

18 JAN 2016



Mr Phil Clarke  
Queensland Ombudsman  
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BRISBANE QLD 4001

Office of the  
**Director-General**

Department of  
**Education and Training**

Dear Mr Clarke

I refer again to your letter dated 3 November 2015 and the request for submissions in relation to the review of the *Public Interest Disclosure Act 2010* (the Act).

The Department of Education and Training (the Department) appreciates the opportunity to provide a submission in response to the review of the operations of this legislation.

The Department strongly supports the purpose of the Act, specifically, to 'facilitate the disclosure, in the public interest, of information about wrongdoing in the public sector and to provide protection for those who make disclosures'. In the Department's submission we have made some observations and recommendations in relation to the operation of the Act which we consider may assist departments in discharging their legislative responsibilities.

These observations are informed by the Department's experience in receiving, assessing and managing disclosures under the current Act. The Department's feedback is detailed below, with the matters the Department offers comment on referenced to the relevant item number as it appears in your issues paper.

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

Under section 12 of the Act, certain Public Interest Disclosures (PIDs) may be made by 'any person'. In particular, disclosures can be made about substantial and specific danger to the health and safety of a person with a disability, and substantial and specific danger to the environment. In this regard, the Department receives complaints from various sources, including members of the public.

Despite the legislative intent to protect disclosers against reprisal there are limits on what protections and support can be provided to 'any person' who is not a public officer. For this reason, and given minimal reporting by members of the public, the Department questions whether treating these matters as PIDs does in fact help to achieve the stated purpose and objects of the Act.

That said, the Department believes that continuing with 'any person' being able to make a disclosure of reprisal has merit given allegations of reprisal are sometimes made against people who are not public officers (including relatives and associates of the discloser).

In summary we suggest the reviewing authority:

- consider whether the inclusion of PIDs made by 'any person' about certain types of wrongdoing is effective in promoting the stated purpose and objects of the Act; and
- maintain the provision that 'any person' can make a PID relating to reprisal.

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### **6.3 Meaning of ‘substantial and specific’**

Sections 12 and 13 of the Act use the words ‘substantial and specific’ when describing some types of public interest information. The Department believes that because this term is undefined it is open to interpretation. It is our view the Act should provide more guidance on the meaning of ‘substantial and specific’ or alternatively reword the definition to ensure greater clarity.

In summary we suggest the reviewing authority:

- provide a definition in the Act of the term ‘substantial and specific’.

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

Under section 13(1)(a)(i) of the Act, a public officer may make a PID about ‘maladministration that adversely affects a person’s interests in a substantial and specific way’. The term ‘maladministration’, although defined in the Act, is broad and allows for the inclusion of matters that may be solely in the personal interest of the discloser and not the department or public service generally. For this reason, the Department concurs with the idea raised in the issues paper that consideration be given to adding a ‘public interest’ test for disclosures by public officers that are substantially workplace complaints. However, should such a term be introduced, it would require definition to facilitate unambiguous assessment.

In summary we suggest the reviewing authority:

- consider adding a ‘public interest’ test for disclosures by public officers that are substantially workplace complaints.

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

Sections 12 and 13 of the Act provide that PIDs may be made by public officers, but do not specifically provide for disclosures in the normal course of employment. The Department has encountered queries and in some cases resistance from staff members who ‘reported’ PIDs as part of their normal role (including auditors, Principals mandatorily reporting student harm, internal investigators who themselves uncover further alleged wrongdoing). The Department believes the Act would benefit from specific mention that a PID includes a disclosure by a person as part of their normal course of employment.

In summary we suggest the reviewing authority:

- make specific mention in the Act that a PID includes a disclosure by a person as part of their normal course of employment.

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

Section 7(1) of the Act provides that ‘a public officer, of a public sector entity, is an employee, member or officer of the entity’. This has been interpreted as including officers employed on a permanent, temporary or casual basis but not including volunteers and contractors. From the Department’s perspective, volunteers play an important and active role in our schools by assisting staff in a range of areas and by helping to foster a partnership between school, home and the community. For this reason, the Department supports the view that the definition of ‘public officer’ in the Act be widened to include volunteers. In summary we suggest the reviewing authority:

- broaden the definition of ‘public officer’ in the Act to include volunteers.

## 7.2 Multiple pathways for reporting

Under section 15 of the Act, a public officer may make a PID to their own agency and also to an investigative agency. This is considered to be an important option for encouraging disclosers to make a PID. There is no obligation to report internally first. The Department concurs with the views expressed in the issues paper regarding the implications of two agencies concurrently assessing/managing a matter and suggests the Act be amended such that in the first instance the matter should be referred internally unless special circumstances exist. This would help to avoid overlap and/or differing assessment or actioning.

In summary we suggest the reviewing authority:

- amend the Act to require disclosers to report internally in the first instance unless special circumstances exist.

Thank you again for the opportunity to provide this submission.

Should you have any queries in relation to this submission, I invite your officers to contact [redacted] by email at [redacted] or on telephone [redacted]

Yours sincerely

  
**DR JIM WATTERSTON**  
**Director-General**

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