Centre for Privacy, Transparency and Accountability

Po Box 71
LUTWYCHE QLD 4030

20 February 2023

Public Interest Disclosure Review Secretariat
Strategic Policy and Legal Services
Department of Justice and Attorney-General
GPO Box 149
BRISBANE QLD 4001

By email: PIDActReview@justice.qld.gov.au

To the Review

RE: **Submissions to the Review of the *Public Interest Disclosure Act 2010* (Qld)**

Our organisation (described on the last page) recommends the following major amendments to the *Public Interest Disclosure Act 2010* (Qld) to the Review:

1. The period for investigation of a Public Interest Disclosure should be time-limited;
2. Public Interest Disclosure and Reprisal must be investigated properly;
3. The standards for investigations should be regulated: including the process of updating whistle-blowers, provision of investigation terms of reference and outcome letters;
4. The excuse to not give a full description of outcomes on "privacy and confidentiality" grounds should be prohibited without Ministerial approval; and,
5. Public interest disclosers should be given the opportunity to suggest a particular outcome and the decision made on the public interest disclosure should be expressly made by the decision maker.

Our organisation submits the following in relation to these recommendations:

1. Annexure A – suggested amendments to the legislation
2. Annexure B – descriptions of the whistle-blower experience
3. Annexure C – responses to suggested questions for the review

Summary

The ***Public Interest Disclosure Act 2010*** **(Qld)** provides the infrastructure for integrity in the public service in Queensland because it permits public servants to alert official sources to wrong-doing. If official sources do nothing, then the Act permits public servants to tell the public through a journalist. Fear of public review is, after all, outside the comfort zone of the supposedly public service. Ultimately, the law should give protection to public servants that point out wrong-doing since they only trying to do their job. In theory.

In practice, Queensland is ruled by a 'game of mates' tribalism in respect of how the Act is applied. Investigations are sent out to HR contractors who make, and suggest the making of, reports that no-one ever sees but other people in the organisation share among themselves, finding a decision-maker who will make a decision about the conduct. The norm encouraged by the Act is supposedly the free public description of matters of public interest. Instead, the current legislation creates norms of (1) personal assassination (2) bullying (3) anxiety (4) excessively lengthy investigations (5) lack of serious

investigation. As usual, the system is now at the point of being *gamified* by professional public servants. What did you expect?

It is time for the Public Interest Disclosure Act to be adjusted in the face of current practices. As such, this Review should focus on, and document, actual practices in the public service and the complaints from former and current public servants with specific concern for the pressure put on them by the legislation and current practice.

The time period of investigations

We strongly recommend that actual anonymised descriptions of current practices be included in the report of the Review. It is of public interest to see examples of what is actually happening within government. As a community, the public should be permitted to see, openly, all public interest disclosures that are unresolved within a certain time period.

This mechanism would permit the Act to ensure actual response by government.

Current practice within the public service is that the period between (a) PID status being granted and (b) a letter of outcomes being provided will be extended if the matter of wrong-doing is serious, politically damaging or damaging to the image of the relevant unit of the public service.

We would request that the Review public (and each year the Government publish):

(a) The number of public interest disclosures made to each relevant entity; and,
    a. For resolved investigations - The period of time between the grant of PID Status and Letter of Outcomes.
    b. For on-going investigations, the average period of time for each relevant entity between the grant of PID Status and the present.
(b) We also think it would be useful to record the period of time for the longest investigation by relevant entity.

Our group is aware of PID investigations that have taken beyond five (5) years without letter of outcome. There is little legal recourse for a whistle-blower being kept in the oubliette of an on-going investigation outside of resort to the *Judicial Review Act*.

The investigators

Investigators should be bound by a duty to quickly provide recommendations to decision-makers and that investigatory and integrity bodies be appropriately resourced to respond to disclosures and referrals within a reasonable time.

Current practice in the public service includes contracting law firms and HR Advisory firms to provide reports and recommendations which are, generally, never available for public review, nor even review by the PID Discloser. Law firms, naturally, and HR Advisory firms as 'government lawyers', generally assert legal professional privilege in relation to investigation reports.

