

Your ref: 2015-00225  
Our ref: 11378

13 January 2016

Mr P Clarke  
Queensland Ombudsman  
PID Act Review  
GPO Box 3314  
BRISBANE QLD 4001

Dear Mr Clarke

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

Attached is my submission for your consideration as part of the review of the *Public Interest Disclosure Act 2010*.

I have provided information on situations arising as part of QAO's management of external public interest disclosures (PIDs). I believe further clarity in the Act would address these situations.

If you would like to discuss this further please contact [REDACTED]

Yours sincerely

[REDACTED]  
Andrew Greaves  
Auditor-General

Enc.

# PID submission

## **Purpose**

The Queensland Ombudsman's Office is reviewing the operations of the *Public Interest Disclosure Act 2010* (the PID Act). Submissions may address the questions posed or address other matters about the operations of the PID Act and Standard.

The purpose of this submission is to raise matters the Queensland Audit Office (QAO) has encountered while managing external public interest disclosures (PIDs) received through our referral process.

## **Context**

Our dealings with public interest disclosures is two pronged. Firstly we receive PIDs from a range of stakeholders as part of our referral process. Secondly staff can make PIDs about internal QAO operations. In the main, PIDs are received through referrals.

## **Referrals**

Anyone with information or concerns about financial mismanagement within Queensland public sector entities can refer matters to QAO to consider. QAO will assess information provided and if appropriate, investigate the matter with the aim of strengthening and improving public sector performance and accountability.

Public interest disclosures can be made in accordance with the *Public Interest Disclosure Act 2010*. The Auditor-General is the proper authority to receive public interest disclosure in relation to misuse of public resources.

## **Managing PIDs**

Two matters that have arisen at QAO when managing PIDs that would benefit from further clarity. These include:

- Disclosures about Government Owned Corporations (GOCs).
- Who is responsible for managing PIDs/breaches when the individual has reported to a number of agencies?

## **Disclosures about GOCs**

### *Legislation*

- Section 6 of the PID Act does not include GOCs as public sector entities except where stated in the act.
- Part 3 s.19 covers GOC disclosures and limits disclosures to the GOC, rail government entity or CCC.
- S.19(6) specifies that the act does not affect a procedure required under another Act for disclosing the type of information being disclosed.
- Under s.19(8) the person can disclose under s.12 Disclosure by any person.

Based on these sections in the PID Act, a GOC employee cannot make a PID to QAO as a proper authority unless it meets the purpose of s. 12 disclosure by any person.

The sections referred to above are included in full in Attachment A.

### *Matter being raised*

We recommend that QAO be included as a proper authority for GOC PIDs.

If QAO is contacted by an employee of a GOC wanting to make a PID that falls within s.13 of the PID Act but not s.12, QAO cannot assess the information as a PID.

Taking into account s.19(6), even though PID status is denied, QAO does assess the matter as a referral. Protection of the individual's identity is given under s.53 of the *Auditor-General Act 2009*.

### ***Who is responsible for managing PIDs/breaches where the individual has reported to a number of agencies***

We recommend that the legislation needs to be made clearer on the point of a public sector entity's responsibilities for ensuring the discloser is protected when information is given to multiple agencies some as PIDs and some not.

If QAO has received a request for PID status that has been assessed as a PID but the discloser has also told other agencies including the private sector, it is unclear where QAO's responsibility ends.

Can an individual expect QAO to intervene and prevent another party from taking any reprisal action when they have also been provided the information or are aware of the individual disclosing the information to other entities?

If the individual is going to disclose information to other entities, do they have to request PID status from each entity?

### **Conclusion**

In summary, the two matters raised in this submission are provided as context for our recommendation that consideration is given to:

- including QAO as a proper authority for GOC PIDs
- clarifying an agencies responsibilities when information is provided to multiple agencies.

## Attachment A – Relevant sections of the PID Act

### Section

6

#### **6 Meaning of *public sector entity***

(1) A *public sector entity* is any of the following—

- (a) a committee of the Legislative Assembly, whether or not a statutory committee;
- (b) the parliamentary service;
- (c) a court or tribunal;
- (d) the administrative office attached to a court or tribunal;
- (e) the Executive Council;
- (f) a department;

*Note—*

The following are, or are included in, departments—

- the Queensland Ambulance Service
- the Queensland Fire and Rescue Service
- the Queensland Police Service.

- (g) a local government;
- (h) a registered higher education provider or TAFE Queensland;
- (i) the Queensland Agricultural Training Colleges under the *Queensland Agricultural Training Colleges Act 2005*;
- (j) an entity established under an Act or under State or local government authorisation for a public, State or local government purpose;
- (k) an entity, prescribed under a regulation, that is assisted by public funds.

**(2) However, the following are not public sector entities—**

- (a) a corporate entity, other than to the extent expressly stated in this Act;
- (b) a GOC, other than to the extent expressly stated in this Act;**
- (c) the following entities under the *Education (General Provisions) Act 2006*—
  - (i) an advisory committee;
  - (ii) a non-State school;
  - (iii) a parents and citizens association;
  - (d) an entity prescribed under a regulation.



(3) Also, a State educational institution or school council is part of the department in which the *Education (General Provisions) Act 2006* is administered.

*Note—*

See also the *Corrective Services Act 2006*, section 273(5).

(4) In this section—

**registered higher education provider** see the *Tertiary Education Quality and Standards Agency Act 2011* (Cwlth), section 5.

**TAFE Queensland** means TAFE Queensland established under the *TAFE Queensland Act 2013*, section 5(1).

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### **Part 3 Specific public interest disclosures—corporate entities and GOCs**

#### **19 Disclosure concerning GOC or rail government entity**

(1) This section applies if an employee of a GOC or rail government entity has information about—

(a) the conduct of another employee of the GOC or rail government entity, that could, if proved, be corrupt conduct; or

(b) the conduct of another person that could, if proved, be a reprisal that relates to a previous disclosure made by the employee to the GOC, rail government entity or the Crime and Corruption Commission.

**(2) The employee may make a disclosure in relation to the information to the GOC, rail government entity or the Crime and Corruption Commission.**

(3) For subsection (1), an employee has information about the conduct of a person if—

(a) the employee honestly believes on reasonable grounds that the information tends to show the conduct; or

(b) the information tends to show the conduct, regardless of whether the employee honestly believes the information tends to show the conduct.

(4) The employee may make a disclosure under this section in any way, including anonymously.

(5) However, for a disclosure to a GOC or rail government entity, if the GOC or rail government entity has a reasonable procedure for making a public interest disclosure to the GOC or rail government entity, the employee must use the procedure.

(6) This Act does not affect a procedure required under another Act for disclosing the type of information being disclosed.

(7) If a public interest disclosure is properly made to a GOC or rail government entity, the GOC or rail government entity is taken to have received the disclosure for the purposes of this Act.

(8) This section does not affect—

(a) the making of a public interest disclosure by any person under section 12; or

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(b) the making of a complaint to the Crime and Corruption Commission under the *Crime and Corruption Act 2001*.

(9) This section does not affect a referral under section 31—

- (a) from a GOC or rail government entity to a public sector entity of a public interest disclosure made to the GOC or rail government entity under this section; or
  - (b) from a public sector entity to a GOC or rail government entity of a public interest disclosure made to the public sector entity under section 15.
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