



Department of  
**Natural Resources and Mines**

Ref CTS No 26897/15

27 January 2016

PID Act Review  
Office of the Queensland Ombudsman  
Email: [PIDreview@ombudsman.qld.gov.au](mailto:PIDreview@ombudsman.qld.gov.au)

Thank you for the opportunity to participate in the review of the *Public Interest Disclosure Act 2010* (the PID Act).

I am responding on behalf of the Department of Natural Resources and Mines and the Department of Energy and Water Supply.

I understand that the objects of the PID Act are to:

- promote the public interest by facilitating public interest disclosures of wrongdoing in the public sector
- ensure that public interest disclosures are properly assessed and, when appropriate, properly investigated and dealt with
- ensure that appropriate consideration is given to the interests of persons who are the subject of a public interest disclosure
- provide protection from reprisals to persons making public interest disclosures.

We welcome this opportunity to address the issues identified in the issues paper and other matters related to the operation of the PID Act.

Please find our submission attached.

Should you have any further enquiries, please contact  
Workplace Relations of the department on telephone

Yours sincerely

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## Submission

### THE MAIN OBJECTS OF THE PID ACT

The department/s consider the main objectives of the PID Act are valid including to:

- promote the public interest by facilitating public interest disclosures of wrongdoing in the public sector
- ensure that public interest disclosures are properly assessed and, when appropriate, properly investigated and dealt with
- ensure that appropriate consideration is given to the interests of persons who are the subject of a public interest disclosure
- provide protection from reprisals to persons making public interest disclosures.

It is considered that the PID Act is a key component to underpinning the integrity and accountability of the Queensland Government, for the identified areas of complaints.

With regard to other ways of promoting the disclosure of wrongdoing and protection to disclosures, the Queensland Ombudsman may wish to consider promotion and awareness more broadly, including the interaction between the Public Service Commission (PSC) (including the Conduct and Performance Excellence (CaPE) Framework), the Crime and Corruption Commission (CCC), and Anti-Discrimination Commission Queensland (ADCQ).

This may include considering promotion in the form of a campaign similar to ADCQ who in November 2015 trialled a new strategy for human rights month: over a period of four weeks four key topics were highlighted (e.g. sexual harassment etc) and the campaign took an opt-in approach, and departments were provided with promotional material such as posters, training to key personnel and staff sessions. This provided departments the opportunity to connect the campaign with other departmental priorities, such as health and safety. The campaign was also promoted and spoken of at PSC forums with Chief Human Resource Officers and others networks. Similar campaign strategies and networks could be considered for the promotion of the PID Act, linking with CCC, and relevant agencies to bring about further awareness in a targeted campaign.

Yes it is considered the PID Act has been effective in promoting PIDs, particularly at the point when it came into effect in 2010, seen through the implementation of changes and terminology for departments. However, the term 'whistleblower' is still referenced from time to time, which may be due to its long term historical use and that it may provide more understanding and meaning for some, due to its broad national/international use.

## 6. WHO CAN MAKE PIDS AND WHAT THEY ARE ABOUT

### 6.1 Two different types of disclosers

*What is the effect of including two categories of disclosers ('any person' and 'public officer') in the PID Act?*

It provides a clear delineation between the types of information that is considered a PID for each category (i.e. those additional types of PIDs that can be made by public officers), and therefore this forms a key consideration in the assessment and management of PIDs received by the department/s.

*Are these provisions appropriate? Are there benefits in continuing this arrangement?*

Yes these provisions are appropriate; particularly given the nature and type of complaints and information received. The separate category and extended provisions for 'public officer'



disclosures provide a public officer with protections for reporting maladministration, corrupt conduct and so forth, which often are reported due to allegations within the department or workplace they occupy, therefore these protections and support are important to promote the reporting of wrong doing. It also assists to highlight public officer obligations and seriousness with regard to Corrupt Conduct and supports the responsibilities under the Code of Conduct to report wrongdoing, including substantial misuse of public resources and maladministration. Concerns would also arise with regard to protecting 'any person' for types of disclosers specific to 'public officers'.

*Are there other options that should be considered?*

The position of CCC as to whether or not corrupt conduct disclosed by members of the public is suitable for inclusion in s12 may warrant consideration, however as per above the practicality of providing protections, the implication of private and political interests, and referring back to the objectives of the PID Act and those areas identified may deem this inappropriate.

## **6.2 PID reporting by any person**

*What is the value of including disclosures about the health and safety of a person with a disability and the environment in the PID framework?*

It promotes reporting of wrongdoing in areas that may otherwise be vulnerable to low levels reporting and commercial interests.

*Are there other more appropriate ways to provide support and protection to persons (not public officers) who make disclosures about these issues?*

Concerns do exist for the ability to provide protections to persons other than public officers; however confidentiality provisions can in most cases be applied effectively.