This practice should be banned.

Law firms will find themselves in an immediate position of conflict if they give a report in relation to an investigation.

A fundamental requirement of the Westminster system is that the decisions made by a decision-maker shall be reviewable. The decision as to whether to take action in relation to a reported and accepted public interest disclosure is unreviewable if the material on which the decision-maker makes their decision is not available. Accordingly, the current practice of claiming legal professional privilege in relation to such investigation reports is aimed at causing decisions to be unreviewable.

The effect of this practice is well-known by senior executives within the public service, including those that have control of the purse-strings for such external engagement. It would be laughable to think that such executives do not have the capacity and practice of colluding in relation to the procurement of such reports.

Additionally, the use of private organisations to carry out investigations where there is insufficient resourcing (especially in smaller agencies and statutory bodies) or where there is a conflict is a significant cost burden to the State which could be minimised by the establishment of a separate independent investigation services body within the Queensland Government that is mandated to carry out investigations. This separate body itself should make the decision whether to engage private organisations where specialist skills are required. Where additional resources where needed, those resources should be temporarily seconded to the agency to avoid the issues above arising.

The standards and processes of investigation

Once an investigator is appointed to review a public interest disclosure then they should provide timely updated to the discloser of the current process and status of their investigation.

Current practice is to give no information to disclosers or provide sporadic reports hoping that the discloser will forget about the matter. Further, it is also common practice in the public service to combine the public interest investigations with human resources reviews, including through statutory mechanisms.[1] Likewise, if the discloser has made their disclosure outside of their home employer, the disclosing entity/person should also be kept informed as to the status and outcome of the investigation.

These practices should be banned.

The psychological pressure placed on a discloser who is forced into a simultaneous investigation which may affect their employment or as a result of not being kept up to date with the steps of an investigation is extreme. This undermines their trust in their organisation and with the interviewer. It also gives pause to a public interest discloser providing a full and complete disclosure in respect of the identified wrongdoing. In particular, public interest disclosures often consist of statements about a discloser's manager or other senior executives and such personnel are highly likely to have control of, or even organise, aspects of such combined processes. This has meant instances where an officer who is subject of an investigation also commissions the investigation.

Without some legal requirement to avoid the above practices, public servants are far less likely to become public interest disclosers, even if they identify a relevant wrong-doing.

[1] See Part 9, *Hospital and Health Boards Act 2011* (Qld).

The content of letters of outcomes

A letter of outcomes should allow the public interest discloser to have knowledge that their identified wrong-doing has either been dismissed or acted on for resolution.

Current practice in the public service includes giving a letter of outcomes that does neither. Instead, letters of outcome are almost template in their content and vagueness, including the following elements:

(a) Asserting the matter was investigated.
(b) Indicating there has been outcome.
(c) Noting that the outcomes can't be disclosed for "confidentiality and privacy" reasons.
(d) Assuring the public interest discloser that the matter is over.
(e) Reminding the public interest discloser of their confidentiality obligations.

This practice should be banned.

Rarely any greater detail than this has been observed in outcome letters. A letter of outcomes should give a complete description of how the wrong doing in the public interest disclosure has been rectified. The current practice gives no such requirement despite the law being reliant on a letter of outcomes being provided. Without an obligation to give such full report, there is no way for the discloser nor the public to be assured that:

(a) there have been any outcomes;
(b) there have been sufficient rectification; or,
(c) the outcomes have actually been implemented.

Without this legislative change, disclosers are in no better position than when they reported the wrong doing. Instead, it is suggested that any excuse for refusing disclosure of outcomes should be limited to the relevant Minister and subject to legislative control.

Taking public servants seriously

Public interest disclosers who identify a wrong doing should have the opportunity to suggest rectification of the wrong doing.

