The Honourable Alan Wilson KC
Public Interest Disclosure Review
Department of Justice and Attorney General
GPO Box 149
Brisbane QLD 4001

7 March 2023

Dear the Hon Mr Wilson KC,

The Centre for Governance and Public Policy at Griffith University, Human Rights Law Centre and Transparency International Australia welcome the opportunity to make this joint submission to the Review of the *Public Interest Disclosure Act 2010 (*Qld*)*.

In support of our submission, we **enclose** our report *Protecting Australia's Whistleblowers: The Federal Roadmap* (***Roadmap***), first published in November 2022, which provides further detail and references on several of the key issues. We trust this updated version of the report, albeit focused on whistleblowing law reform priorities for the Federal Government, will be a useful aid to your deliberations.

This submission has been prepared with the assistance of Jane Olsen, Research Fellow with the Centre but previously Senior Research and Policy Officer, Public Interest Disclosures for the NSW Ombudsman (among other roles). As reflected in the submission, Jane has many further practical insights that we know would assist your Review, and we all stand ready to assist further as needed.

We would be happy to discuss our submission and can be contacted at a.j.brown@griffith.edu.au

Yours sincerely

Professor A J Brown
Griffith University
Boardmember, Transparency International Australia

Kieran Pender
Senior Lawyer
Human Rights Law Centre

Jane Olsen
Research Fellow
Griffith University

Alice Drury
Acting Legal Director
Human Rights Law Centre

Submission to the Review of the *Public Interest Disclosure Act 2010* (Qld)

Centre for Governance and Public Policy, Griffith University
Human Rights Law Centre
Transparency International Australia

March 2023

Table of Contents

Dr A J Brown is Professor of Public Policy and Law, Centre for Governance and Public Policy, Griffith University; Board member, Transparency International Australia; formerly Senior Investigation Officer, Commonwealth Ombudsman; Member of the Commonwealth Ministerial Expert Panel on Whistleblower Protection (2017-2019); Member, Standards Australia and ISO Expert Technical Group, Whistleblowing Management Systems for Organisations (AS ISO 37002: 2023).

Jane Olsen is Research Fellow and PhD Candidate, Centre for Governance and Public Policy, Griffith University; formerly Senior Research and Policy Officer, Public Interest Disclosures, NSW Ombudsman; Member, Standards Australia and ISO Expert Technical Group, Whistleblowing Management Systems for Organisations (AS ISO 37002: 2023).

Kieran Pender is Senior Lawyer, Human Rights Law Centre.

Centre for Governance and Public Policy

The Centre for Governance and Public Policy at Griffith University is an outstanding intellectual environment for world-class research engaging international scholars and government and policy communities. We examine and critique the capacity, accountability and sustainability of the public service and government, providing insights into improved management structures. Working closely with governmental and non-governmental partners, we make a tangible mark on governance research. Our Australian Research Council-funded research into whistleblowing includes the *Whistling While They Work #1* and #2 projects, undertaken in collaboration with public integrity and regulatory agencies across Australia – the world's largest and most comprehensive studies in the field (see www.whistlingwhiletheywork.edu.au). This research fundamentally informed both the case for the original *Public Interest Disclosure Act 2013* and the more recent *Corporations Act* reforms in 2019, among other state, national and international reforms.

Human Rights Law Centre

The Human Rights Law Centre uses a strategic combination of legal action, advocacy, research, education and UN engagement to protect and promote human rights in Australia and in Australian activities overseas. Our vision is an Australian democracy in which civil society is robust and vibrant; public debate is informed, fair and diverse; government is open and accountable; and the wellbeing of people and the planet are at the heart of every government decision. Our work includes supporting whistleblowers, who are crucial to shedding light on and ensuring accountability for government and corporate wrongdoing and systemic failures.

Transparency International Australia

Transparency International Australia is the national chapter of Transparency International, a global coalition against corruption operating in over 100 countries. Each chapter is independent and unique, and together we aspire to a unified vision: a world free of corruption. Our mission is to tackle corruption by shining a light on the illegal practices and unfair laws that weaken our democracy, using our evidence-based advocacy to build a better system. Transparency International's substantial research and policy advice includes the Best Practice Guide for Whistleblowing Legislation (2018), alongside TI Australia's own country specific research and contributions dating back to the first Australian Standard on Whistleblower Protection (2004).

1. Introduction

Following the Fitzgerald Inquiry into police corruption, Queensland became only the second jurisdiction in the world to enact specific-purpose legislation to protect whistleblowers, with the *Whistleblowers (Interim Protection) and Miscellaneous Amendments Act 1989* (Qld). Further reform followed through the *Whistleblower Protection Act 1994* (Qld) and the more recent *Public Interest Disclosure Act 2010* (Qld) (*PID Act*).

However, over the past decade, there has been seismic changes in whistleblowing standards domestically and internationally.[1] Most Australian states and territories, and the Commonwealth, are now lagging well behind. The current review of Queensland's *PID Act* therefore provides the opportunity for Queensland to return to its position as a national and international leader in ensuring people who speak out about public sector wrongdoing are supported and protected in legislation and in practice. We hope that the Review and the Government will seize that opportunity.

We are glad the Review has already noted recommendations in our recent *Federal Roadmap* report, which while focused on federal law reform, sets out issues which are of identical relevance to most Australian public interest whistleblowing regimes, including Queensland's *PID Act*. We **enclose** an updated version of the *Roadmap* for your reference. We cross reference key issues in the *Roadmap* with responses to the questions in your Review's Discussion Paper, as below. We also cross-reference to relevant submissions made to other Queensland and federal review processes, which we hope you will consider as part of your review.

While the Review is necessarily canvassing very many issues, we wish to highlight **four issues** which in our view are critical for reform of the *PID Act* to be effective:

1. Enhanced institutional support for enforcement and protection;
2. Enhanced, more accessible remedies which are distinct from criminal liability provisions;
3. An enforceable duty to protect whistleblowers; and
4. Excluding solely individual employment grievances without undermining the breadth of protected disclosures.

We address these in turn below, before going on to address the Review's questions and issues as laid out in the Discussion Paper.

[1] These include legislative change in the European Union following *Directive 2019/1937 on the protection of persons who report breaches of Union law* and developments in other parts of the world, as well as developments in Australia in both the private sectors (e.g. *Corporations Act 2001* (Cth) Part 9.4AAA as amended in 2019), and different aspects of state legislation (e.g. some key reforms in the *Public Interest Disclosures Act 2022* (NSW) (*NSW PID Act*).

2. Four critical issues for effective reform

2.1. Enhanced institutional support for enforcement and protection

One of the most important parts of forthcoming whistleblowing reform, in Queensland and elsewhere, is the need to provide institutional support for protecting whistleblowers and enforcing whistleblower protection laws: see point one in our *Roadmap* report. As we explore further throughout this submission, this Review and subsequent reform provide a golden opportunity for Queensland to establish an enhanced, effective institutional framework to support the operation of the *PID Act* in practice.

A dedicated whistleblower protection office, whether established as a standalone body or within an existing institution (such as the Integrity Commissioner), would provide independent oversight and enforcement of the *PID Act*. Such a body could provide practical guidance and support to whistleblowers, assist agencies in the coordination and management of disclosures, investigate reprisals and undertake strategic litigation (both as a party and by intervening in important cases).

The establishment of a whistleblower protection office would see Queensland again lead Australia in protecting and empowering whistleblowers. Currently no Australian jurisdiction has a dedicated whistleblowing authority, with the limited administrative oversight responsibilities and administrative options for gaining support for pursuit of independent remedies – if any – split between different agencies, none of which are charged with a duty to ensure that protections are delivered.

Moreover, the events in Queensland that gave rise to your Review, demonstrate vividly that this is the most critical gap currently adversely affecting the confidence of the general public, and potential whistleblowers, in the entire scheme. See our answers to Questions 30 and 33-40 below for more detail on how this applies to Queensland.

Later this year, the federal government will issue a discussion paper on the need for a whistleblower protection authority. However, globally, the inclusion of such bodies at the heart of whistleblower protection regimes is becoming international best-practice; in the United States, the Office of Special Counsel has long been central to the efficacy of public sector whistleblowing. It is time for Queensland, which possesses a large public sector (the third largest in Australia after NSW and Victoria, and larger than many countries) to embrace these responsibilities.