## **6.3 Meaning of 'substantial and specific'**

*Should the PID Act provide more guidance or examples about the meaning of 'substantial and specific'?*

While guidance and examples may assist, this would be more appropriate in supporting tools or training rather than the PID Act. The usual meaning should continue to be applied, as is the case with other terms within related ethical-based legislation – should it become too specific it may restrict, and therefore impact, the application of the PID Act.

*Are there alternatives to the use of the words 'substantial and specific'?*

No

## **6.4 Dealing with public officer complaints about matters that are substantially workplace complaints or grievances**

*Should consideration be given to adding a public interest test for disclosures by public officers that are substantially workplace complaints?*

Yes this may assist. Often with PIDs there are overlaps with other assessments and complaint processes; however it is considered more a matter of the intent of the PID Act and therefore ensuring the correct purpose and subsequent practical application take place.

## **6.5 Public officers reporting role-related PIDs**

*Should the PID Act be made more explicit about disclosures made in the normal course of a public officer's duties?*

Yes clarification on this would assist for future matters.

This has been an area of uncertainty over the years, particularly in the early implementation of the PID Act, however it is considered that the provisions surrounding disclosures in the normal course of a public officer's duty are now well understood. For the purpose of clarity providing more guidance in the PID Act may assist for future PIDs and assessors.

*Should there be further consideration about how role-related PIDs should be managed?*

It is considered that the current provisions are appropriate, whereby the 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, 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.

## **6.6 Changes to employment arrangements for public officers**

*Should the PID Act definition of 'public officer' be widened to include volunteers and contractors?*

This would warrant further consideration, particularly where there is an employment relationship connection, and volunteers and/or contractors are placed in similar positions to that of public officers.

*Should further consideration be given to clarifying the application of the 'public officer' definition?*

Yes so far as the considerations between employing agency, and broader employer 'Queensland Government'. Refer to 7.2 for comments on communication and interaction between these entities.

## **6.7 Post-employment considerations for public officers**

*Should the PID Act be more explicit about how disclosures by former public officers should be managed?*

Yes this may assist from the position of employment separation and PID protections. However it should be carefully considered so as not to deter public officers from making a PID (should they leave the department), but also be practical and feasible for entities to apply, with considerations given to short and long term effects, including ability to afford protection to public officer if they separate from the employing agency.

# **7. HOW PIDS ARE MADE**

## **7.1 Who can receive a PID**

*What is the impact of this wide range of options for disclosing a PID?*

This provides the disclosure with flexibility for reporting a PID, which facilitates in the reporting of wrongdoing, a key objective of the PID Act.



*What are the advantages? What are the disadvantages?*

Allowing the disclosure to choose the reporting option is advantageous to supporting the premise of the PID Act with regard to facilitating the reporting of wrongdoing, enabling the disclosure to choose the option they prefer, or in some cases, may only be aware of. This is also advantageous in smaller sized entities due to confidentiality and the types of disclosure being made.

However disadvantageous may exist whereby multiple reporting options are accessed by a disclosure, both for the process, management and resources required. It would also depend on whether the multiple contact points are aware of the various reporting that occurred, and then consideration of the time required determining who will take carriage of the matter.

**7.2 Multiple pathways for reporting**

*What is the impact of having multiple reporting pathways? Is this encouraging disclosures?*

Providing for multiple pathways is another mechanism to encourage and facilitate the reporting of wrongdoing. As a department that receives disclosures for environmental related matters, and in general from members of the public, this allows for appropriate assessment and investigation if required direct to the department that has the authority to do so.

As above in 7.1, should multiple reporting options be used, this can impact the processes and resources for management of the PID, and therefore communication between the various reporting contacts is important.

However this communication between entities may warrant clarification. Issues have become highlighted in instances whereby a public officer makes a disclosure to a department (other than their employing agency). The receiving department is limited to the protections able to be afforded and risk strategies implemented. It is understood from previous advice from the Queensland Ombudsman, that the department in receipt of the disclosure must first seek consent from the disclosure before contacting the PID Coordinator, or equivalent, in the public officers employing agency. The transfer of information between entities is an area for consideration and clarification, either through legislation or other supporting tools.

*Are there options for improving how internal and external reporting arrangements work?*

Yes, this is a key area for consideration. Improving the transfer of information between government departments for public officer's in a highlighted area. Options may exist through the PID Network, PSC's Chief Human Resource Officers Forum (CHROF) or other alternatives.

**7.3 PIDs to journalist**

*How has this option been used? Are there alternatives that should be considered?*

The department is not aware of when this option has been used. It is considered that this is appropriate as it stands.

**8. HOW PIDS ARE MANAGED**

**8.1 PID status**

*What is the effect of these provisions on disclosers? And agencies?*

It is considered appropriate that the receiving department (be it the PID Coordinator) assesses the disclosure and acts accordingly to the PID Act requirements, and this is in line

with other legislation and requirements (e.g. *Crime and Corruption Act 2001* (the CC Act) and PSC CaPE).