Current practice is that the outcomes of an investigation are completely disconnected from the disclosure of a wrong doing by the delegate and decision maker completely avoiding disclosure of the considered scope of outcomes. Investigators will generally not ask questions about what the public interest discloser thinks should happen and decision makers do not document whether they support or reject such expectations.

This practice should be regulated.

As a consequence of current practice, public interest disclosers are often left without any tangible outcome. Instead, it is suggested that public interest disclosers should, if identified, be specifically asked if they have a suggested outcome, that should be documented in the investigation report and a decision about whether that outcome will be carried out should be made and documented by the decision maker to the public interest discloser.

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Conclusion

The Centre for Privacy, Accountability and Transparency supports a broad network of current and former public servants who privately provides support to whistle blowers.

Website – www.cpta.com.au

Telephone – 0407 092 261

Twitter – @cptawhistler

Our mission is to assist individuals through the crushing process of being a whistle blower and to advocate for better legislation for whistle blowers.

Yours sincerely

[**Signature provided by mail**]

Alexander Stewart[2]
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Annexure A – Suggested Legislative Amendments

A. Broaden the objects of the *Public Interest Disclosure Act 2010* (Qld)

3 Main objects of Act

The main objects of this Act are—

(a) to promote integrity, accountability and transparency in the Queensland public service

(b) to promote the public interest by facilitating public interest disclosures of wrongdoing in the public sector; and

(c) to ensure that public interest disclosures are properly assessed and, when appropriate, properly investigated and dealt with; and

(d) to ensure that appropriate consideration is given to the interests of persons who are the subject of a public interest disclosure; and

(e) to afford protection from reprisals to persons making public interest disclosures.

B. Permit disclosure by any person

~~***12 Disclosure by any person***~~

~~*(1) This section applies if a person (whether or not the person is a public officer) has information about—*~~

~~*(a) a substantial and specific danger to the health or safety of a person with a disability; or*~~

~~*(b) the commission of an offence against a provision mentioned in schedule 2, if the commission of the offence is or would be a substantial and specific danger to the environment; or*~~

~~*(c) a contravention of a condition imposed under a provision mentioned in schedule 2, if the contravention is or would be a substantial and specific danger to the environment; or*~~

~~*(d) the conduct of another person that could, if proved, be a reprisal.*~~

~~*(2) The person may make a disclosure under section 17 in relation to the information to a proper authority.*~~

~~*(3) For subsection (1), a person has information about the conduct of another person or another matter if—*~~

~~*(a) the person honestly believes on reasonable grounds that the information tends to show the conduct or other matter; or*~~

~~*(b) the information tends to show the conduct or other matter, regardless of whether the person honestly believes the information tends to show the conduct or other matter.*~~

12 Disclosure by any person

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(1) This section applies if a person ~~who is a public officer~~ has information about—

(a) the conduct of another person *that could, if proved, be—*

(i) corrupt conduct; or

(ii) maladministration ~~that adversely affects a person's interests in a substantial and specific way~~; ~~or~~ <u>(other than an alleged misuse based on mere disagreement over policy that may properly be adopted about amounts, purposes or priorities of expenditure); or</u>

(iii) <u>contrary to the objects of this Act</u>; or

(iv) <u>a breach of any Act</u>~~.~~

~~(b) a substantial misuse of public resources (other than an alleged misuse based on mere disagreement over policy that may properly be adopted about amounts, purposes or priorities of expenditure); or~~

~~(c) a substantial and specific danger to public health or safety; or~~

(d) ~~a substantial and specific danger to the environment~~.

(2) The person may make a disclosure under section 17 in relation to the information to a proper authority.

~~(3) For subsection (1), a person has information about the conduct of another person or another matter if—~~

~~(a) the person honestly believes on reasonable grounds that the information tends to show the conduct or other matter; or~~

~~(b) the information tends to show the conduct or other matter, regardless of whether the person honestly believes the information tends to show the conduct or other matter.~~

C. <u>All disclosures to be deemed properly made</u>

17 How disclosure to be made

(1) A person may make a disclosure to a proper authority in any way, including anonymously.