2.2. Enhanced, more accessible remedies which are wholly distinct from criminal liability provisions

A primary purpose of whistleblowing laws is to protect whistleblowers from detriment for speaking up about wrongdoing, by providing them with accessible remedies (including reinstatement and compensation) if supports and protections fail. Unfortunately, across Australia including in Queensland, these remedies have proven largely inaccessible in practice: see point six of our *Roadmap* report.

One of the primary difficulties faced by whistleblowers seeking to enforce protections under Australian whistleblowing law, including the *PID Act*, is the conflation of civil and criminal liability provisions. This is an especially Australian problem, because other jurisdictions with somewhat more successful track records of providing remedies (such as the USA and UK), at first legislated *only* to provide civil remedies

and hence did not simultaneously burden the processes for delivering those, with the necessarily more stringent standards for allocating criminal liability for acts or omissions causing detriment.

The *PID Act*, like a number of other Australian whistleblowing laws, provides at s.41 that taking a reprisal is a criminal offence; in this case, an indictable offence with a maximum penalty of 2 years imprisonment or 167 penalty units (currently more than $24,000). The *PID Act* also provides that a reprisal is a tort with available remedies including damages: s.42, and provides for employment remedies. However, the overlap between these provisions, including that they are found in the same Chapter of the *PID Act* and draw on the same concepts and defined terms, has in practice led to confusion and conflation between the criminal and civil provision. We have observed firsthand the frequency with which PID investigations have not resulted in a finding of reprisal, sufficient to trigger civil remedies, because even when a clear nexus is established between the disclosure and the detrimental acts or omissions which caused harm, it is not a nexus (e.g. level of provable individual intent or recklessness) which would sustain a criminal prosecution or even disciplinary action.

We strongly recommend that the *PID Act* disaggregate civil and criminal liability with an overhaul of Chapter 4. While it should remain a criminal offence to threaten or take a deliberate reprisal (or do so by way of reckless indifference), this should be separated out from tort and employment remedies, which should include the ability to seek compensation for the consequences of detrimental acts and omissions where these involve a failure to fulfil a duty of care, including the institutional duty to support and protect, recommended below. Prior reforms aimed at making remedial proceedings more feasible have simply not proved effective. Part 9.4AAA of the *Corporations Act 2001* (Cth), as reformed in 2019, finally went one step towards the kind of separation that is needed, by distinguishing between a criminal offence of 'victimisation' and civil remedies for 'detrimental conduct', although the evidentiary burdens required for proving detrimental conduct on a civil basis remain confused and too high. In Queensland, while the language of 'reprisal' can be kept for a criminal offence, it is time to find different, broader language such as 'detrimental conduct, including by way of omission', which does not assume individual intent to harm, as a basis for civil, employment or administrative remedies.

As indicated below (see Questions 29, 31 and 32), this separation is simply the most fundamental reform required for remedies to be made properly accessible. In addition, to bring *PID Act* remedies into line with domestic and international best practice, other reforms are needed, such as a reverse-onus of proof in civil claims. Under the *Corporations Act 2001* (Cth), for example, a whistleblower is required to point to evidence that suggests a reasonable possibility of the reprisal and some nexus with the disclosure. Once this low-level onus is discharged, the burden of proof shifts to the respondent (typically the employer) to prove that the claim is not made out. We also recommend this provision be adopted in the *PID Act*, among other reforms.

2.3. An enforceable duty to protect whistleblowers

In recent years, several Australian jurisdictions legislated an enforceable, positive duty to protect whistleblowers from retaliation. These provisions promote a workplace culture of supporting and empowering whistleblowers by making agencies liable when they fail to do so. This is also a priority for federal reform – see point seven in our *Roadmap* where some initial steps in this direction have already been taken. For

example, in the *Fair Work (Registered Organisations) Act*, an employer is liable if it fails in whole or in part to fulfil its duty to 'prevent, refrain from, or take reasonable steps to ensure other persons … prevented or refrained from, any act or omissions [likely to be detrimental to the whistleblowers].' This was followed by the creation of liability upon an employer if they fail to fulfil a similar positive duty to protect whistleblowers in the 2019 amendments to the *Corporations Act 2001* (Cth).

Most recently, the *NSW PID Act* has been amended to reflect such an enforceable duty, as noted in the Discussion Paper. The latter provides a strong precedent, because it not only makes agencies liable if they fail in their duty to 'assess and minimise the risk of detrimental action' (including omissions) in a way that then adversely affects a whistleblowers, but also is triggered if the agency 'ought' to have known that the matter was a public interest disclosure, not simply when an agency did actually assess it to be a public interest disclosure.

These important provisions recognise the importance of employers and agencies taking responsibility for preventing retaliation against whistleblowers. They also improve the accessibility of remedies by placing the focus on an employer's failure to support and protect, rather than requiring the whistleblower to demonstrate the nexus between the disclosure and an individual's culpability for deliberate, knowing or reckless retaliation against the whistleblower. We strongly recommend that the *PID Act* be amended to include an enforceable duty to protect whistleblowers. See our response to Question 25(c).

2.4. Excluding solely individual employment grievances without undermining the breadth of protected disclosures

The fourth critical issue is how to meet the difficulty faced by all whistleblowing laws, in distinguishing between matters which should engage the processes and protections provided by the law, and those which should not. To varying degrees, all Australian whistleblowing schemes have struggled to balance a desire for expansive coverage with the need to exclude solely personal employment grievances. The use of whistleblowing channels to agitate personal work issues have tended to undermine the efficacy and reputation of whistleblowing laws. Accordingly, we support, in principle, efforts to appropriately exclude these grievances from the scope of the *PID Act*.

However, as we argue in response to Q5, the drafting of any such exclusion must be approached with care. The risks posed by an overly-expansive exclusion have been highlighted during the current attempt to reform federal whistleblowing law. Our research, *Whistling While They Work 2*, has demonstrated that almost half of all whistleblowing (and 70 per cent of public interest whistleblowing) involves a mixture of workplace and public interest concerns. There is hence a considerable risk that overly-broad exclusions will carve out legitimate public interest whistleblowing, which will undermine the efficacy and reputation of the *PID Act*.

This is a particular concern in Queensland where, among the events giving rise to your Review, some powerful stakeholders spent considerable resources promoting the idea that because a matter involved a management conflict, it did not also involve public interest whistleblowing even when, on the facts, it clearly did. The idea that there always will be, or should be, a clear separation between an employment dispute and a public interest disclosure, and that the Act's protection cannot apply where the former is present, is one that should be clearly addressed, and rejected, by the Review.

At the same time, some attempts to grapple with the need to exclude *purely* individual employment grievances from whistleblowing laws have resulted in complex, inaccessible provisions containing exceptions to exceptions to exceptions. That is undesirable and limits the accessibility of the scheme to whistleblowers, many of whom will make their decision as to whether to disclose wrongdoing without the support of legal advice.

We therefore recommend that great care is taken in developing and refining an appropriate approach to excluding solely individual employment grievances, in a way that does not unintentionally undermine the breadth of disclosures that are legitimately protected by the *PID Act*. The reformed NSW *PID Act* again provides a reasonable starting point. It would also be advisable to include a statutory review of the operation of the *PID Act*, in the years ahead, to enable an opportunity to reconsider the practical operation of whatever filter is arrived at.

3. Responses to Discussion Paper

3.1. Policy objectives of the *PID Act*

Q1. Are the objects of the PID Act valid and is the Act achieving these objects? Has the PID Act been effective in uncovering wrongdoing in the public sector?

The *PID Act* plays an important role in encouraging the reporting of wrongdoing in the public sector and protecting persons who make such reports. We note the increasing trend in the number of public interest disclosures (**PIDs**) reported by agencies (from 725 in 2013-14 to 1,927 in 2021-22)[2] which supports a view that the *PID Act* has progressively become better institutionalised across government in support of its primary objective of enabling wrongdoing concerns to be raised, recognised and responded to, within the public sector.

