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Office of the Registrar

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Mr Phil Clarke  
Queensland Ombudsman

By email to [PIDreview@ombudsman.qld.gov.au](mailto:PIDreview@ombudsman.qld.gov.au)

Dear Mr Clarke

**Re: Public Interest Disclosure Act Review**

Thank you for your invitation to provide a submission in response to the review of the Public Interest Disclosure Act 2010. Please find enclosed a submission from QUT, which I am providing on behalf of the University.

We have not responded to all review questions, but have selected those where we have a particular comment to make. Overall, we believe that the PID Act provides sufficient framework for the University to fulfil its obligations, but there are some areas where clarity would be useful, either in the Act itself or supporting guidance documentation provided by the Queensland Ombudsman. However, in light of the many obligations impacting public sector entities (and universities in particular), we believe it is important that review outcomes do not place any further obligations upon entities, or result in any further complexity.

Please refer to our submission for particulars.

Yours sincerely



University Registrar

Enc Submission from QUT to the Review of the Public Interest Disclosure Act 2010

## Submission from QUT to the Review of the Public Interest Disclosure Act 2010

### Section 5: The main objects of the PID Act

#### Question from review paper:

Are the PID Act provisions for protecting the interests of disclosers and subject officers adequate and appropriate?

#### QUT Response:

The PID Act makes very little reference to the interests of subject officers (i.e. respondents). Respondents to complaints often express the view that provisions for PID protections are unfairly weighted towards complainants, with little or no regard for respondents' rights during a complaint and investigation process.

### Section 6.3: Meaning of 'substantial and specific'

#### Statement from review paper:

s.13(1)(a)(ii) refers to 'maladministration that adversely affects a person's interests in a substantial and specific way'.

#### QUT Comment:

Consideration should be given to whether the reference to maladministration in the Act is sufficient. The Act currently states that a public officer may lodge a PID about:

*'maladministration that adversely affects a person's interests in a substantial and specific way'* (Chapter 2, Part 2, Division 1, section 13).

'Maladministration' is described in the following ways:

MacQuarie Dictionary Online:

*'to manage (especially public affairs) badly or inefficiently'*

Cambridge Dictionaries Online (Business):

*'a situation in which the people who manage a company or organization behave in a careless or dishonest way and cause serious problems'*

Oxford Dictionaries Online

*'inefficient or dishonest administration; mismanagement'*

Public perception tends to be that maladministration is something which has widespread implications. However, there can be a tendency for individuals to lodge a PID, as alleged maladministration, in regard to matters which are substantially the individual's workplace grievance.

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

Question from review paper:

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

QUT response:

Yes. Complainants sometimes seek to lodge a PID about circumstances which affect them personally – i.e. substantially workplace complaints concerning themselves, but not others; however, an individual's dissatisfaction with their own workplace circumstances is unlikely to be a matter in the public interest (i.e. unlikely to be a PID).

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

Statement from review paper:

Sections 12 and 13 of the PID Act provide that PIDs may be made by public officers, but do not specifically provide for disclosures in the normal course of employment (e.g. an auditor reporting 'corrupt conduct').

Question from review paper:

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

QUT response:

No; this should not be necessary. It is already clear that any public officer can make a public interest disclosure to a proper authority. The fact that concerns arise through a public officer's normal course of employment is to be expected. PIDs are often made because a public officer becomes concerned about something which arises through the course of their employment.

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

Question from review paper:

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

QUT response:

No. Public sector entities are able to provide protections to their own officers because they have direct influence over the workplace circumstances of those people. Accordingly, entities have jurisdiction to relocate those individuals if appropriate, approve leave or other special arrangements and keep the identity of the person (and the reasons for any changes to their workplace circumstances) confidential; therefore the protections which an entity can offer to persons who are not their officers may be limited. Further, consultation about protections may be required with parties outside of the organisation (e.g. the discloser's external line management, in the case of contractors), reducing the ability of the organisation to keep the discloser's identity confidential.

If, however, the definition was widened, the Act should be clear that any protections put in place by an entity only concern those matters which are logically within the entity's jurisdiction and that there would be no liability to put arrangements in place elsewhere.

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

##### Question from review paper:

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

##### QUT response:

No. Public sector entities are able to provide protections to their own officers because they have direct influence over the workplace circumstances of those people. Where an officer has departed an organisation, the public sector entity no longer has this influence and any protections put in place by the entity could only concern those matters which are logically within the entity's jurisdiction (refer to comments under 6.6 above).