~~(2) However, if a proper authority has a reasonable procedure for making a public interest disclosure to the proper authority, the person must use the procedure.~~

~~(3) Despite subsection (2), If the proper authority is a public sector entity, the person may make the disclosure to—~~

~~(a) its chief executive officer; or~~

~~(b) for a public sector entity that is a department—the Minister responsible for its administration; or~~

~~(c) if the proper authority that is a public sector entity has a governing body—a member of its governing body; or~~

~~(d) if the person is an officer of the entity—another person who, directly or indirectly, supervises or manages the person; or~~

~~*(e) an officer of the entity who has the function of receiving or taking action on the type of information being disclosed.*~~

~~*Examples of officers for paragraph (e)*~~

~~*1 an officer of an entity's ethical standards unit, if the disclosure is made under section 13(1)(a)(i)*~~

~~*2 a health officer or environmental officer of a department having a statutory or administrative responsibility to investigate something mentioned in section 12(1)(a), (b) or (c) or section 13(1)(c) or (d)*~~

~~*3 the officer of an entity in charge of its human resource management if the public interest disclosure is made under section 12(1)(d) and is about detriment to the career of an employee of the entity*~~

(2) This Act does not affect a procedure required under another Act for disclosing the type of information being disclosed.

(3) ~~If~~ A public interest disclosure ~~is properly~~ made to a proper authority ~~the proper authority~~ is deemed to be properly made ~~taken to have received the disclosure~~ for the purposes of this Act.

D. Limit time periods for investigation

20 When disclosure may be made to a journalist

(1) This section applies if—

(a) a person has made a public interest disclosure under this chapter; and

(b) the entity to which the disclosure was made or, if the disclosure was referred under section 31 or 34, the entity to which the disclosure was referred—

(i) decided not to investigate or deal with the disclosure; or

(ii) investigated the disclosure but did not recommend the taking of any action in relation to the disclosure; or

(iii) did not notify the person, within 6 months after the date the disclosure was made, whether or not the disclosure was to be investigated or dealt with; or,

(iv) notified the person that they intended to investigate the disclosure but did not provide a letter of outcome within one (1) year of the notification or such longer period as provided under sub-section (1A).

(1A) An entity to which the disclosure was made or, if the disclosure was referred under section 31 or 34, the entity to which the disclosure was referred, must complete an investigation into the disclosure within one year of giving notice to the person of an election to investigate unless an extension to the period for investigation is given in writing by the Attorney-General.

(1B) In the event of an extension of time under section 20(1A), the relevant entity must give written notice of the extension to the person who made the disclosure.

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E. Record of disclosure

29 Record of disclosure

…..

(4) The chief executive officer of the public sector entity must provide the Minister for the public sector entity a report containing the proper record of the disclosures made including any reasons given under section 30 but, excluding the name of the person making the disclosure, at least quarterly.

F. No action taken

30 When no action required

(1) A public sector entity may decide not to investigate or deal with a public interest disclosure if—

(a) the substance of the disclosure has already been investigated or dealt with by another appropriate process; or

(b) the entity reasonably considers that the disclosure should be dealt with by another appropriate process; or

(c) the age of the information the subject of the disclosure makes it impracticable to investigate; or

(d) the entity reasonably considers that the disclosure is too trivial to warrant investigation and that dealing with the disclosure would substantially and unreasonably divert the resources of the entity from their use by the entity in the performance of its functions; or

(e) another entity that has jurisdiction to investigate the disclosure has notified the entity that investigation of the disclosure is not warranted.

(2) If an entity decides not to investigate or deal with a public interest disclosure under subsection (1), the entity must give written reasons for its decision to the person making the disclosure and the oversight agency.

(3) A person who receives written reasons for a decision of an entity under subsection (2) may apply to the ~~chief executive of the entity~~ oversight agency for a review of the decision within 28 days after receiving the written reasons.

G. Expressly prevent vague responses in letters of outcome

32 Person who made disclosure, or referring entity, to be informed

….