It is also likely that the oversight of the *PID Act* by the Queensland Ombudsman (**QO**), through its education and reporting functions, has assisted most agencies to significantly improve their internal systems for identifying and assessing PIDs, and hence played a major role in strengthening Queensland's integrity system. However, the effectiveness of the *PID Act* in terms of uncovering wrongdoing remains necessarily linked to its awareness across the public sector, including confidence that the promised protections are actually being delivered in practice – which clearly need further strengthening and institutional support, as indicated by our responses to many questions below, including Q42.

While the objects of the *PID Act* remain appropriate and valid, they could and should be strengthened by way of being reordered and updated, including to specifically emphasise:

- that the underlying intent of the *PID Act* is to ensure integrity and accountability in the operations of government, the public sector and in the delivery of public services and functions to the people of Queensland (see par (a) below);
- that the *PID Act* regime is intended to support, but not replicate or replace, the investigative powers and responsibilities that go with dealing with reports of wrongdoing under different Queensland legislation – in other words, that the requirements and protections created by this Act 'overlay' (or 'underpin') the rest of the integrity system but are not intended to create a different, separate "track" for the investigation and remediation of wrongdoing such as corrupt conduct, or maladministration, simply because the originating information happens to have come from a public official and is therefore *also* a PID (see suggested revised/new par (d) below); and
- that the Act already provides, and should be further strengthened to better provide, more than simply protections against 'reprisal' (see suggested revised/new par (b) below). This is especially important given the evidence that the PID Act is not fulfilling its objective of ensuring that those who come forward about wrongdoing are protected and supported for doing so, or provided with justice when this does not occur – an essential area of reform for ensuring public

[2] Queensland Ombudsman annual reports.

confidence in the PID scheme, further discussed in the latter half of this submission.

Section 3 - Main objects – some suggested enhancements

(a) to promote the public interest, and support the integrity and accountability of government, by facilitating ~~public interest~~ disclosures of public interest wrongdoing within the public sector, publicly-funded services and the exercise of public functions; and

~~(d)~~ (b) to afford support and protection to persons making public interest disclosures, including remedies, when appropriate, for persons who experience detriment as a result of making a disclosure, and criminal, disciplinary and administrative sanctions against ~~protection from~~ reprisals; and

~~(b)~~ (c) to ensure that public interest disclosures are properly assessed and, when appropriate, properly investigated and dealt with; and

~~(c)~~ (d) to support the handling and resolution, under other Queensland laws, of disclosures of public interest wrongdoing to whom this Act applies, including by ensuring that appropriate consideration is given to the interests of persons who are the subject of a public interest disclosure, and by ensuring transparency in the actions taken in response to disclosures.

Q2. Is the title of the legislation suitable? Should any other terms, such as 'whistleblower' or 'wrongdoing', be included in the title or used in the legislation?

Yes, the term 'whistleblower' or 'whistleblowing' should be re-included in the title of the Act, to assist public officials, agencies and the general public to clearly understand its nature and purpose. Updated titles could include:

- *Public Interest Disclosure (Whistleblowing) Act*; or
- *Public Interest Reporting (Whistleblowing) Act*

Over a decade ago, when reform was last considered, it was a step forward to replace 'Whistleblower Protection Acts' with 'Public Interest Disclosure Acts' due to the level of misunderstanding of, and stigma against, the concept of whistleblowing. Since then, public understanding and acceptance of the term has increased substantially, to the point where the advantages of using the term 'whistleblower' now outweigh the disadvantages, including relative to the relatively clunky and inaccessible official nomenclature that has grown up around 'public interest disclosers'.

For example, Part 9.4AAA of the *Corporations Act 2001* (Cth), as reformed in 2019, retained 'Whistleblower Protections' in its title, and introduced the statutory term 'eligible whistleblower' to describe those whose relevant disclosures trigger the Act's protections. (The term 'eligible' is better replaced, as it can encourage the idea that this is a status for which a person can 'apply', but the term 'whistleblower' itself has proved clear and effective.)

While there is a case for re-including the entire term 'Whistleblower Protection' in the title, this should only be adopted if the Act is fully updated to include the improved protections recommended below, as well as new, more effective enforcement machinery, so the purpose of the Act is more strongly tilted towards actually delivering this promised protection, than is currently the case. Even then, the Government needs

to remain mindful that the term can raise unrealistic expectations among some complainants, that they may be able to use the legislation to protect themselves against any or all adverse outcomes in any given situation (including for example, to evade responsibility for their own wrongdoing or the consequences of clearly reasonable management action involving them), when this is not necessarily the case.

Q3. Are changes needed to ensure public confidence in the integrity of the PID regime?

Yes – extensive changes, as laid out in response to the questions below.

Q4. Are any changes needed to the PID Act to make it more compatible with the Human Rights Act 2019?

The *PID Act* generally works in service of the protection and promotion of key rights, as noted in the Discussion Paper. Enhancements to the protections and their enforcement, as recommended below, will therefore only make the *PID Act* more compatible with human rights.

The main area where the *PID Act* currently has the potential to conflict with a fundamental human right is in respect of the right to **freedom of expression** (s. 21, *Human Rights Act 2019*). Most of the Act is intended to provide clarity about when and how public officials can make disclosures to which the protections apply, within public agencies or the public sector, in a context in which any actual or implied restrictions are unlikely to place unjustifiable limits on that freedom. However, s. 20 of the *PID Act* places specific limits on the circumstances in which a whistleblower may make a public interest disclosure to **a journalist**, and is silent on the circumstances in which a whistleblower may make a disclosure **to any other third parties**, implying (or with the potential consequence) that any other such disclosures are not permitted at all, irrespective of the circumstances.

Reform is needed to ensure that protections can apply in *all* justified circumstances of disclosure of wrongdoing to any third parties, as recommended below in response to Q21. This reform would better serve the objectives of the *PID Act* and reduce the likelihood of any incompatibility with the *Human Rights Act*.

3.2. What is a public interest disclosure?

Q5. What types of wrongdoing should the PID regime apply to? Should the scope be narrowed or broadened? Why and how?

The scope of wrongdoing that attracts public interest disclosure protections has generally proved highly workable, over a long period. It is important that the types of wrongdoing identified by the *PID Act* continue to align with those operating throughout the rest of the Queensland integrity system, to help make clear that the requirements and protections overlay and under-pin the rest of the integrity system, rather than creating a new, separate track for the investigation and remediation of wrongdoing, which is different to those existing, established categories and responses (such as for corrupt conduct, maladministration, etc).

There are nevertheless three areas where we recommend that refinement should be considered. These are:

a) Personal work-related grievances

This is a critical issue for reform – see section 2.4 above. We support a provision which makes clear that matters which are solely personal work-related grievances, and do not otherwise involve any of the categories of public interest wrongdoing identified in the Act, are not intended to trigger the protections afforded by the *PID Act*, although they may trigger protections in other legislation. We also outline this point in greater detail in point 12 of our *Roadmap* report.

However, this provision needs to be carefully drafted. Currently the debate over equivalent amendments to the *Public Interest Disclosure Act 2013* (Cth) (including a proposed s.29A) demonstrates the risk that a poorly drafted provision, or one that fails to be clear including to laypersons regarding its intent and effect, may have counter-productive effects of:

- Encouraging managers or agencies to miscategorise public interest disclosures as personal grievances as a new means of avoiding the requirements of the *PID Act*;
- Discouraging managers and agencies from establishing the assessment processes needed to properly identify and deal with the mixture of public interest and personal grievance issues which our research indicates is present in around 47% of all disclosures, including around 70% of all public interest disclosures, as recognised on p.9 of the Discussion Paper: Brown, A.J. et al, 2019, *Clean as a whistle: a five-step guide to better whistleblowing policy and practice in business and government*, Brisbane, Griffith University, p.13, Fig 7 [NB incorrectly identified as Fig 4]; and
- Increasing, rather than reducing, the proportion of whistleblowers who suffer mistreatment and detrimental outcomes as a result of the poor management of these mixed disclosures, also identified by our research as a major risk area for negative repercussions: ibid p.15, Fig 9.

