



Department of Infrastructure,
Local Government and Planning



Our ref: DGC15/1403

Your ref: 2015-00225

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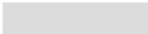
Mr Phil Clarke
Queensland Ombudsman
GPO Box 3314
BRISBANE QLD 4001


~~Dear Mr Clarke~~

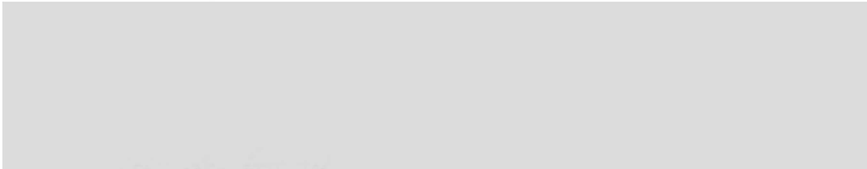
Thank you for your letter of 3 November 2015 inviting a submission from the Department of Infrastructure, Local Government and Planning (the Department) to assist with your review of the *Public Interest Disclosure Act 2010*.

Please find attached a submission which provides answers to the key consultation questions based on the experience of officers working in this area of the Department's operations.

If you require any further information, I encourage you to contact 

 provides ethics and integrity services, including coordination of Public Interest Disclosures for this Department, under a service level agreement and he will be pleased to assist you with this matter on behalf of my Department.

Yours sincerely


Frankie Carroll
Director-General

Enc

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Department of Infrastructure, Local Government and Planning Submission - December 2015

Review of the *Public Interest Disclosure Act 2010 (PID)*

Question	Response
Section 5 of the Issues Paper	
Do the objects of the PID Act remain valid?	Yes The objects are important in establishing a system that facilitates the reporting of wrongdoing and providing legislative protection against reprisal for disclosers. This is a key public interest matter that supports integrity in the public sector.
Are there other ways of promoting the disclosure of wrongdoing and providing protection to disclosers that should be considered?	Yes Departments and agencies should work in cooperation with the Qld Ombudsman's Office, Public Service Commission and Crime and Corruption Commission to ensure consistent information is provided to all employees at induction and during regular ethics awareness and training sessions.
Has the PID Act been effective in promoting public interest disclosures?	No The title of the legislation is confusing and the Act is too complex to be readily understood by everyday members of the public and most public sector employees.
Are the PID Act provisions for assessment and investigation appropriate or should other options be considered?	No Other options should be considered. Not all PIDs require a high level of assessment and investigation. Other informal resolution and management actions may be sufficient to address some PID matters.
Are the PID Act provisions for protecting the interests of disclosers and subject officers adequate and appropriate? What alternatives might be considered?	No Disclosers and persons assumed to be disclosers or their supporters can suffer subtle psychological pressure and isolation that is not readily identifiable as reprisal. Most public sector officers maintain that making a PID will detrimentally affect their career and reputation.
Are the PID Act provisions for protection against reprisal effective? What works well in the current arrangements? What opportunities are there for improvement?	No There have been no publicly reported cases of a person in Queensland ever having been charged with or convicted of "reprisal". The Act provides a range of protections. A more rigorous and well-resourced oversight agency could monitor and detect reprisal and take appropriate action.
Section 6.1 of the Issues Paper	
What is the effect of including two categories of disclosures ('any person' and 'public officer') in the PID Act?	No noted problems or issues experienced in relation to this matter.
Are these provisions appropriate? Are there benefits in continuing this arrangement?	As above

Question	Response
Are there other options that should be considered?	As above
Section 6.2 of the Issues Paper	
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?	<p>Disability issue: To protect carers and others that make complaints about persons with disabilities who could suffer reprisal or similar conduct from Government agencies dealing with funding and other support to the carers and the persons with disabilities they support.</p> <p>Environment issue: This is a key public interest area and persons making a PID about an environmental matter may be at the mercy of say a local government and could suffer reprisal through non provision of services or other actions in bad faith.</p>
Are there other more appropriate ways to provide support and protection to persons (not public officers) who make disclosures about these issues?	<p>No</p> <p>The PID Act is appropriate legislative vehicle to provide protection for the carers and disclosers.</p>
Section 6.3 of the Issues Paper	
Should the PID Act provide more guidance or examples about the meaning of 'substantial and specific'?	<p>Yes</p> <p>Both terms are open to wide subjective interpretations.</p>
Are there alternatives to the use of the words 'substantial and specific'?	<p>All other synonyms for substantial and specific would suffer the same difficulty with subjectivity. An objective test should replace the subjective one.</p>
Section 6.4 of the Issues Paper	
Should consideration be given to adding a public interest test for disclosures by public officers that are substantially workplace complaints?	<p>Yes</p> <p>A public interest test would add value to determining matters that could be dealt with more appropriately under the <i>Public Service Act 2008</i> or similar legislative schemes for other entities.</p>
Section 6.5 of the Issues Paper	
Should the PID Act be made more explicit about disclosures made in the normal course of a public officer's duties?	<p>Yes</p> <p>That would clear up any doubt for officers whose duty it is to report such matters as part of their normal duties.</p>
Should there be further consideration about how role-related PIDs should be managed?	<p>Yes</p> <p>There should be acknowledgement that such matters will follow a different path in both the Act and the PID Standard.</p>
Section 6.6 of the Issues Paper	
Should the PID Act definition of 'public officer' be widened to include volunteers and contractors?	<p>Yes - as such people are still prone to reprisal action.</p>
Should further consideration be given to clarifying the application of the 'public officer' definition?	<p>Yes - this could resolve the issue simply and effectively.</p>