(4) The public sector entity need not give information under subsection (1) if giving the information would be likely to adversely affect—

(a) anybody's safety; or

(b) the investigation of an offence or possible offence; or

(c) necessary confidentiality about an informant's existence or identity.

(4A) If the public sector entity does not provide information under section 32(4), it must include reasons explicit statement of the relevant ground.

(4B) A public sector entity must not refuse the provision of information under section 32(2) except as permitted under section 32(4).

(4C) In the event the person has suggested a course of action for the entity in relation to the disclosure, the public sector entity must in the written outcomes expressly:

(a) confirm it shall take that course of action suggested by the person; or,
(b) give reasons that the public sector agency will not take that suggested course of action.

H. Extend timeline for commencing proceedings for reprisal

42 Damages entitlement for reprisal

…

(7) In the event that a public sector entity has investigated a reprisal, the time for making a complaint of reprisal shall under this clause shall be one (1) year from the date of the public sector entity giving reasonable information under section 32 of this Act.

I. Ban the practice of performing HR reviews in conjunction with PID Investigations

45 Reasonable management action not prevented

…

(5) Notwithstanding this section 45, it is unlawful to carry out or conduct any reasonable management action or other review step in the course of the same process or activity as investigation of a public interest disclosure under this Act.

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Annexure B – Description of Whistle-blower experiences

The following stories are compiled from whistle-blowers and individuals who have engaged in integrity processes with statutory bodies and government departments.

Experience A

The public servant became aware of evidence giving reasonable suspicion of a statutory body engaging in conduct misleading a Court. The public servant raised an anonymous public interest disclosure. The statutory body did not refer the matter to the CCC, however, one of the subject officers of the allegation commissioned a secret internal investigation which could potentially discover the identity of the disclosing public servant. The public servant identified themselves to the statutory body's integrity unit when no action was taken on the disclosure and the disclosure not sent to the CCC. Within a week of the self-identification, the public servant was met by a senior bureaucrat who threatened the public servant demanding that there be "no more complaints". The public servant resigned following those threats. The investigation of the public interest disclosure has now run to three and a half years without resolution or indication of time for resolution.

Experience B

The public servant came into dispute with a senior manager over the use of public funds and operations of the local unit. Rather than manage the issue or hold a discussion, the senior manager distributed a photograph of the public servant wearing "drag" to the rest of the work unit. When a complaint was raised about this conduct, no action was taken by the statutory body. The CCC offered no support in relation to the complaint.

Experience C

The public servant and their spouse worked in a complex field of health care. The public servant raised concerns about technical equipment not meeting Australian Standards and posing a risk to patients. The public servant was told to sign off on the use of the equipment and refused. The spouse was then released from their employment contract following that refusal without reason. A complaint was raised but no action taken on the matter.

Experience D

A group of public servants were subjected to significant insulting behaviour by a senior manager including the use of derogatory names. The group independently raised complaints about the behaviour. The name calling was determined to be "endearing" and an identical letter rejecting action sent to each of the public servants despite their separate and distinct complaints.

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Experience E

The public servant had a dispute with their oversight body. A distinct allegation was made about the public servant within the organisation. The oversight body reserved the decision about the conduct to themselves rather than engaging in an independent investigation. The conflict of interest was raised and no action taken by the CCC.

Experience F

The public servant raised concerns about the use of estimates to obtain funding when actual numbers significantly deviated from estimates. The concerns were rejected by a senior bureaucrat. The public servant had their contract lapse and not renewed. The public servant received alternative employment offers. The senior bureaucrat telephoned the new employer. The alternative employment offer was then rescinded. The public servant complained to the CCC and the investigation of the conduct was rejected.

Experience G

The public servant raised a public interest disclosure. The CCC received the disclosure and remitted the matter back to the statutory body employing the public servant. The statutory body engaged a legal firm to act on their behalf to conduct the investigation. The legal firm had no powers to compel responses and had no previous experience in statutory investigations. The investigation was significantly delayed over a number of years and no substantial result has been give to date. The CCC refuse to provide oversight or review of the purported “independent investigation”.