As identified by the Commonwealth Ombudsman in relation to the same issue, another risk of an exclusion of 'work-related conduct' which is either too broad or too vague as to when the disclosure of such conduct may nevertheless still attract protection, is that it is likely to increase – not decrease – the burden on administering agencies when called on to mediate complaints that a workplace matter is 'significant' enough to warrant treating as a PID, even though it may still be solely a personal workplace-related grievance.

Accordingly, we recommend that the exclusion of personal work-related grievances:

1. Be expressed using language that makes clear that only matters which are 'solely' or 'only' personal work-related grievances are excluded;
2. Include clear language of 'grievance' (as used by s.1317AADA of the *Corporations Act 2001* (Cth)*)* to implement and communicate the intended limitation;
3. Adopt precise language and/or construction to specify when a personal work-related grievance may nevertheless still attract the PID Act protections and processes; and

4. Make explicit that if a matter may involve *both* disclosable conduct *and* a personal work-related grievance, then *PID Act* protections and oversight still apply to the entire matter – even if the Act is elsewhere amended to provide greater flexibility for the use of alternative (non-*PID Act*) processes and timeframes to resolve work-related grievance components where appropriate, and with the whistleblower's consent, under the supervision and monitoring of the relevant oversight agency.

Section 26(3) of the *NSW PID Act* provides a reasonable precedent through its use of the term 'only', as would s. 1317AADA of the *Corporation Act 2001* (Cth) if it similarly included the term 'only' or 'solely'. The latter provision has the benefit of stipulating that the protections do not apply 'to the extent' that the disclosure (only) concerns a personal workplace grievance, which may signal a recognition and intent that even when personal grievances are present, and certainly if the personal grievances have any relationship whatsoever to the wrongdoing disclosure, then the protections should still apply. As indicated above, this should be explicit in the *PID Act*.

This issue is especially important for Queensland, due to events surrounding the responses of the Crime and Corruption Commission (**CCC**) to corrupt conduct allegations at Logan City Council, which reinforced the need for this Review. In that case, powerful stakeholders spent considerable resources promoting the idea that because the matter involved a management conflict, it did not also involve public interest whistleblowing – even when, on the facts, it clearly did. We refer the Review to Professor Brown's submission to the Commission of Inquiry into the CCC, which deals with the facts of that case at paragraphs 43-52 (pp.10-11).[3]

The idea that there always will be, or should be, a clear separation between an employment dispute and a public interest disclosure, and that the Act's protection cannot apply where the former is present, is one that should be clearly addressed, and rejected, by the Review. The legislative solution on this issue, recommended by the Review, should also be framed to address the increased risk of misinterpretation likely to flow from much public commentary regarding the Logan events.

<u>b) Maladministration</u>

Maladministration as defined by the Act (Schedule 4, Dictionary) is appropriately broad, aligning with the types of administrative action about which the Ombudsman may make adverse findings and recommendations under s.49(2) of the *Ombudsman Act 2001* (including unlawful, unreasonable, unjust, oppressive or improperly discriminatory actions, those based wholly or partly on improper motives, etc). This also extends to administrative actions that are simply 'wrong'. Given this breadth and the subjectivity of this judgment, s. 13(1)(a)(ii) of the *PID Act* attempts to limit this to non-trivial or non-technical maladministration by requiring it must also 'adversely affect a person's interests in a substantial and specific way'.

To help ensure the *PID Act* remains focused on its purposes, consideration could be given to adding the proviso contained in the *NSW PID Act*, that the law is only triggered by 'maladministration, *not including conduct of a trivial nature*, that adversely affects a person's interests in a substantial and specific way'. In addition or as an alternative, to underscore that the *PID Act* is not intended for matters that are

[3] Submission of Professor A J Brown to Commission of Inquiry relating to the Crime and Corruption Commission, 11 April 2022 – https://www.cccinquiry.qld.gov.au/__data/assets/pdf_file/0005/726350/a-j-brown-professor-of-public-policy-and-law-griffith-university.pdf.

solely personal workplace-related grievances relating to the reporter (see below), the definition could be amended to: 'maladministration that adversely affects a person's interests, *other than simply the interests of the discloser*, in a substantial and specific way'.

c) Other forms of defined public interest wrongdoing

A particular advantage of retaining the broad definition of maladministration is that it captures all manner of wrongful actions and decisions within the Queensland public sector, without specific breaches of different legislative requirements – no matter how important – needing to be detailed.

There may be a case for adding further specific areas of breach or contravention, especially where central to public integrity and accountability (e.g. lobbying disclosure requirements under the *Integrity Act 2009* (Qld), or breaches of the *Right To Information Act 2009* (Qld)). However to ensure a simple regime, the Review should avoid adding further specific types of integrity violations, especially with reference to multiple pieces of legislation, unless there is a clearly compelling reason to do so, and reason why this would not be covered by an existing category. Even then, consideration should first be given to making it clear that the violation type falls within an existing category, where this is or could be the case, rather than creating new categories.

Q6. Should a PID include disclosures about substantial and specific dangers to a person with a disability or to the environment? Why or why not?

This issue primarily arises because these are the categories of wrongdoing which 'any person' (as opposed to public officials) may disclose, under s.12, to trigger the *PID Act*. See q9 below for our response on that issue.

Substantial and specific danger to the environment is a basis for disclosure under both s.12 (by 'any person') and s13 ('public official'). We support the retention of these provisions. Similarly, there is no reason not to make explicit that a substantial and specific danger to the 'health and safety of a person with a disability' (s.12) is one form of danger to 'public health or safety' generally (s.13), and should therefore also be retained, in this way, in the *PID Act*. In both cases, retaining these categories will reassure the community that these important types of risks are not being somehow downgraded or excluded as important matters on which public interest disclosures should be able to be made and protected. The separate issue of *who* should be able to receive the protections for raising them, is dealt with below.

Q7. Is there benefit in introducing a public interest or risk of harm test in the definition of a PID?

No. By definition, all the types of wrongdoing identified in the Act – especially when it is made clearer that purely personal work-related grievances are excluded – are of a 'public interest' nature. This fact should not be made subject to an additional discretionary assessment as to whether or not the *PID Act* applies, which would be both administratively onerous and have the potential to endanger the proper administration of the scheme in many cases. Adding further thresholds would also be contrary to widely-accepted international best practice.

Q8. Should a person be required to have a particular state of mind when reporting wrongdoing to be protected under the PID regime? Are the current provisions appropriate and effective?

The current provisions in s 13 of the *PID Act* concerning a reporter's state of mind – that they must either have an honest belief on reasonable grounds that the information they disclose demonstrates wrongdoing or that the information disclosed in fact demonstrates wrongdoing – remain appropriate and effective. This combination of objective and subjective thresholds was a specific recommendation of the *Whistling While They Work 1* research and has since been taken up in a range of PID legislation, including Queensland.

We strongly caution against including any 'good faith' requirement. Most law reform in many jurisdictions over recent decades has been focused on removing such a requirement – as occurred in 2019 in the federal private sector whistleblowing reforms – in recognition that, provided a whistleblower does not act in a way that is dishonest or misleading, the information they give may validly raise concerns about public interest wrongdoing and require protections to be triggered, irrespective of their specific intentions or motivations.

3.3. Who can make a public interest disclosure?

Q9. Who should be protected by the PID regime? Should the three categories of disclosers (public officer, employees of government owned corporations or Queensland Rail, and any person) be retained? Why or why not?

Q10. Should the definition of public officer be expanded to include those performing services for the public sector whether paid or unpaid, for example volunteers, students, contractors and work experience participants? Should former public officers be covered?

The answers to these two questions are closely linked.

The focus of whistleblower protections is on facilitating disclosures by, and protecting, the 'insiders' to public sector entities and services who are best placed to reveal wrongdoing but also subject to the greatest disincentives for doing so, due to their personal dependency on the organisation, sector or industry responsible for the wrongdoing. The intent behind the legislation is to protect those people who are most likely to know about public sector wrongdoing but also most at risk of detriment and in need of protections.