Although a discloser need not identify their complaint as a PID, often complainants will do so, and this may be to ensure the matter is treated as such. The department however carries out the assessment and advises the discloser, in accordance with the Act.

*Are there alternatives that should be considered?*

Nil comment.

## **8.2 Informing a person who has made a PID**

*Should the PID Act be explicit about when information should be provided to disclosers?*

Generally other timeframes also apply, including the department's complaint management processes, and therefore the existing strategies are considered appropriate.

*Should further consideration be given to clarifying the extent of information to be provided to a discloser about the results of action arising from a PID?*

No, this is not considered necessary.

## **8.3 Providing protections for 'a public officer' who is not employed by the entity**

*Should the PID Act be more specific about providing protection to a discloser who is not an employee of the entity investigating the PID?*

Yes this is a concern as outlined in 7.2, and the clarification on the obligations to seek consent, and protections limited to an entity who is not the employer would be of benefit. It is currently understood that the position is that the entity cannot inform the other entities with the disclosers consent. Privacy considerations must also occur.

## **8.4 Obligations on public sector entities**

*Are the current requirements for each public sector entity to develop and publish their own PID policy valuable and appropriate?*

While it is considered important that a current policy is in place, some entities are very small in size, and therefore this is not always appropriate. A single Queensland Government Policy the small size of some entities may impact the appropriateness of this requirement.

*Are there alternatives that could be considered?*

A single Queensland Government policy would assist. This could be accompanied by a draft procedure, which would then allow the entity (particularly those small in size, to adopt and modify the procedure to suit their operations), while referring and applying the whole of government policy. This is similar to the Code of Conduct for the Queensland Public Service, and other whole of government policies.

*Should further consideration be given to the extent of protections provided by the Act and responsibility for providing that protection?*

Again the size of some entities may restrict their ability to do so.

## **8.5 An entity with powers to investigate or remedy**

*Are the current arrangements for 'investigate and remedy' agencies appropriate?*

Yes, usual complaint and investigation processes are applied.



*What other options or improvements could be considered?*

Nil comment.

## **8.6 Preserving confidentiality**

*Are the current arrangements for confidentiality adequate and appropriate?*

The department applies confidentiality provisions for complaint matters to ensure the integrity of the processes are upheld, and the additional PID confidentiality provisions assist as part of risk management for reprisal. However the department agrees there may be instances, as identified by the Issues Paper that require the provision of information for other purposes.

The PID Act does provide arrangements for information to be provided for the purpose of discharging another Act, which is appropriate. With regard to natural justice processes identified in the Issues Paper, the department agrees this can be difficult. The usual course of redacting and de-identification of identifying information before providing to a respondent is the usual course, however confidentiality cannot be guaranteed particularly in circumstances where by the nature of the matter and particulars, the identity of the disclosure can be surmised or presumed. Managing the risk of reprisal in consultation with the discloser is key to these processes.

*Are there improvements that could be considered?*

Nil comment.

## **9. REPRISAL CONSIDERATIONS**

*Are the current arrangements for managing reprisal adequate and appropriate?*

Applying sound risk management practices, good decision-making, consultation with the discloser, and being advised of potential risks of reprisal are important to be able to minimise the risk and provide appropriate protections. This occurs on a case-by-case basis. The department has not had any instances of allegations of reprisal, however further clarification and guidance would be of benefit.

*What other options or improvements could be considered?*

Nil comment.

## **10. REVIEW RIGHTS**

*Should the issue of review rights in the PID Act be further considered?*

The existing review rights, applied for administrative decisions of PIDs, are considered appropriate and in line other complaint management processes.

*Are there other options or improvements that could be considered?*

Nil comment.

## **11. ROLE AND POWERS OF THE OVERSIGHT AGENCY**

*Are the functions of the oversight body appropriate?*

Yes, however should the example raised in the Issues Paper surrounding new provisions to require an entity to act in a particular way to a PID be further considered, examination of the

other existing legislative requirements (and oversight bodies) should be had as to the interaction and workability of this.

For example, a public officer makes a disclosure of corrupt conduct and therefore the PID Act provisions and CC Act provisions apply. Requiring a department to act in a particular, as advised by two separate oversight agencies may result in a range of issues, including conflicting requirements and/or delays.

*Should there be any requirement to audit and formally report about entities' compliance with PID Act requirements?*

It is recognised that the Queensland Ombudsman provides statistical information within its Annual Report, however does not report on agency compliance with the Act, however historically the oversight agency has ensure departmental compliance so far as policies and procedures. Department's do however report detailed information of each PID received to the Queensland Ombudsman through the online database and this may serve as a source for compliance audits with the PID Act. It should be noted that departments are also audited through other means such as ethics reviews, as to the compliance with policies and procedures, and further complaints audits such as the CCC.

*Are there other improvements that could be considered?*

Nil comment.