Experience H

The public servant raised a number of maladministration concerns with the local integrity unit which were raised with them by staff from another unit. Those staff were fearful of making future complaints because of the retaliation from senior managers when they made prior complaints but felt it important that they were raised. Separately, the public servant reported a number of concerns they personally had about the same unit. The integrity unit declined to accept each of the complaints as public interest disclosures. The public servant was later reassigned so that they did not to continue to work with the unit that was subject of the complaints raised. When the public servant’s employment contract was due to expire, the senior management, despite support of their line manager and significant resource shortages, had to make after a threat of a formal complaint to the OIC before steps were taken to extend their contract.

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Annexure C – responses to suggested questions

3.1 Policy Objectives of the Legislation

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 should be amended to align with the *Public Interest Disclosure Act 2013 (Cth)* (**PID Cth**) and the United Nations Convention Against Corruption[3] (**UN Convention**), specifically, to include as objectives:

   i) to promote the integrity and accountability of the public sector;
   ii) to promote efficiency and transparency of the public sector;
   iii) to encourage the making of public interest disclosures by any person;

   The PID Act current objects are limited to establishing a system to report and protecting person making PIDs without providing the objective of what this system is required to achieve. In our view, the fundamental objective of the PID Act is to maintain and strengthen 'proper management of public affairs and public property, integrity, transparency and accountability'.[4]

   This is then achieved by providing a statutory process and supporting framework (policies, procedures, training, reporting) for making, assessing, investigating PIDs, taking appropriate action and protecting disclosers from retaliation.

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?*

   The PID Act could be improved in its readability by introducing a new definition of 'whistleblower' or 'discloser' as used in the PID Cth for a person who makes a public interest disclosure.

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

   Yes, the PID Act needs to be amended and we set out or further recommended changes below.

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

   No comment.

3.1 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 scope of a PID should include all matters covered by the objects, including those specified in our proposed amendments in 3.1(1).

[3] United Nations Convention Against Corruption, 14 December 2005 (ratified by Australia 7 December 2005)
[4] ibid. Article 5 (1)

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?*

   Given the broad range of services the public sector is charged with providing to the community we do not think it is appropriate that the type of matters which can be disclosed should be limited other than, to the agreed objects of the PID Act. Further that any person may make a disclosure e.g. section 12 and 13 should be merged.

   Consideration should be given to a central reporting process for disclosures of this nature and those which may have significant adverse consequences for the entity about which the PID is made. This should include, at a minimum an expediated initial consideration and assessment to determine whether priority investigation is warranted and an escalation pathway for each of the integrity units and public sector entities. For example, the relevant chief executive officer (or equivalent) or chief legal officer should be able to ask for an expediated review.

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

   No, this would discourage individuals coming forward as it introduces further uncertainty on whether a disclosure will be treated as a PID and provides opportunity for inconsistency in such an assessment.

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?*

   No, this would require a subjective test of a person's mental health, an investigator or administrator of the PID Act is not qualified to make this assessment.

3.2 Who can make a public interest disclosure?

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 who makes a disclosure should be protected by the PID Act.

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?*

    Yes, any person should be able to make a PID. This is in line with the PID Cth, the UN Convention and community expectations.

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?*

    See response to Question 10.

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

    We consider the role of reporters to be vital in dealing with PID matters. The disclosure to reporters of matters which have been through the PID process should be preserved as they

provide a bulwark against defamation or other causes of action that may arise if disclosers self-publish.

3.3 Experiences of people who witness and report wrongdoing

Our response to this section is confidential and has been anonymised to protect the individuals who have provided feedback on this review to us. Refer to Annexure B of this submission for examples of the behaviour experienced. In addition, we respond as follows:

13. *How would you describe your experience in reporting wrongdoing under the PID Act? Do you have any suggestions for improvements?*

    The inconsistency in the reporting process and initial assessment is a barrier to promoting open and transparent disclosure of identified issues. Often the discloser is asked to provide evidence of the wrong doing before the assessment of the disclosure progresses. This is clearly not required under the PID Act. It also places undue pressure on a discloser to "prove" wrong-doing rather than merely allowing for them to describe a reasonable and honest suspicion of wrong-doing. It is our experience that integrity units place far too much pressure on disclosers to carry out this step.

