

Chief Operating Officer
Greg Pringle

8 February 2016

Mr Phil Clarke
Queensland Ombudsman
GPO Box 3314
BRISBANE QLD 4001
Sent via email: PIDreview@ombudsman.qld.gov.au

Dear Mr Clarke

Thank you for your correspondence of 3 November 2015 to the Vice-Chancellor, Professor Peter Høj advising of the review of the *Public Interest Disclosure Act 2010*. Professor Høj has asked that I respond on his behalf.

The University of Queensland welcomes the opportunity to provide input into the review of the Act. Please find attached the University's response to the Issues Paper, which I understand is the initial stage of the review.

I appreciate the additional time afforded to the University to provide feedback on the Issues Paper and I look forward to providing further input as the review continues.

If you have any questions in relation to the feedback, please contact my office on [REDACTED].

[REDACTED]
Mr Greg Pringle
Chief Operating Officer

Questions	University of Queensland response
5. The main objects of the PID Act	
1. Do the objects of the PID Act remain valid?	The University believes the objectives of the Act remain valid.
2. Are there other ways of promoting the disclosure of wrongdoing and providing protection to disclosers that should be considered?	The University has no recommendations for other ways of promoting the disclosure of wrongdoing and providing protection to disclosers.
3. Has the PID Act been effective in promoting public interest disclosures?	The University believes the Act has increased the awareness of public interest disclosures, and that agencies and the Ombudsman have a shared responsibility in their continued promotion.
4. Are the PID Act provisions for assessment and investigation appropriate or should other options be considered?	The University believes the current assessment and investigation provisions are appropriate.
5. Are the PID Act provisions for protecting the interests of disclosers and subject officers adequate and appropriate? What alternatives might be considered?	The current Act contains limited information about advising the subject officer about the matter being a PID. Additional information or guidance could assist in reducing the risk of reprisal by ensuring the subject officer is informed of their obligations in relation to confidentiality and the consequences of taking any action that may be deemed to be a reprisal. The rights of disclosers are sufficiently protected.
6. Are the PID Act provisions for protection against reprisal effective? What works well in the current arrangements? What opportunities are there for improvement?	The University believes the current provisions are appropriate.
6. Who can make PIDS and what they are about	
6.1 Two different types of disclosers	
1. What is the effect of including two categories of disclosers in the PID Act?	Agencies, other than a law enforcement agency, have a very limited capacity to provide protection to a person who is not an employee. It may be beneficial to consider under what circumstances a person would require protection if they were to make a disclosure, then assess the risks against what it is that has been alleged. For example if the matter could be a criminal offence, then protection would be available to them as a witness in criminal proceedings by the Qld Police Service or the Crime and Corruption Commission.
2. Are these provisions appropriate? Are there benefits in continuing this arrangement?	
3. Are there other options that should be considered?	

6.2 PID reporting by any person	
1. What is the value of including disclosures about health and safety of a person with a disability and the environment in the PID framework?	The University questions the value of this provision given there is existing legislation to deal with these matters. Offences prosecuted under this legislation would deem a discloser a witness and as such subject to protection.
2. Are there other more appropriate ways to provide support and protections etc.?	Public sector agencies should be following standard complaints management processes irrespective of whether the person is covered under a PID. This would include ensuring confidentiality is maintained and protections are set in place to ensure the discloser is not subject to victimisation/harassment or disadvantage as a result of making the complaint. These processes are already subject to the oversight of the Ombudsman and on occasions the CCC.
6.3 Meaning of 'substantial and specific'	
1. Should the PID Act provide more guidance or examples about the meaning of 'substantial and specific'?	Yes, the University believes there is considerable benefit in providing a definition and guidance for the term 'substantial and specific'.
2. Are there alternatives to the use of the words 'substantial and specific'?	The University would recommend the current term be retained, but with additional information provided on its meaning.
6.4 Dealing with public officer complaints about matters that are substantially workplace complaints of grievances	
1. Should consideration be given to adding a public interest test for disclosures by public officers that are substantially workplace complaints?	Yes, the inclusion of a public interest test for maladministration could be beneficial as the definition is too broad and captures issues not intended by the legislation.
6.5 Public Officers reporting role-related PIDs	
1. Should the PID Act be made more explicit about disclosures made in the normal course of a public officer's duties?	Yes, the University would support the Act being more explicit about disclosures that are made in the normal course of a public officer's job. For example if a matter is brought to the attention of the agency through an audit and subsequently assessed as a PID the tasks of assessing, protecting and providing updates to the auditor appears unnecessary. However, if there is a risk of reprisal then the matter should be dealt with in accordance with the PID policy and procedures of the agency.
2. Should there be further consideration about how role-related PIDs should be managed.	The University recommends agencies should be allowed to exercise a degree of discretion in how to manage role related cases. For example if a matter with a low risk of reprisal is identified then an acknowledgement that the matter is a PID