As previously recommended by the Ombudsman and others, there is no reason to retain an ability for 'any person' to receive protection – as these may or may not be 'insiders' – **provided** that the scope of those who do receive protection is expanded beyond simply public officials, to the wider categories of 'insiders' proposed. This should include:

- anyone performing services for the public sector, whether paid or unpaid
- volunteers
- interns, students undertaking work placements, and other work experience participants (but not students in general)

- government contractors, and employees of contractors, including anyone delivering publicly-funded services or exercising public functions (in respect of those services or functions).

See further point two of our *Roadmap* report.

In our view, it is unnecessary for employees of government owned corporations or Queensland Rail to be in a separate category to other public officials, for the purposes of the *PID Act* – see our response to Q22.

Former public officials or whistleblowers in the above categories should receive the protections of the *PID Act*, provided their disclosure is made within a reasonable time. A statutory timeframe is advisable, but should be subject to exceptions (for example, there may be valid reasons why a former official did not make a disclosure within a particular timeframe, if still subject to reprisal risks despite leaving the agency, or subject to personal trauma or health issues). The disclosure should relate to wrongdoing observed and information gained by the person in their role as a public officer (or as above), rather than as an outside individual.

Q11. Should relatives of disclosers, or witnesses be eligible to make PIDs? Should they, or anyone else, be entitled to protection under the PID regime?

The *PID Act* already protects *any* person (s.40(1): 'another person') from reprisal as a result of any disclosure to which the law applies – not simply the whistleblower. Protection therefore already extends to any relatives or other witnesses. This is appropriate and should be retained.

Relatives were included in the 2019 reform to the *Corporations Act 2001* (Cth) and *Taxation Administration Act 1953* (Cth), because the construction adopted in that legislation ('eligible whistleblowers') was intended to encourage close personal relatives (e.g. spouses) of potential whistleblowers to themselves blow the whistle on corporate wrongdoing or tax evasion of which they were aware, even if their own spouse (the actual employee or officer) did not. The Review can consider whether it is necessary to take this particular step in this legislation.

Given that a large part of the *PID Act* is concerned with measures that should be taken by agencies to assess, prevent and manage risks of detrimental action against whistleblowers within their own agencies, it should be remembered that public sector entities are unlikely to be a position to provide adequate and appropriate support to reporters who are not within the ambit of the organisation (e.g. the whistleblower spouse of a non-whistleblower employee). Such protections would be the province of general witness protections, if available, from the police or relevant regulator.

Q12. Should different arrangements apply to role reporters? Why and how?

Yes, but we suggest a new and more direct solution for managing this issue.

First, it should be noted that any persons who report public interest wrongdoing as part of their organisational role, or as a witness to any investigation, should not adversely suffer for doing so – and as above, are already protected from reprisals and eligible for remedies, like any other person, if they suffer detriment as a result of another person's disclosure.

As a result, disclosures of information that occur purely as a result of handling or passing on a disclosure made by another person, do not *necessarily* need to be managed as a public interest disclosure in their own right. In certain circumstances, they may be, for example:

- where a supervisor receives information from one of their employees, who does not wish to make a disclosure, and the supervisor makes the disclosure in their stead – as expected under their duties – but is potentially subject to reprisals; or
- an internal investigator or auditor who receives anonymous information or observes irregularity in financial records, and assesses, and then insists that the matter requires investigation as per their normal job, but this occurs against the wishes of superiors.

The protections and processes provided by the *PID Act* should apply to such reports, even if they are 'role reports', and even if most role reporting carries low risks of reprisal and low need for the administrative obligations surrounding the management of disclosures. At the same time, we support the need for public sector agencies to be relieved of responsibility for fulfilling these administrative obligations (notifications, referrals, risk assessments, support provision, complainant progress reports and consultation) in respect of every 'role report' which is currently, technically, a public interest disclosure. The limited support and protection resources available should be focused on those reporters at actual risk of detriment.

We understand the intent behind the *NSW PID Act*'s way of managing this issue – by distinguishing between 'voluntary' disclosures which attract the full protections and requirements, and 'mandatory' disclosures (role reports) which do not, unless 'deemed' to be voluntary PIDs by the head of an agency.

However, we think the distinction itself is not helpful, because people who report wrongdoing in the ordinary course of their role may well consider they are doing this voluntarily and, conversely, any public officer may properly consider they have a mandatory duty to report wrongdoing under their code of conduct or other basic terms of employment. It also adds a layer of complexity to matters that are already difficult to assess.

We recommend that an amended *PID Act* should not create these different categories of disclosure, which just add complexity to the regime. Instead, the regime as amended should simply provide that the specific obligations giving rise to current administrative over-burdens do not apply to any disclosure which meets the description of a role report, unless an authorised officer (not simply the head of an agency) deems this to be necessary, or the role reporter requests that they apply. We suggested this would be a simpler and more direct way of achieving the same result.

3.4. Experiences of people who witness and report wrongdoing

While noting the questions in this section of the Discussion Paper are seeking the perspectives of those who have witnessed and reported wrongdoing in the Queensland public sector, some research findings, including our own, may be helpful.

Q13. How would you describe your experience in reporting wrongdoing under the PID Act? Do you have any suggestions for improvements?

Q14. What factors impacted your decision to report or not report wrongdoing? Did you encounter any barriers or obstacles during the process? How can the PID regime encourage disclosers to come forward?

Research consistently suggests that the two key factors that impact a whistleblower's decision on whether speak up are: firstly, whether action will be taken to deal with it, and secondly, whether they will be protected from detriment for doing so. Legislation can only go so far in ensuring these conditions are met unless they are embedded in agency values. Ethical leadership influences employee attitudes, performance and ethical behaviours,[4] with poor ethical cultures not only leading to increased unethical behaviour, but a reluctance to report wrongdoing.[5] Conversely, positive ethical cultures and leadership have been identified by our research as strongly associated with answers to these problems.[6]

We consider this evidence strongly supports the need for simple, principles-based legislation, a focus on managers' and agencies' duty of care to support officials who report wrongdoing, and more easily enforceable remedies to help drive a focus on treatment and outcomes, rather than a complex, compliance-based approach to the management of disclosures.

Q15. Were you supported effectively during the process? Would alternative or additional support have been helpful?

The QO's *PID Standard No. 2/2019* provides comprehensive obligations to provide support to internal disclosers, including by assigning a PID support officer who is independent of any investigation. We note, however, that the standard is limited to internal support provided by the relevant public sector entity.

In situations where the whistleblower is in dispute with the relevant entity about the handling of a PID or facing detriment, alternative or additional support external to the entity is often necessary. Unions and employee representatives undoubtedly have an important role to play in this respect. Further, we consider it important that any oversight responsibilities include ensuring that reporters are supported. This may

[4] Cheng, J., Bai, H., & Yang, X. (2019). Ethical leadership and internal whistleblowing: A mediated moderation model. *Journal of Business Ethics*, 155(1), 1-16; den Hartog, D.N. (2015). Ethical leadership. *Annual Review of Organizational Psychology and Organizational Behavior*, 2, 409-434.

[5] Kaptein, M. (2011). From inaction to external whistleblowing: The influence of the ethical culture of organizations on employee responses to observed wrongdoing. *Journal of Business Ethics*, 98(3), 513-530; Treviño, L. K., Butterfield, K. D., & McCabe, D. L. (1998). The ethical context in organizations: Influences on employee attitudes and behaviors. Business Ethics Quarterly, 8(3), 447-476.

[6] Brough, P., Lawrence, S.A., Tsahuridu, E., Brown, A.J. (2021) 'The Effective Management of Whistleblowing'. In: Brough P., Gardiner E., Daniels K. (eds) *Handbook on Management and Employment Practices*. Handbook Series in Occupational Health Sciences. Springer.

include, for example, administering a funding scheme to provide legal,[7] psychosocial, employment mentoring or other financial supports as necessary, as well as the type of external protection interventions reflected in our response to Q36.

Q16. Did you feel your disclosure was taken seriously, assessed in a timely way, investigated fairly and addressed appropriately?

In line with our response to Q14, we found that stronger ethical leadership by management and the state of the ethical culture, including the reinforcement of ethical behaviour, in an organisation are critical to an environment in which reporters are supported, and good investigation outcomes and benefits are achieved. Whistleblowing responses are not technical processes that can be delivered without that wider commitment and supportive environment, delivered by the management culture and actions of the organisation, in practice.[8]

3.5. Making, receiving and identifying PIDs

Q17. Are the requirements for making, receiving and identifying PIDs appropriate and effective?