    The lack of adequate resourcing within the integrity units and integrity bodies to cope with the number of disclosures within a reasonable time is a significant barrier to encouraging individuals to disclose.

    Acknowledgement of the disclosure should occur within 24 hours, the disclosure should automatically be deemed to be properly made. Public sector entities would then need to satisfy section 30 of the PID Act in order to not investigate or deal with the disclosure. This decision should be reviewable by application to the oversight agency who should also be provided a copy of the reasons why the public sector entity has determined no action is required.

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?*

    Refer to our comments within this submission.

15. *Were you supported effectively during the process? Would alternative or additional support have been helpful?*

    See our response to Q 24.

16. *Did you feel your disclosure was taken seriously, assessed in a timely way, investigated fairly and addressed appropriately*

    See our covering letter.

3.4 Making, receiving and identifying PIDs

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

No. The general view within the public sector is that all disclosures must be first made to the relevant ethical standards unit. This is clearly not the case however easy to understand information and confidence in how to report PIDs outside of a public servant's home employer is not readily available.

Further, the Queensland Ombudsman's (**Ombudsman**) Public Interest Disclosure Standard No. 3/2019 is binding and requires reporting of PIDs, should the recipient deem the disclosure not to be a PID, no record of it is required to reported to the Ombudsman and as the Ombudsman is not resourced to undertake an independent audit the public sector's compliance with the PID Act and the Ombudsman's standards these disclosures can fall through the cracks.

To improve transparency and support of disclosers, we recommend that all disclosure are deemed PIDs and reported to the Ombudsman, that the Ombudsman is resourced to audit compliance with the PID Act and its standards and the ability for all persons to disclose to any of the entities is promoted at a government wide level.

Further, more accessible options should be provided to individuals to make disclosures.

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?*

We believe it is necessary that common platform across all integrity bodies in Queensland is established to receive complaints so that a truly independent review is undertaken of each complaint in a consistent manner across the public sector which is uninfluenced by the senior bureaucrats with regular external audits to ensure compliance with the relevant legislation. This would also aid in providing an early warning system of system-wide issues.

Further, each of the integrity bodies should work in unison to deliver better outcomes for Queenslanders by streamlining the reporting, assessment and referral processes, each should be properly resourced from consolidated funds on a multi-year cycle with legislation to protect the heads of each from removal by the current government.

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

Immediately on making a disclosure.

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?*

Yes. This should also include an acknowledgement of the complaint with a unique reference number, status updates on the assessment and investigation process (not the actual investigation). Additionally, a right of appeal of the assessment to another permitted disclosers e.g. such as the Ombudsman should be available under the PID Act to promote transparency and consistency.

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?*

    As we have set out in these submissions, we are of the view that media disclosure is important but we also suggest that there must be better and fuller reporting of PIDs received by relevant entities.

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?*

    No, there should be a uniform process across all public sector entities including government owned corporations and local governments.

3.5 Managing, investigating and responding to PIDs

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

    Providing changes are made as set out in our response particularly in the resourcing and improved oversight by the Ombudsman, the general process is appropriate provided that any individuals involved in assessing, managing, investigating and responding to PID's hold a minimum relevant skill set and are required to regularly undertake training and be certified to apply the PID Act in an objectively and consistently.

    For example, the intake of a complaint and the reporting steps required – should require the requisite officer to complete advanced training approved by the Ombudsman on the relevant parts of the PID Act and its Standards and be assessed no less than annually that they are capable of carrying out those duties. Whilst investigations of a complaint should be undertaken by an individual with a skill set relevant to the complaint itself.

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

    No. This is usually devolved back to the line manager of the relevant employee to assess and manage. A central independent service, similar to EAP should be made available to any discloser who has the ability to escalate any concerns back to the 'complaint officer' for further referral and action.