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

##### Statement from review paper:

Under s.17, a PID may be made to another person who directly, or indirectly, supervises or manages the discloser or to others such as the Chief Executive Officer or to a person who has the function of receiving or taking action on the type of information being disclosed (such as an ethical standards officer). A disclosure may also be made to a Minister (if the Minister is responsible for the administration of the department) or if the proper authority is a public sector entity with a governing body it may be made to a member of its governing body.

##### Questions from review paper:

What is the impact of this wide range of options for disclosing a PID? What are the advantages? What are the disadvantages?

##### QUT response:

One disadvantage is that more people may be apprised about the PID than necessary. For example, if a discloser lodges a PID with a member of an entity's governing body, it is likely that the member (or their executive support staff) will refer the matter down the chain of command. The matter may be brought to the attention of several parties before it reaches the person in the organisation who is responsible for managing PIDs.

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

##### Question from review paper:

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

QUT response:

No. It's completely dependent upon the nature and complexity of the matter. Some matters may require extensive data analysis which can take weeks, followed by several more days or weeks for the analysis to be thoroughly reviewed and understood by the investigator before any findings can be made. Sometimes it is simply not possible to provide a time frame for the short to medium term.

Question from review paper:

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?

QUT response:

Yes. Disclosers will receive information about the results of actions arising from the PID which the entity believes is reasonable. Disclosers will not necessarily receive all of the information to which they believe they are entitled. It is not for disclosers to determine what information they will, or will not, receive; that is a matter for the entity to determine, however disclosers rarely understand this fact. Some information, for example legal advice provided to the entity which the entity relies upon to determine its actions, may be legally privileged and not disclosable.

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

Statement from review paper:

[...] the practicality of managing the risk of reprisal and providing protections has been raised as an area of concern by agencies.

Question from review paper:

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

QUT response:

Yes. It is difficult for a public sector entity who employs a discloser to determine the extent of its protection obligations towards the discloser, when the discloser has lodged a PID with another public sector entity and advised their employing entity that they have done so. The entity where the discloser has lodged the PID has responsibility to determine a protection plan for the discloser. To what extent does the employing entity have protection obligations and how do these fit in with the protection plan of the external entity?

We reiterate our comments under sections 6.6. above – that any protections put in place by an entity should only concern those matters which are logically within the entity's jurisdiction and that there should be no liability to put arrangements in place elsewhere.

## Section 8.6: Preserving confidentiality

### Question from review paper:

Are the current arrangements for confidentiality adequate and appropriate? Are there improvements that could be considered?

### QUT response:

The discloser's obligation to maintain confidentiality is not clear in the Act. They sometimes seek guidance on the extent to which they can discuss their complaint with other parties, internal or external to the public sector entity (e.g. unions, legal advisors); noting that the Act (Chapter 6, section 65) states that a person must not disclose confidential information to anyone, other than in particular circumstances (set out in sub-section 3).

## Section 9: Reprisal considerations

### Question from review paper:

Are the current arrangements for managing reprisal adequate and appropriate?

### QUT response:

Clarity would be useful about the circumstances where, under the Act, action is considered to be reprisal action. The Act states that a person must not take detrimental action against another person because that other person has made a PID. Clearly detrimental action is not acceptable and must be addressed; however, if a person takes detrimental action against another person because they are aware that person made a complaint, does this action meet the definition of reprisal action under the Act? The person undertaking the detrimental action may be aware that the other person has made a complaint, but they might not know that the complaint has been lodged as, or is being managed as, a PID. Are they liable, under the Act, for undertaking reprisal action when they don't know a PID has been made? The presumption is that they are not, but this could be clarified.

## Section 10: Review rights

### Question in review paper:

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

### QUT response:

No. The Act is clear. It states (at Chapter 3, Part 2, Section 30) that a person, who receives notification that the matter they have raised will not be investigated under the PID Act, may apply to the Chief Executive Officer of the entity for a review of the decision within 28 days after receiving the written reasons. Like any other complaint process, once a matter has been responded to and internal review processes have concluded, the next point of review is to raise the matter with an appropriate external entity.

## **Section 11: Role and powers of the oversight agency**

### Question from review paper:

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

### QUT response:

Public sector entities are already required to report to the Queensland Ombudsman on PID management. In considering this question, the Queensland Ombudsman is encouraged to give thought to the already substantial audit and reporting requirements placed upon public sector entities, particularly universities which have very diverse activities already subject to extensive audit and reporting obligations.