Q18. Who should be able to receive PIDs? Do you support having multiple reporting pathways for disclosers? Is there a role for a clearing house or a third party hotline in receiving PIDs?

In broad terms, the requirements for making and receiving PIDs – including the availability of multiple reporting avenues – remain strong and appropriate.

However, as in other jurisdictions, there remain challenges in recognising and identifying when integrity concerns constitute PIDs under the legislation and need to be managed accordingly. One recent example highlighted by the Commission of Inquiry into Forensic DNA Testing in Queensland was that Ms Amanda Reeves's criticisms of the DNA testing process were not recognised as a PID concerning maladministration, when clearly that is what they were.[9] The same appears to be true at a federal level, for example with the number of disclosures and concerns regarding the unlawfulness and oppressiveness of the Robodebt scheme, that were not identified as triggering the *Public Interest Disclosure Act 2013* (Cth).

In our view this ongoing challenge should be addressed by keeping the regime as simple as possible, by maintaining and expanding appropriate training, and through more rigorous and active oversight and enforcement as described below, to more proactively identify when agencies are failing to identify disclosures and hold managers and agencies to account when this occurs.

The *PID Act* is already consistent with our *Roadmap* report in support a 'no wrong doors' approach to who can receive public interest disclosures. While the legislation is strong in allowing disclosures to any manager and supervisor, agencies should also provide multiple reporting pathways outside the hierarchy (including third-party

[7] We note the Victorian government considered a pilot scheme to provide legal support to whistleblowers, with a discussion paper published in October 2018. It is not clear why the scheme did not proceed.
[8] Brown AJ et al, 2019, *Clean As a Whistle: A Five-Step Guide to Better Whistleblowing Policy and Practice in Business and Government – Key findings and actions of Whistling While They Work 2*, Griffith University, August 2019.
[9] Commission of Inquiry into Forensic DNA Testing in Queensland final report.

hotlines which are now relatively standard among organisations, and do not require any legislative improvement, other than perhaps further guidance to ensure the use of hotlines does not abrogate responsibility on agencies for assessing and dealing with reports, and supporting those who make them).

While we would caution against a 'clearing house' as a *sole* point of reporting, there is a strong case for a central institution which devotes more resources to:

- tracking and supporting the effective management of disclosures, wherever made (where not kept confidential to a specific receiving agency)
- assisting whistleblowers and agencies to ensure disclosures are referred to the most appropriate place for resolution, without the burden for this falling solely on whistleblowers to seek out the appropriate recipient
- providing advice and support to whistleblowers about their reporting options, rights, expectations and ways of managing the reporting experience
- monitoring for 'forum shopping' by complainants and streamlining the resolution of repeat or serial complaints
- monitoring agencies' responses to disclosures once referred, and more rapidly triggering interventions to rectify any problems with their handling.

The importance of upgrading these functions – whether contained in a new 'clearing house' or other central whistleblowing oversight agency – is further discussed below.

Q19. At what point in time should the obligations and protections under the PID regime come into effect?

Q20. Should the PID legislation require a written decision be made about PID status as recommended by the Queensland Ombudsman? What would the implications be for agencies?

The *PID Act*'s obligations and protections should come into effect as soon as a report is made, and appropriately may also apply in advance of a report being made (e.g. s.40(1) defines reprisals as including detriment caused because a person 'intends to make' a disclosure). This should be strengthened to include protection against reprisal on the basis that a person 'could' make a disclosure, given the difficulty of proving that a defendant or respondent knew or believed that another person 'intended' to make a disclosure.

We do not support the idea that PID protections and obligations can only commence once a written assessment or binding determination to this effect is made. It is important that disclosure recipients continually assess and recognise whether information they are receiving amounts to a PID, document this, inform a whistleblower of their resulting rights and expectations, and proceed in accordance with the *PID Act*'s obligations. Possible recipients of PIDs, such as public sector entities and investigating bodies, should ensure appropriate triage processes are in place to assess whether reports are public interest disclosures and provide a written decision advising of such.

However, this should not be mistaken for a discretion as to whether or not to assess and designate a matter as a PID, which is the risk associated with creating obligations

(and a de facto power) for a prior, binding determination. An oversight body such as the QO may well have a different view to a public sector entity (but should be able to deal with complaints about an agency's assessment), and ultimately only a court should be able to formally determine whether a matter did or did not trigger the *PID Act*, as a matter of law, if or when that fact is contested.

Q21. Are the provisions for disclosures to the media and other third parties appropriate and effective? Are there additions or alternatives that should be considered?

The ability to make a disclosure to third parties, including the media, is a vital safeguard when internal disclosures are not practical or not addressed. Presently, s.20 of the *PID Act* permits protected disclosures to journalists *only* where an internal disclosure was made first and (i) not investigated; (ii) investigated but no action was subsequently taken; or (iii) did not notify the whistleblower of any response to the disclosure within six months.

We consider s.20 as presently drafted is inappropriately narrow, and recommend significant reform.

First, the *PID Act* should be amended to explicitly permit disclosure for the purpose of seeking advice and support. We would recommend at least two categories of such external disclosure: disclosure for the purposes of seeking legal advice, consistently with the express provision for such disclosures in federal law (see *Corporations Act 2001* (Cth) s.1317AA and *Public Interest Disclosure Act 2013* (Cth) s.26), and disclosure for the purposes of seeking advice and support, e.g. from family members, union officials, medical professionals and so on. This would go some way to addressing the isolation and loneliness often felt by whistleblowers.

Second, the circumstances permitting external disclosure should be expanded, to permit disclosure when a prior internal disclosure was not possible, safe or reasonable (for whatever reason). The *Public Interest Disclosure Act 2013* (Cth), for example, permits emergency disclosures in cases of imminent danger to the health or safety of one or more people or the environment, including whether there are exceptional circumstances that justify the discloser's failure to first make an internal disclosure.

While this would be a step forward for the *PID Act*, we consider even the federal approach to third-party disclosure is too restrictive – as we outline in point 11 of our *Roadmap* report. The ongoing prosecutions of federal public sector whistleblowers Richard Boyle and David McBride are acute demonstrations of the injustice done when a whistleblower thinks they have followed the requirements in making an external disclosure as a last-resort, but their agency remains defensive. We would encourage consideration of approach proposed by Zoe Daniel MP in an amendment unsuccessfully moved to the *Public Interest Disclosure Amendment (Review) Bill 2022*, of adding a catch-all safeguard where external disclosure 'is otherwise reasonable and in the public interest, having regard to all of the circumstances'.

Third, we recommend that the category of people to whom external disclosures can be made is expanded. While journalists are often the appropriate recipient for external whistleblowing, there is no clear rationale for restricting the disclosure to *only* the media where the criteria for external disclosures are otherwise met. In some cases, it may be more appropriate to make an external disclosure to an industry body, union,

or special interest (e.g. consumer protection) group – or it might be that for media to accurately report on a story, they need to seek input from external experts. This is the approach adopted in the *Public Interest Disclosure Act 2013* (Cth), where external or emergency disclosures can be made to anyone but a foreign government official (except for disclosures involving intelligence information). Internationally, other legislation such as in the United Kingdom takes a similar approach.

We do not consider any of these recommendations to be radical. Internal disclosure can and should remain the primary avenue for blowing the whistle; in the overwhelmingly majority of cases, employees will speak up internally and go no further. However, as whistleblowing best-practice has long recognised, the ability to safely and lawfully blow the whistle publicly is a critical safeguard in exposing wrongdoing which might otherwise be unaddressed or covered up. The changes advanced above are sensible, incremental expansions that align with the better approaches in other Australian jurisdictions and internationally.

Q22. Should the PID process for government owned corporations or Queensland Rail be different to those for public sector entities? Why or why not? Are the current arrangements appropriate and effective?

There is no rationale for PID obligations and processes being different for government owned corporations (**GOCs**) or Queensland Rail in the *PID Act*. Practically, our research found very little difference between the public sector and private sector in how reports of wrongdoing are handled. We recommend that GOCs simply be considered public sector entities, in line with legislation in other jurisdictions.