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?*

    In relation to (a) no, the breadth of type of complaints will make this impractical. In relation to (b) and (c) the PID Act should certainly contain these requirements, these are fundamental to the rule of law.

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*

Yes, provided such support is provided by an independent body and information is made available to the discloser to reassure them that such interactions are managed impartially.

3.6 Protections for disclosers, subject officers and witnesses

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

No. For those that feel it is necessary to ensure complaints are properly investigated, careful consideration of the process to be used and securing alternate employment outside of the public service, is unfortunately necessary.

It is very easy for individuals who make complaints to be labelled trouble makers and they can suffer reprisal which on the face, appears as reasonable management action e.g., non-renewal of contracts, moved to less desirable positions or managed in way which is intended to encourage them to leave.

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

No. There is a general lack of awareness within the public sector of how to correspond with complaints in a manner which preserves their anonymity or limits their role as a discloser to the relevant individuals. For example, where correspondence is sent via the 'corro chain' that such documents are locked and only accessible by the complaint officer.

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

As set out in the submissions, we have found that Human Resources departments are ungainly in dealing with PID matters and often conflate PID investigations with other management measures which ultimately puts pressure on disclosers and heightens anxiety and fears about the effect on their roles. We recommend that standard practice be for HR to be kept out of all PID matters for this reason.

In our view, the definition of reprisal should be extended to situations where such pressure set out in the above is made by a HR unit.

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

See response to 26.

3.7 Remedies

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

No. These should be further strengthened to provide a discourage non-compliance with the objects, statutory requirements and supporting framework. At a minimum it should reflect the remedies available under the PID Cth.

Further, the PID Act should be restructured to bring the disclosers protection and remedies for non-compliance to the front of the PID Act.

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

    The PID Act should include a presumption of retaliation in favour of the discloser with the onus of proof being on the other party.

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?*

    Our experiences have been that the QHRC mediation is largely ineffective because government departments are simply unwilling to discuss or engage sensibly with the allegation of reprisal. Our experience has been that government departments do not comply with the model litigant rules and will seek to maximise technicalities or take a "win at all costs" approach to those mediations, meaning there is rarely (if ever) a sensible or reasonable resolution available from mediation of a reprisal allegation. We suggest this is a cultural matter because of the legalistic approach of government departments to reprisal matters, rather than an issue with the constitution of the QHRC.

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

    Yes – we support a redress scheme where there have been accepted allegations of reprisal and we suggest this should include financial assistance and support, particularly where there has been a lengthy or protracted nature of the PID. We suggest that an independent third party should be the relevant assessor of same as we have no confidence in government departments responsibly handling such assessment when related to their own organisations.

3.8 Role of the oversight agency

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

    See above.

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?*

    Our experience is that such conflicts are effectively managed by the Ombudsman however we believe that a separation between the oversight and operational role of investigating and responding to PIDs is preferable.

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

    Yes. See above.

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

Yes. See above.

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

    See above.

3.9 Practical considerations

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

    Yes. This should also include immunity under common law and professional standards should explicitly refer to the PID Act as an exception to, for example, a duty of confidentiality.

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

    No. Disclosure should be a duty on all public servants with an honest and reasonable suspicion of wrong-doing. By contrast, we take the view that failure to make a disclosure in circumstances where a reasonable person would hold such suspicion should be grounds for reprimand.

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

    No. In addition to our responses above each of the available disclosing entities and persons should be provided appropriate training to understand their role. For example, Members of Parliament should be provided customised training of their role and a handbook setting out the relevant statutory and procedural requirements for both the Members and their staff along with the support services available to them and the disclosers.

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 inclusion of additional proper authorities which represent First Nations Peoples, CALD and individuals with accessibility needs should be included in the PID Act.

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

    No. Review of the definitions used, simplification of the processes to disclose, use of diagrams showing how the disclosure through to finalisation of the complaint be included in the Explanatory Memorandum.