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Our ref: 10099 (3)  
P Christensen [REDACTED]

## OFFICIAL

24 February 2023

The Honourable Alan Wilson KC  
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](mailto:PIDActReview@justice.qld.gov.au)

Dear Judge Wilson

### ***Review of the Public Interest Disclosure Act 2010***

Thank you for the opportunity to meet with you on Tuesday 21 February 2023, I am pleased to provide the attached submission for your review of the *Public Interest Disclosure Act 2010*.

Please contact me if you would like to discuss this further. Alternatively, your staff may contact Paul Christensen, Senior Director, on [REDACTED] or by email to [REDACTED].

Yours sincerely

[REDACTED]  
Brendan Worrall  
Auditor-General

Enc.

# QAO Submission

## Review of the *Public Interest Disclosure Act 2010*

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The following comments are provided from QAO's perspective as a receiver of potential PIDs in its role as an integrity agency.

### Policy objectives of the PID Act

We have no specific comments on this section of the discussion paper.

### What is a public interest disclosure?

QAO is most likely to receive a PID under s.13(1)(b) of the PID Act. These relate to disclosures by a public officer about a substantial misuse of public resources. QAO is a 'proper authority' to receive a PID as a public sector entity (as defined by s.6(1)(j) of the PID Act) who has the power to investigate a substantial misuse of public resources.

This is consistent with the Auditor-General's mandate for conducting audits of public sector entities under the *Auditor-General Act 2009*. This is explained in the [Auditor-General of Queensland Auditing Standards](#) which state:

#### Additional public sector considerations

In conducting a financial audit, the mandatory requirements of applicable Australian auditing standards are applied. The Auditor-General has developed and maintains a methodology based on the requirements of these standards.

Financial audits also take a qualitative risk-based approach to assessing:

- the probity of matters associated with the stewardship of public sector entities
- the propriety of administrative decisions taken within an audited entity and the associated audit reporting processes
- acts or omissions that have given rise to a waste of public resources
- compliance with relevant Acts, regulations, and government policies.

In assessing whether a disclosure received by QAO is a PID under section 13, our biggest challenges are:

1. Determining what is a substantial misuse of public resources.

The PID Act does not currently provide any definition of, or guidance on, what would be considered 'substantial'. This makes it a very subjective assessment. While we have a process for considering whether we believe something is substantial, this could be different to other agencies, or the person making the PID.

Further, given the differing size of public sector entities there is the potential for the value of the public resources involved to be considered substantial at one public sector entity but only very minor at another. The value of the public resources involved will also influence our decision as to whether we would investigate the matter.

This may raise issues on how to manage public expectations about what should or should not be investigated as a substantial misuse of public resources.

2. Assessing whether the person 'honestly believes on reasonable grounds' that the information tends to show the wrongdoing.

Unless the PID is clearly vexatious, we would likely start with the presumption that the person honestly believes the matter demonstrates some wrongdoing. However, assessing whether there are 'reasonable grounds' for their beliefs can be difficult, depending on the nature and extent of the supporting information provided. Further, assessing whether the grounds are reasonable can be quite subjective.

From our experience, it is often necessary to do at least some initial work to assess whether there are 'reasonable grounds', meaning it can take longer to do the initial assessment.

## Who can make a public interest disclosure?

We occasionally receive information from GOC employees alleging misuse of resources by the GOC. These employees may seek to claim PID status when disclosing the matter to QAO. However, because s.19 does not include misuse of resources as a type of disclosure that can be made by an employee of a GOC or Queensland Rail, these disclosures do not attract PID status. This would appear to be inconsistent with s.13 of the PID Act where similar disclosures by employees of other public sector entities may attract PID status.

Further, the nature of the allegations made may also involve potential corrupt conduct. In those circumstances the allegations could attract PID status if made to the GOC or the CCC. This would mean the same allegations could attract PID status with the CCC but not QAO, even though the matter might also be appropriately investigated by QAO as part of our audit mandate.

It would seem inconsistent for the same allegations to potentially attract PID protections at one integrity agency but not another because of the type of entity the allegations are about.

## Experiences of people who witness and report wrongdoing

We have no specific comments on this section of the discussion paper.

## Making, receiving and identifying PIDs

As per our comments above, there is an inconsistency in the PID Act between disclosures involving the misuse of resources by GOCs and Queensland Rail and other types of public sector entities. Based on our experience, it can be confusing for employees of GOCs to know who they can refer matters to QAO and also claim PID status.

We also note that the discussion paper identifies how s.31 of the PID Act allows the referral of disclosures to another public sector entity in certain circumstances. QAO, however, also needs to assess whether this can be done under s.53 of the Auditor-General Act which requires us to maintain the confidentiality of information obtained as part of our audits. While s.53 allows QAO to provide information to the CCC, it does not include other public sector entities that may have a role in investigating PIDs such as the Ombudsman.

Further, if QAO receives a disclosure involving allegations of possible corrupt conduct at a GOC, we would not be able to refer this directly to the CCC due to the operation of the *Crime and Corruption Act 2001* and s.156 of the *Government Owned Corporations Act 1993*. It is our understanding that s.156 of the GOC Act only allows the CCC to receive allegations of corrupt conduct from the GOC or the Under Treasurer.

## Managing, investigating and responding to PIDs

We assess disclosures received as part of our Request for Audit process. This ensures that we only investigate matters within the mandate provided to the Auditor-General under the Auditor-General Act.

While we believe this process is generally consistent with the requirements of the PID Act there also some elements of the Auditor-General Act that need to be considered when investigating PIDs:

1. Under s.9 of the Auditor-General Act identifies that the Auditor-General is not subject to direction by anyone about the discharge of their mandate. As investigation of PIDs are performed as part of our audit functions this means we cannot be directed as to whether we chose to investigate them or how we do so.
2. The confidentiality provisions contained in s.53 limit our ability to disclose protected information. For this reason, we are limited to what we can report back to a discloser under s.32 of the PID Act.

## Protection for disclosers, subject officers and witnesses

We have no specific comments on this section of the discussion paper. In addition to maintaining confidentiality of disclosures received under the PID Act we also seek to maintain the confidentiality of disclosures received under s.53 of the Auditor-General Act.

## Remedies

We have no specific comments on this section of the discussion paper.

## Role of oversight agency

We have no specific comments on the role of the Ombudsman. However, as noted previously, there can be issues in terms of sharing information on PIDs and reporting on them to the appropriate integrity agency. This is due to each agency having different legislation with different confidentiality requirements. These may allow for sharing of information between some agencies but not others. For example, the Auditor-General Act allows QAO to share information with the CCC but not the Ombudsman. This directly impacts on QAO's responsibilities for reporting on PIDs to the Ombudsman's in their oversight role.

## Practical considerations

As identified throughout this document, there are several areas where there is added complexity in applying the requirements of the PID Act while operating within our legal mandate under the Auditor-General Act. Additional complexity arises from our inability to refer matters directly to the CCC which involve allegations of corrupt conduct at GOCs.