3.6. Managing, investigating and responding to PIDs

Q23. Are the requirements for managing, investigating and responding to PIDs appropriate and effective?

We consider that best practice in legislative design of whistleblowing schemes is to avoid overly prescriptive legislation. For example, the *Public Interest Disclosure Act 2013* (Cth) contains prescriptive requirements in relation to timeframes, the conduct of investigations and content of investigation reports, which has ultimately hindered the ability of agencies to effectively deal with wrongdoing, and often instead led to duplication (such as conducting a 'PID investigation' separately to a 'Code of Conduct investigation'). We consider the *PID Act* is sufficient in terms of providing that appropriate action should be taken; we would recommend against adding further prescriptive requirements to legislation. If further procedural guidance is needed from time to time, it can and should take the form of QO standards.

Q24. Are agencies able to provide effective support for disclosers, subject officers and witnesses? Are any additional or alternate powers, functions or guidance needed?

Prevention is better than cure, particularly given the difficulties discussed later in this submission on ensuring legal protections for whistleblowers after they have already suffered detriment. We therefore support obligations on public sector entities to

provide proactive support to all parties when a PID is made. We consider that there is considerable need for the expansion of effective support, coordinated by a central whistleblowing authority (as discussed below). As outlined in the appendix, there is a gap in institutional oversight responsibilities in relation to legal and psychological support.

Q25. Should the PID Act include duties or requirements for agencies to:

a. take steps to correct the reported wrongdoing generally or in specific ways?

b. provide procedural fairness to the discloser, subject officer and witnesses?

c. assess and minimise the risk of reprisals?

In response to (c) – the answer is a definite 'yes'. This is a critical issue for reform, as discussed section 2.3 above. It is now clear, including from our research, that when the risks of detriment are assessed as soon as a report of wrongdoing is made, and presuming that measures are then taken to address these risks, and both the risk monitoring and resulting measures are updated as needed, then whistleblowers will fare considerably better in terms of how they are treated and the extent of detriment that they face.

A positive duty on public sector entities to assess and minimise risks of detriment, as is contained in the *NSW PID Act*, would go a long way to improving whistleblower outcomes. However, as we discuss in response to Q29, any such provision, however, must go beyond reprisal to encompass a broader definition of detriment; and it must be enforceable (i.e. lead to remedies or sanctions if not complied with), rather than simply aspirational, as is the case with many existing and proposed obligations in whistleblowing laws. We believe that such a duty would also reinforce existing Queensland case law to provide support during an investigation.

In response to (a) and (b) – there is a case for the Act to reinforce these duties, in broad terms, but we do not consider these need to be as detailed. Agencies are already subject to administrative and legal requirements under other legislation, for the taking of appropriate steps to deal with wrongdoing, including under the *Crime and Corruption Act 2001* (Qld). The same is true for procedural fairness to all parties involved in the reporting process.

As noted at the outset of our submission, the *PID Act* regime is intended to support, but not replicate or replace, the investigative powers and responsibilities that go with dealing with reports of wrongdoing under different Queensland legislation. Instead, the requirements and protections created by this Act should 'overlay' (or 'underpin') the rest of the integrity system, and remain focused on the protections and administrative requirements that are uniquely needed for whistleblowing matters – not create a different, separate "track" for the investigation and remediation of wrongdoing such as corrupt conduct, or maladministration, as if this Act is an all-encompassing statute for the management of these matters. See also our response to Q27 and Q40.

Q26. Should a discloser be able to opt out of protections afforded under the Act, such as the requirement to receive information or be provided support? Should this only apply to role reporters, or to any type of discloser?

No, we do not support providing an option for whistleblowers to 'opt out' of the *PID Act* scheme. Whistleblowers who do so may not be accurate in their assessment of the risks (previous research has suggested that there is a cohort of 'naïve' whistleblowers who come forward unaware of the risks they face at the time of making a report, and who are therefore often at higher risk, but these are the most likely to 'waive' protections[10]). Whistleblowers may also come under pressure from agencies or managers to waive their rights, in order to ease administrative burdens or for other reasons.

We also believe it is preferable to remove administrative burdens on agencies in relation to role reporters or other witnesses in a systematic way, rather than create individual 'opt out' options, as discussed above.

3.7. Protections for disclosers, subject officers and witnesses

Q27. Are the current protections for disclosers, subject officers and witnesses appropriate and effective? Should additional or alternative protections be considered?

No, the current protections for whistleblowers ('disclosers') are not appropriate or effective, and yes, additional and alternative approaches to protection are needed. See Questions 29 and 31-34 below for detail.

For witnesses, it should be remembered that the existing reprisal provisions (criminal offence and civil remedies) are already both available to any person, as a result of a disclosure – not simply the whistleblower. However, if there is a perceived need to enhance administrative obligations under the Act to ensure witnesses are more actively supported and protected, this should be taken, especially as there may be no "bright line" distinction between an original whistleblower and someone who provides critical information as a witness, in many cases. Protections for witnesses should also already be available under other legislation.

For subject officers, see our response to Question 25(b), above. While there is a case for the Act to reinforce an agency's duties towards all other parties to an investigation, including subject officers, this should be seen as a secondary rather than primary purpose of this Act. As noted at the outset, the *PID Act* regime is intended to support, but not replicate or replace, the investigative powers and responsibilities that go with dealing with reports of wrongdoing across Queensland legislation. This Act should 'overlay' (or 'underpin') the rest of the integrity system, focused on the protections and administrative requirements that are uniquely needed for whistleblowing matters – not seek to create or replicate the entire complaint and investigation management process, as if this Act is the all-encompassing statute for complaint management.

[10] Anderson, P. 1996, Controlling and managing the risk of whistleblower reprisal, Paper presented at the Australian National Occupational Stress Conference, March 1996, Brisbane, Australia.

Q28. Are the current provisions about confidentiality adequate and fit for purpose? Should any improvements be considered?

We consider that the existing approach to confidentiality is adequate, with principle-based exceptions sufficient. We do not recommend seeking to provide further prescriptive clarity, given experience has shown that more exhaustive detail gives rise to undesirable technicities and uncertainties.

Q29. Is the definition of reprisal appropriate and effective? Do any issues arise in identifying, managing and responding to reprisals?

No, the current definition of reprisal is neither appropriate or effective.

First, and fundamentally, the very concept of 'reprisal' has been shown by experience to only be appropriate for the criminal offence of threatening or undertaking detrimental conduct, where either an intention to retaliate or punish a whistleblower, or a level of recklessness as to the impact of specific conduct on a whistleblower, is present and can be shown. These circumstances, while serious, are relatively infrequent in practice (and even more difficult to prove, even when they occur). While the criminal offence of reprisal (or 'victimisation') should be retained, both as a matter of justice and for its valuable deterrent effect, that specific concept should be reserved for criminal or disciplinary sanctions where there are issues of individual fault. Even then, reform is needed to ensure such sanctions can be properly investigated and prosecuted (see Question 32 below).

For civil, employment or administrative remedies to be triggered, the Act needs to recognise that the types of detriment suffered by whistleblowers may often (usually) flow not from circumstances of 'reprisal' (as above), but from acts or omissions by managers, agencies or colleagues which involve no intended retaliation – or not any that can be proved – but have been caused or worsened by simple mistakes, or as a result of breach of a duty of care towards the whistleblower or the process. We recommend that the basis for civil and other remedies – while they should also be triggered by any criminal or disciplinary offence of reprisal – be constituted independently of the concept of 'reprisal' in the Act, and flow from a wider definition of 'detrimental conduct' (including by omission, as well as action) which need not hinge on an express or implied requirement for a person or agency to either intend or know that their conduct will be harmful (provided that unjustified detriment was indeed caused by the relevant acts or omissions in response to the disclosure). This is a critical issue for reform, as discussed in section 2.2.

Further, the definition of 'detriment' (Schedule 4 in the Act) which underpins both lines of response (criminal and civil) should be further broadened, in line with the definition in the *Corporations Act 2001* (Cth): s.1317ADA. The Queensland definition is already wider than in some other legislation, such as the Commonwealth *PID Act* which is in process of being amendment in line with point 10 of the *Roadmap*. It would be beneficial if the Queensland definition was fully comprehensive and also more consistent with that federal provision.