Question	Response
Section 6.7 of the Issues Paper	
Should the PID Act be more explicit about how disclosures by former public officers should be managed?	Yes Protections under the Act should remain as many former officers re-enter or transfer around the sector and reprisal risk may remain due to relationships and professional networks within the sector.
Section 7.1 of the Issues Paper	
What is the impact of this wide range of options for disclosing a PID?	This increases the risk that a PID may be incorrectly assessed or dismissed as many managers do not have a sufficient level of skill or experience to properly identify and deal with a PID.
What are the advantages? What are the disadvantages?	Advantages – multiple options for disclosers to report matters, increases ability for a discloser to preserve anonymity. Disadvantages – increases risks for agencies of incorrect identification and assessment; loss of key information and risk of loss of confidentiality if the matter passes through many hands.
Section 7.2 of the Issues Paper	
What is the impact of having multiple reporting pathways? Is this encouraging disclosures?	See disadvantages above.
Are there options for improving how internal and external reporting arrangements work?	Yes Providing one central point for receipt and assessment of PIDs – with the oversight body.
Section 7.3 of the Issues Paper	
How has this option been used?	Not in the experience of this department. However journalists often refer to "whistleblowers" as their source which creates uncertainty and perpetuates unhelpful myths about PIDs.
Are there alternatives that should be considered?	This provision is important to maintain transparency and accountability.
Section 8.1 of the Issues Paper	
What is the effect of these provisions on disclosures? And agencies?	It creates confusion. As previously suggested PIDs should be directed to a single oversight agency for consistency and accountability of assessment. Once assessed the status of the matter should be confirmed with the discloser and the agency to which the matter is directed.
Are there alternatives that should be considered?	As above.
Section 8.2 of the Issues Paper	
Should the PID Act be explicit about when information should be provided to disclosures?	Yes, especially given the six month limit at which disclosure to a journalist can be made. Perhaps setting a time of within one month would allow for assessment and preliminary inquiries to be completed.
Should further consideration be given to clarifying the extent of information to be provided to a discloser about the results of	No This is adequately set out in the PID Standard.

Question	Response
action arising from a PID?	
Section 8.3 of the Issues Paper	
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 appears to be a gap in the current legislation.
Section 8.4 of the Issues Paper	
Are the current requirements for each public sector entity to develop and publish their own PID policy valuable and appropriate?	Yes – but only to the extent that different agencies will have different units assigned to PID management and localised complaint procedures and communication methods/preferences. The essence of the policy is the same across all agencies so only localised contact information and procedures need be published and members of the public can obtain information from the Qld Ombudsman's Office website.
Are there alternatives that could be considered?	As above
Should further consideration be given to the extent of protections provided by the Act and responsibility for providing that protection?	No This adequately covered by the current legislation.
Section 8.5 of the Issues Paper	
Are the current arrangements for 'investigate and remedy' agencies appropriate?	Not applicable or relevant to this department or its experience.
What other options or improvements could be considered?	As above.
Section 8.6 of the Issues Paper	
Are the current arrangements for confidentiality adequate and appropriate?	The issue of WorkCover investigations and requests for information is a noted one amongst PID coordinators.
Are there improvements that could be considered?	There could be some tightening up of the provisions to deal with WorkCover matters or to limit the extent of information available to that agency.
Section 9 of the Issues Paper	
Are the current arrangements for managing reprisal adequate and appropriate?	See responses to Question 5 above.
What other options or improvements could be considered?	See responses to Question 5 above
Section 10 of the Issues Paper	
Should the issue of review rights in the PID Act be further considered?	Yes There appear to be limited options available under the Act.
Are there other options or improvements that could be considered?	The oversight body could have a more robust review system and procedure.

Question	Response
Section 11 of the Issues Paper	
Are the functions of the oversight body appropriate?	No See answers to questions 5, 7.2, 8.4 and 10 above.
Should there be any requirement to audit and formally report about entities' compliance with PID Act requirements?	Yes That would raise the importance of compliance with department and agency senior management but would have resourcing implications for the oversight agency.
Are there other improvements that could be considered?	See comment below

Additional comments:

The major issue with the legislation has been caused by changes to the Crime and Corruption Act 2001 involving the change of definition involved in moving from "official misconduct" to "corrupt conduct" and the threshold for reporting in Section 38 of the Act from suspicion to reasonable suspicion. The changes have reduced the level of matters being reported thereby reducing oversight of matters by both the Crime and Corruption Commission and the Qld Ombudsman's Office. That is not in the public interest as visibility of serious misconduct and corruption by oversight agencies has declined. Additionally agencies have had to assess and manage more serious issue on their own and conduct more detailed preliminary inquiries which leaves officers and agencies exposed while that is occurring and possibly contaminates evidence trails with matters that turn out to be criminal conduct.

There are issues with PID complaints being identified by agencies based upon a mere unsubstantiated and vague complaint. In some cases it is possible to misidentify a particular complaint as not involving a PID but after some investigation find some additional information that would make it one. If the agency has not dealt with the complaint as a PID from the beginning it could lead to unintended breaches of the PIDA such as releasing the identity of the complainant while making enquiries. In general, the complainant should be encouraged to nominate their complaint as a possible PID in the first instance.

Issues specific to the administration of local government

The PID Act allows PID complaints to be made to a range of persons and entities but in some of the cases those entities may have very little power to do anything in relation to the complaint especially in relation to protecting the confidentiality of the complainant and/or protect the complainant from a reprisal. For example, the DILGP can receive complaints about local government councillors but we have no powers under the LGA or PIDA to take any steps to protect a complainant from a reprisal.

We have concerns with the ability of complainants to make PID complaints directly to councillors as most of them would not understand their obligations under the PIDA in relation to such complaints and because individual councillors have no powers to deal with such complaints.