	should be sufficient. There should be no requirement to update the person on how the complaint is to be managed and the outcomes.
6.6 Changes to employment arrangements for public officers	
1. Should the PID Act definition of Public Officer be widened to include volunteers and contractors?	The University does not support the Act being widened to include volunteers. Whilst every person that has a relationship with a public sector agency should be protected from inappropriate behaviour, extending the PID definition to include volunteers may result in:
2. Should further consideration be given to clarifying the application of public officer definition	<ul style="list-style-type: none"> - Distortion of annual PID statistics. - Increased obligations on agencies to manage additional PIDs. - Incur additional costs of managing and investigating PIDs. - Create unrealistic challenges to manage PIDs in complex scenarios. <p>Consideration should be given to broadening the definition to include contractors who provide services to the agency.</p>
6.7 Post-employment considerations for public officers	
1. Should the PID Act be more explicit about how disclosures by former public officers should be managed	Yes, the University would support the Act providing further detail on how disclosures by former public officers should be managed. If a former public officer makes a complaint, and the matter would have been a PID, then it is likely to be maladministration or corrupt conduct, and action would be required to resolve it. It would be very difficult to provide the discloser with protection from a reprisal as it is more likely to take place outside the workplace.
7. How PIDS are made	
7.1 Who can receive a PID	
1. What is the impact of this wide range of options for disclosing a PID?	<p>Providing multiple options for reporting a PID allows disclosers to choose a path they feel is appropriate and offers the greatest level of protection.</p> <p>The Ombudsman may wish to consider clarifying the current section 17 that states if an agency has reasonable procedure for making a PID, that avenue must be used, however the following subsection provides a list of other avenues a discloser may contact.</p>
2. What are the advantages? What are the disadvantages?	The University believes the primary advantage is making the process as easy as possible for a discloser.

	However providing a number of options does rely on a collaborative relationship between reporting agencies to ensure PIDs are provided to the investigative agency in a prompt and efficient manner.
7.2 Multiple pathways for reporting	
1. What is the impact of multiple reporting pathways? Is this encouraging disclosure?	Although multiple reporting pathways provide choice to disclosers it can be problematic for agencies and result in the duplication of workload and inconsistent advice to disclosers. The Ombudsman may wish to consider if matters should be reported internally in the first instance, and in the event a matter is reported to an external agency then they should be required, where appropriate, to liaise with the relevant agency to manage the PID.
2. Are there options for improving how internal and external reporting arrangement work?	
7.3 PIDs to journalists	
1. How has journalist option been used?	A discloser made their PID to a journalist after their PID was not acknowledged within six months.
2. Are there alternatives that should be considered?	It is unclear to what part of the provision the Ombudsman is seeking alternatives for. However the Ombudsman may wish to consider if reasonable effort needs to be made by a discloser to ensure the agency has received the PID.
8. How PIDs are managed	
8.1 How PIDs are managed	
1. What is the effect of these provisions on disclosers? And Agencies?	Disclosers ought to be given the option to not be formally declared as the discloser, provided they are able to be afforded adequate protection under a common law duty of care.
2. Are there alternatives that should be considered?	
8.2 Informing a person who has made a PID	
1. Should the PID Act be explicit about when information should be provided to disclosers?	The University does not believe the Act should contain explicit timeframes for responding to disclosers as the ability to meet such provisions will depend on the agency and the complexity of the matter.

<p>2. 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?</p>	<p>The University supports further information being provided on the actions arising from PID, as disclosers may have different levels of expectation on the current term ('a description of the results of action').</p>
<p>8.3 Providing protection for a public officer who is not employed by the entity</p>	
<p>1. Should the PID Act be more specific about providing protection to a discloser who is not an employee of the entity investigating the PID?</p>	<p>The University recommends the Act contain additional information on providing protection to a discloser who is not an employee.</p> <p>For instances where two agencies may have an established formal working relationship the Ombudsman may also wish to consider allowing the agency to liaise with the discloser's employer, where appropriate, to discuss protections from reprisal, and what each agency can provide.</p>
<p>8.4 Obligations on public sector entities</p>	
<p>1. Are the current requirements for each public sector entity to develop and publish their own PID policy valuable and appropriate?</p>	<p>The University believes the current provisions that agencies are to develop and publish a PID policy are valuable, however consideration should be given to including a penalty regime for non-compliance.</p>
<p>2. Are there alternatives that could be considered?</p>	<p>The Ombudsman may wish to consider that in instances where the agency does not have a PID policy framework in place, a generic policy written by the Ombudsman be imposed. The policy would remain in place until such time as the agency developed its own policy.</p>
<p>3. Should further consideration be given to the extent of protections provided by the Act and responsibility for providing that protection?</p>	<p>As this is one of the main drivers in promoting the reporting of disclosures, we recommend further consideration being given to the ability of agencies to provide protection to non-employees.</p>
<p>8.5 An entity with powers to investigate or remedy</p>	
<p>1. Are the current arrangements for 'investigate and remedy' agencies appropriate?</p>	<p>The University believes the current arrangements are appropriate, and has no suggestions for suggestions or options for further consideration.</p>
<p>2. What other options or improvements could be considered?</p>	
<p>8.6 Preserving confidentiality</p>	

1. Are the current arrangements for confidentiality adequate and appropriate?	It is considered the Act does not adequately address the confidentiality obligations of the discloser and subject officer.
2. Are there improvements that could be considered?	The University would recommend Section 65 of the Act be amended to explicitly state that confidentiality should be maintained by all parties (including witnesses).
9 Reprisal considerations	
1. Are the current arrangements for managing reprisal adequate and appropriate?	The University considers the current provisions are adequate, however the Ombudsman may wish to consider providing clarification on how to deal with an alleged or actual reprisal.
2. What other options or improvements could be considered?	
10. Review rights	
1. Should the issue of review rights in the PID Act be further considered?	On the assumption that agencies have a complaints management policy with a review process embedded within it, the University considers the current review rights sufficient.
2. Are there other options or improvements that could be considered?	
11. Role and powers of the oversight agency	
1. Are the functions of the oversight body appropriate?	The University considers the functions of the oversight body are appropriate.
2. Should there be any requirement to audit and formally report about entities' compliance with the PID Act requirements?	Yes, the University believes the Act should provide a requirement for the oversight agency to audit and report on compliance.
3. Are there other improvements that could be considered?	Consideration may wish to be given to amending the Queensland Ombudsman's PID reporting database to indicate if a subject officer has resigned during the investigations process.