

Enquiries to:
Telephone:
Facsimile:



Office of Chief Executive

**Darling Downs Hospital
and Health Service**

Office of the Queensland Ombudsman
GPO Box 3314
Brisbane QLD 4001

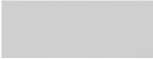

E-mail: PIDreview@ombudsman.qld.gov.au

Dear Mr Clarke

Review of the Public Interest Disclosure Act 2010

I refer to your letter to Dr Bristow dated 4 November 2015 inviting submissions from stakeholders relative to the above review.

Please find enclosed a submission by way of responses to the questions raised in the issues paper for your consideration and which I trust will be of assistance in the review.

Should there be any queries please contact the writer on  or by e-mail 

Yours sincerely



**Legal Counsel
Darling Downs Hospital and Health Service**

12/10/2016

Office of Chief Executive
Cnr Hogg and Tor Streets
PO Box 405 Toowoomba
Queensland 4350 Australia
Telephone +61 7 4699 8888
Facsimile +61 7 4699 8933
www.health.qld.gov.au/darlingdowns

Objects of the PID Act

Do the objects of the PID Act remain valid?

Yes the objects remain valid.

Are there other ways of promoting the disclosure of wrongdoing and providing protection to disclosers that should be considered?

No

Has the PID Act been effective in promoting public interest disclosures?

It is difficult to know. We still see regular examples of a great reluctance on the part of staff to whistle blow or even to provide information after someone else has. Many employees still have a perception that 'nothing good can come from it' and would rather not be involved.

Are the PID Act provisions for assessment and investigation appropriate or should other options be considered?

Yes

Are the PID Act provisions for protecting the interests of disclosers and subject officers adequate and appropriate? What alternatives might be considered?

Protection is adequate in relation to disclosers but this is questionable as regards subject officers. Based upon the statistic provided in the issues paper the vast majority of disclosures are from public agency employees and around half of them are found to be substantiated meaning that about half are not. One of the concerns in relation PIDs is that it can be used by disgruntled staff to target a manager or the organisation in respect of any perceived slight or injustice. By its very nature (with good policy reasons) the PID Act is very heavily weighted in favour of the discloser but which is then also very isolating for the subject officer who has to be mindful of the protections afforded to the discloser and who going forward even if the outcome is that the disclosure is unsubstantiated. It is not believed the provisions in relation to reasonable management action provides sufficient protection to subject officers in managerial positions.

Are the PID Act provisions for protection against reprisal effective? What works well in the current arrangements? What opportunities are there for improvement?

Yes as indicated above.

Who can make PIDs and what they are about?

What is the effect of including two categories of disclosers ('any person' and 'public officer') in the PID Act?

The effect as stated in the issues paper and in the question is to create two categories of discloser.

Are these provisions appropriate?

Yes. There are generally speaking significant differences between the two types of disclosers so I do not believe it makes sense to treat them the same.

Are there benefits in continuing this arrangement?

Yes as noted above.

Are there other options that should be considered?

No

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?

I believe there is value. It is not in my view surprising that there is low rate of reporting in this regard. As indicated in my comments above there are significant differences between members of the public and public officers and one of those differences is in the relative levels of information and knowledge that they are likely to possess in relation to the subject organisation. A member of the public is far less likely to become aware of wrongdoing or have access to information in that regard.

Are there other more appropriate ways to provide support and protection to persons (not public officers) who make disclosures about these issues?

No

Should the PID Act provide more guidance or examples about the meaning of 'substantial and specific'?

Some examples may be useful but I do think these are commonly used words in the English language that ought to be understood by most.

Are there alternatives to the use of the words 'substantial and specific'?

Not required

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

As previously indicated one of the concerns with this legislation is that it may be used by disgruntled staff to target specific managers or the organisation generally. In this regard one is not only dealing with those who act in bad faith. There are also employees who 'crusade' often in relation to historical grievances and who fervently believe in the righteousness of their actions. Having a public interest test as part of the assessment would assist in being able to exclude these types of personal vendettas from the ambit of the PID.

