

Submission from the Department of Communities, Child Safety and Disability Services
email to PIDreview@ombudsman.qld.gov.au, 14 January 2016

Review of the *Public Interest Disclosure Act 2010*

Dear Mr Phil Clarke

Thank you for your letter to Mr Michael Hogan, Director General, Communities, Child Safety and Disability Services inviting submissions from stakeholders to inform the review of the operations of the *Public Interest Disclosure Act 2010* (PID Act).

We would like to provide the following feedback.

5. The main objects of the PID Act.

Q: Do the objects of the PID Act remain valid?

If it is the QO's stance that the Act *does not require the person with a disability to be in the direct care of the Department for the disclosure to amount to a PID*, i.e. the person with a disability may be a client of a FNGSP then the main objects of the PID Act require clarification and or revision.

The stated objectives of the PID Act do not make any reference to public interest disclosures in relation to wrongdoing in the private sector. The act states *the purpose of the PID Act is 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*. However, s11 of the PID Act states that a PID is a disclosure made under chapter 2 of the PID Act. Therefore certain disclosures about private sector entities will meet the requirements in Chapter 2. There is a capacity to provide protections to people with disabilities. Specifically, a person can make a public interest disclosure to the department under the PID Act about a substantial and specific danger to the health or safety of a person with a disability, even if the matter involves a private sector entity, where the department has power to investigate or remedy the subject of the disclosure (such as by using powers contained in the *Community Services Act 2007*).

This capacity is not clearly evidenced in the PID Act objectives and this may lead to some people not being aware there is the capacity to make a disclosure which can be investigated.

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

With regard to the department's Complaints Unit's receipt of reports of wrongdoing from members of the public concerning a substantial and specific danger to the health or safety of a person with a disability, we have found that there has been an increase in the number of reports received. Information on the department's internet site regarding public interest disclosures has been found to be informative for complainants / callers.

6. Who can make PIDs and what they are about.

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

The effect of including two categories of disclosers is positive and helps to encourage reporting of alleged wrongdoing. However as with comments made about the main objects of the PID Act, some revision may be necessary to section 12 of the Act regarding *certain PIDs may be made by 'any person'*. This includes disclosures about a substantial and specific danger to the health and safety of a person with a disability.....some additional clarity is required here regarding disclosures about a substantial and specific danger to the health and safety of a person with a disability even if the person with a disability is not in the direct care of the public sector entity.

Q: Are these provisions appropriate? Are there benefits in continuing this arrangement?

The provisions as they currently stand do not offer sufficient clarity around receipt of disclosures from members of the public concerning persons with a disability who are not in the direct care of the department, instead through the function of a funded agreement, the department's client is receiving supports / services through a FNGSP.

Q: What is the value of including disclosures about the health and safety of a person with disability and the environment in the PID framework?

Including disclosures regarding the health and safety of a person with a disability is of significant value as it is a further mechanism that can offer a safeguard to some of the most vulnerable members of the community and ensuring that the department is engaging with service providers that provide safe and quality services to its clients.

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

More guidance / examples would be appreciated – however, each matter / report still has to be considered on a case by case matter as the individual needs and or disability of a person with a disability will impact on an agency's assessment about whether a report of wrongdoing classifies as a PID or not.

Q: Are the current arrangements for 'investigate and remedy' agencies appropriate?

Currently, if a matter is assessed as a PID pursuant to section 12(1)(a) of the Act, the matter is managed in accordance with the department's complaints management process. Additional 'confidentiality' provisions apply and additional information is provided to the discloser regarding what action they can take in the event they experience or believe they have experienced retribution as a result of reporting a PID to the department.

Regards

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