regime come into effect?</p> <p>At the point of decision in relation to whether the matter constitutes a PID (with agreement that where there is potential it may be a PID, requirements are put in place as soon as possible following receipt of the disclosure).</p>
<p>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?</p> <p>Yes, a discloser should be provided with a written decision as per the Qld Ombudsman recommendation. This agency currently provides disclosers with a written decision, however general implications may be resource requirements (template/s provided by Qld Ombudsman may assist alleviate this) and provided clear avenues available if the discloser is not in agreement with the decision.</p>
<p>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?</p> <p>Other mechanisms of review options may be of more benefit prior to disclosures to media. It is noted this is referred to as a 'last resort' and as such, escalation mechanisms should be clear for disclosers.</p>
<p>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?</p> <p>GOCs and Queensland Rail may be better positioned to respond to this question.</p>
<p>Reference 3.6. Managing, investigating and responding to PIDs</p>
<p>23. Are the requirements for managing, investigating and responding to PIDs appropriate and effective?</p> <p>As identified previously in the issues paper, the management, investigation and response to PIDs can involve overlapping legislation (PSC and CCC requirements). As previously identified, there may be benefit in redefining what can constitute a PID to streamline such matters where possible.</p>
<p>24. Are agencies able to provide effective support for disclosers, subject officers and witnesses? Are any additional or alternate powers, functions or guidance needed?</p> <p>PID matters can be complex with several legislation requirements applied to them including in relation to support. It is considered there is a sufficient support system in place (PID support officer availability, Qld Ombudsman advice) however it is noted that PID matters can be resource intensive and agency resourcing is required to appropriately support all parties.</p>
<p>25. Should the PID Act include duties or requirements for agencies to:</p> <ul style="list-style-type: none"> 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?

<p>The PID Act should include requirements around procedural fairness and the requirement to appropriately manage the risk of reprisals. It is suggested the PID Act can include guidance around what steps may be open to an agency to correct the wrongdoing, however being too prescriptive may limit the agency in considering an appropriate approach on the merits of a matter.</p>
<p>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?</p> <p>It is suggested that it may be more empowering for relevant parties to be able to consider whether they wish to uptake offered protections and supports. This would however be required to be balanced with an agency being able to uphold its duty of care to the parties and the efficient functioning of the agency.</p>
<p>Reference 3.7. Protections for disclosers, subject officers and witnesses</p>
<p>27. Are the current protections for disclosers, subject officers and witnesses appropriate and effective? Should additional or alternative protections be considered?</p> <p>No concerns have been identified with current protections.</p>
<p>28. Are the current provisions about confidentiality adequate and fit for purpose? Should any improvements be considered?</p> <p>No concerns have been identified with confidentiality provisions. Where there is consideration of expanding the provisions to limited numbers of their usual social network, tight provisions would need to be put in place around the obligations of those parties to comply with PID Act requirements.</p> <p>It is also suggested that authority be given to an agency to consult or release information where relevant to another agency to resolve a PID. There may be benefit in further expanding on the circumstances in which PID information can be disclosed for internal report / support purposes (e.g., briefing the Chief Executive of an agency for awareness of matters in the agency).</p> <p>It is also suggested there would be benefit in amending the RTI Act and Workers Compensation and Rehabilitation Act to clarify the extent to which agencies can withhold confidential information.</p>
<p>29. Is the definition of reprisal appropriate and effective? Do any issues arise in identifying, managing and responding to reprisals?</p> <p>It is considered the definition is appropriate and effective. No issues have occurred within this agency in addressing any matters raised as reprisals.</p>
<p>30. Is there a role for an independent authority to support disclosers in Queensland? If so, what should its role be?</p> <p>It is suggested that there is a role for an independent authority to support disclosers. Particularly in regard to supporting the number of small agencies. This role could act as a central point for contact (i.e., the PID support officer) by those involved in a PID matter (discloser, witness, subject officer) to ask PID process related questions, noting that it would be limited to questions around the legislation and process rather than having any particulars of the matter. This would also support consistent advice being provided to those involved in a PID process. The Qld Ombudsman would continue to act as a contact point for practitioners within agencies.</p>
<p>Reference 3.8. Remedies</p>
<p>31. Are the remedies available to disclosers under the PID Act reasonable and effective? Are any changes needed?</p>

<p>This may be best responded to by legal practitioners.</p> <p>32. Do the evidentiary requirements for remedies need amendment?</p>
<p>This may be best responded to by legal practitioners.</p> <p>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?</p>
<p>This may be best responded to by legal practitioners. It is however suggested that alternate dispute resolution options may provide reasonable alternative remedies prior to legal action being taken.</p> <p>34. Do you support an administrative redress scheme for disclosers who consider they have experienced reprisals?</p>
<p>This may require further expansion as to the additional responsibilities and burdens for government agencies to allow for a more informed response.</p> <p>Reference 3.9. Role of the oversight agency</p>
<p>35. Are the Queensland Ombudsman's functions and powers suitable and effective for the purpose of the oversight body?</p> <p>No concerns have been identified with this aspect.</p>
<p>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?</p> <p>No concerns have been identified with this aspect.</p>
<p>37. Do the roles of integrity bodies overlap during the PID process? Are changes needed or do the existing arrangements work effectively?</p> <p>As discussed above, potentially updating who would be considered a discloser would assist mitigate overlap during PID processes.</p>
<p>38. Are the Standards published by the Queensland Ombudsman effective? Are changes needed?</p> <p>The Standards are effective in meeting the objectives to prescribe the organisational systems and procedures agencies must establish in order to give effect to the requirement under the PID Act.</p>
<p>39. Do you agree with the recommendations of the Queensland Ombudsman's 2017 review?</p> <p>The recommendation in the QLD Ombudsman Report which included the provision of clarity about: internal and external review rights for administrative decisions made under the PID Act; and the oversight agency's power to audit compliance with the Act is supported.</p> <p>Reference 3.10. Practical considerations</p>
<p>40. Should the PID legislation be more specific about how it interacts with any other legislation, process or scheme?</p> <p>This may assist clarify requirements.</p>
<p>41. Should the PID legislation include incentives for disclosers? If so, how should they operate?</p>

This may be better answered from a legal perspective and/or with consideration as to if such schemes resulted in an increase in PIDs (that were found to have substance). A risk to this approach may be an increase in matters with an intent other than to rectify wrongdoing, which in itself may be difficult to identify and lend to increased costs to an agency (and therefore the public purse) in resolving matters. An initial view is that the ethical benefit of raising wrongdoing may in itself be incentive enough.

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

Yes, it is considered the current arrangements are effective.

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?

The PSC are currently engaging in where cultural aspects can be incorporated into processes. It is suggested collaboration occur with them to inform this question.

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

Whilst the PID Act is accessible, as it is presented in lay language it is more likely relied upon by sector practitioners. The supporting resources are more readily accessible by all parties, and it may be of benefit for them to be provided in lay person terms.