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

Not aware of this being a significant issue but it does seem to be something that is worth clarifying.

Should there be further consideration about how role-related PIDs should be managed?

Yes

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

No but they would no doubt be able to make the disclosure as 'any person' would and as previously indicated that is another reason to retain the two different types of disclosers.

Should further consideration be given to clarifying the application of the 'public officer' definition?

Yes clarification is required.

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

No I believe it is sufficient as it stands in that regard.

How PIDs are made

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

The advantages are that a discloser has a number of options available in that regard which is useful and necessary. The disadvantages do not seem immediately apparent and I am not aware of any significant impact this aspect has for the disclosure of PIDs.

***What is the impact of having multiple reporting pathways? Is this encouraging disclosures?
Are there options for improving how internal and external reporting arrangements work?***

I think it is important to provide disclosers with an option to report to an agency not connected to the subject organisation. I expect the incidence of multiple investigations and separate outcomes would be low and not insurmountable in terms of managing complaints of reprisal.

PIDs to journalist

I have no experience in regard to this so cannot comment.

How PIDs are managed

***What is the effect of these provisions on disclosers? And agencies?
Are there alternatives that should be considered?***

This does seem to be a very rigid approach and may well have a chilling effect on would be disclosers. The inability to withdraw a complaint in particular may be a concern for disclosers. It is often the case that complaints are made in the heat of the moment or based on inaccurate or misunderstood facts and as such the ability to withdraw is an important safeguard. I think the message as it stands for a discloser is 'if you make a complaint there is no going back' and understandably that may be discouraging to some. I can perhaps understand the concept of not providing a discloser with the right to elect if the complaint is treated as PID or not as that will assume a reasonably good understanding of the

legislation which not all disclosers will have. Furthermore a discloser may also not appreciate the gravity of the information being disclosed so may elect to not treat it as a PID when it may lead to uncovering serious corruption or fraud.

In terms of agencies this approach means there is very little filter in terms of complaints so it is a very broad base and will no doubt have an effect on resources that are required to be devoted to this aspect.

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

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?

I think this would only be feasible if there is a very defined and standardised process of investigating PIDs but given the broad nature and the number of agencies that are involved in instigating PIDs setting timeframes may be impracticable but perhaps thought may be given to provide the ability of a discloser to request a progress report at certain defined intervals. It would in my view be useful to clarify the extent of information that is required to be provided.

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

That would seem to be desirable though it is unclear what sort of protections can in fact be provided in such circumstances.

Are the current requirements for each public sector entity to develop and publish their own PID policy valuable and appropriate?

Yes

Are there alternatives that could be considered?

No

Should further consideration be given to the extent of protections provided by the Act and responsibility for providing that protection?

As already mentioned above it is unclear what protections can be provided as a matter of practicality. If these protections are clearly defined and able to be practically implemented, then by all means but otherwise not. In this regard the cost of providing these protections would need to be carefully considered.

Are the current arrangements for 'investigate and remedy' agencies appropriate? What other options or improvements could be considered?

Yes as already mentioned it does not seem feasible to try to standardise investigative processes. Unless there are clear and specific concerns that the investigative processes being utilised by agencies are deficient then I would not see a basis to intervene.

Are the current arrangements for confidentiality adequate and appropriate?

Yes

Are there improvements that could be considered?

No

Reprisal considerations

Are the current arrangements for managing reprisal adequate and appropriate?

Yes. I am not aware of any specific concerns that have been raised relative to this issue.

What other options or improvements could be considered?

No comment

Review rights

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

No these are adequate and appropriate.

Are there other options or improvements that could be considered?

No

Role and powers of the oversight agency

Are the functions of the oversight body appropriate?

Yes

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

No. Most public sector entities already have significant reporting and auditing requirements. Careful consideration must be given before adding to these. Any such requirements come with increased compliance costs and there should be clear and demonstrable advantages in doing so.

Are there other improvements that could be considered?

No



Legal Counsel
Darling Downs Hospital and Health Service

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