Finally, there is a primary problem with the accessibility of current remedies with regards to reprisals, which is the lack of clear and effective enforcement responsibilities and machinery. This is a critical issue for reform (see section 2.1) and is addressed in response to several questions below.

Q30. Is there a role for an independent authority to support disclosers in Queensland? If so, what should its role be?

Strengthening institutional oversight arrangements of the *PID Act*, such as through the establishment of a dedicated whistleblower protection authority or office, is one of the most significant areas of reform needed – see point one of our *Roadmap* and section 2.1 above.

Importantly, there is clear need for more than the existing combination of administrative oversight provided by the QO, rarely used alternative dispute resolution functions of the Queensland Human Rights Commission (**QHRC**) and potential, but problematic enforcement powers of the Crime and Corruption Commission (**CCC**). In addition to suffering from the legal and operational uncertainties described in response to Question 29 and below, the current roles are both fragmented and incomplete. See the **Appendix** below, drawn from doctoral research in progress, which provides a map of existing institutional arrangements in Queensland. It identifies significant gaps, particularly in relation to:

- action to redress and compensate harm done whistleblowers;
- access to free legal advice tailored to the specific and individual needs of whistleblowers;
- access to career coaching and mental health services;
- systemic and individual reviews of organisations' compliance with legislative and administrative requirements;
- strategic coordination of roles performed by specific stakeholder groups across the system;
- identifying high-risk whistleblowing matters for early intervention;
- investigation of alleged detriment against a whistleblower that does not constitute corrupt conduct;
- independent review of investigations of alleged wrongdoing or detriment (where it does not constitute corrupt conduct) by an agency;
- ongoing review of the effectiveness of the PID regime; and
- regular consideration of the adequacy and effectiveness of the legislative and administrative framework.

Of these weak or missing functions, the lack of an independent agency with clear responsibility and power to investigate alleged or suspected detrimental conduct, and obtain remedies for whistleblowers is the most concerning. Currently, the agency with clearest responsibility to independently enforce protections is the Crime and Corruption Commission (**CCC**) – because it is the agency with independent capacity to investigate serious integrity-related criminal and disciplinary offences, because direct reprisals themselves constitute 'corrupt conduct', and because the CCC is the only agency currently identified by the Act as having a power to bring or intervene in civil (employment) proceedings on a whistleblower's behalf. However, as discussed at Question 37 below, the Logan City Council events show the inadequacy of both the current Act and the institutional arrangements meant to support it, in this regard.

Not all the above functions (or those listed in the Appendix) necessarily must be provided by one agency. However, experience shows that many need to be provided or oversighted by an authority or office which is independent of agencies and normal Executive government, and can be co-located in that authority or office, such as to now justify a specific purpose statutory function, with a range of those duties. A strength of

most *PID Act* oversight responsibilities being vested in one authority is that intelligence gained through performing a particular function can assist with the performance of others. This ensures that limited resources are employed where they are likely to have the greatest impact. While they may be need to avoid conflicts between support/advocacy and investigative/adjudicative roles, arrangements for this are not unusual in existing integrity and regulatory agencies.

Australian drafting precedents for the functions involved can be found in Part 9 of the *National Integrity Commission Bills 2018* (Cth), No. 1 and 2, and the *Australian Federal Integrity Commission Bill 2020*.

Scale of operation, and the need to integrate well with existing integrity agencies and processes, is likely to mean a preferred option of establishing these statutory functions as an office within, or attached to, an existing independent agency – rather than as a stand-alone whistleblowing authority. Our preliminary assessment of which existing agency might be most appropriate is as follows:

1. Crime & Corruption Commission – possibly, but only with statutory reform constituting the whistleblower protection commissioner as independent of (simply co-located with and supported by) the commission, to avoid the type of serious operational conflict discussed at Question 37, when disclosures concern corrupt conduct. An advantage would be greater ease in drawing on the Commission's investigative resources where appropriate and agreed, and to refer matters to the Commission where necessary.

2. Queensland Ombudsman – possibly, but with the same applying, especially in the light of the need for an ombudsman to work constructively with agencies across a wide range of matters of administration. A disadvantage is that in general, the roles and capacities of an ombudsman are not focused on investigating and resolving workplace and management conflicts, nor on active and direct enforcement, which are a large part of the expanded role. An advantage is that the Ombudsman already has the existing oversight and implementation responsibilities for the Act.

3. Queensland Human Rights Commission – this option is not recommended; see Question 33 below.

4. Possible Victims Commissioner (Discussion Paper, p.19) – this option is not recommended. Apart from the likelihood of similar issues arising as covered by Question 33 below, there are likely tensions or functional incompatibilities that may arise from perceptions that whistleblowers are automatically being classed as 'victims' or need to identify as such to approach or seek the assistance of the office. The risks of detrimental conduct against whistleblowers also go well beyond the primary 'victims of crime' scope of such a Commissioner.

5. Integrity Commissioner – this option should be explored, provided legislative amendments make this office an independent statutory body, rather than being located within the Department of Premier and Cabinet and subject to the executive government (as above). Advantages include the fact it would be clearer that the additional office is not responsible for investigating the substantive wrongdoing reported (in the way that the CCC has responsibility for investigating corrupt conduct, or the Ombudsman has responsibility for investigation maladministration), rather has advice, auditing, review, monitoring, dispute resolution and detriment remediation roles.

3.8. Remedies

Q31. Are the remedies available to disclosers under the PID Act reasonable and effective? Are any changes needed?

See our response to Question 29 above, and further questions below. Empirical research has found that too many whistleblowers continue to face undeserved detrimental outcomes, for which they are receiving none of the remedies intended by the legislation. The inadequacy of current arrangements for enforcing whistleblower protections is reinforced by the fact that not a single attempt to secure remedies under the *PID Act* has been successful since it was enacted. This must change.

In terms of the scope of civil and employment remedies, there is a strong case for provision for exemplary damages as increasingly provided in other jurisdictions. Consideration should also be given to a mandatory requirement for an adjudicative body, if recommending or awarding compensation, to calculate compensation on a comprehensive basis (e.g. taking into account the full impact of reputational damage on a person's career and ability to work), rather than on the more limited, conventional bases with which existing tribunals are familiar (e.g. in cases of wrongful dismissal).

The inadequacy of current remedies is underscored by the legal uncertainty as to whether they even have an independent forum. It is highly concerning that the Queensland Industrial Relations Commission (QIRC) ruled in *Kelsey v Logan City Council* that the *PID Act* is not a workplace law, and hence that its jurisdiction to hear claims under the *PID Act* is inherently limited, when it is the only relatively low-cost forum identified by the *PID Act* as able to independently adjudicate such claims on their merits. While this decision remains under appeal, if the QIRC is retained as one forum for pursuing remedies, then this should plainly be put beyond doubt.

Q32. Do the evidentiary requirements for remedies need amendment?

Yes. While overall the issue is less about evidentiary requirements, than the need for accessible remedies and an independent body to aid in the enforcement of them, several reforms are needed.

First, under any of the remedies (criminal or civil), the requirement that the unlawful ground for the reprisal or detrimental conduct must be at least 'a substantial ground' for the act or omission (sub-s. 40(5)), should be relaxed in line with other jurisdictions – for example the Commonwealth, where the conduct is impugned if the disclosure forms *any* part of the reason, or NSW which has been amended to provide that it need only be a *contributory* reason.

Second, we recommend that the burden of proof in civil claims be revised to include a reverse onus, as currently exists in the *Corporations Act 2001* (Cth) private sector protections and other legislation.

Third, it must be beyond doubt that the Act does *not* require the type of proof requirements for liability which are stipulated in the Commonwealth *PID Act* and *Corporations Act 2001* (Cth), and also even in the reform NSW Act. These requirements dictate that unlawful reprisals (criminal) or remediable detrimental acts or omissions (civil) can only be identified if the tribunal is satisfied that a person responsible held a 'belief or suspicion' that there was, or could be a disclosure, and that this 'belief or suspicion' was a reason for the detrimental act or omission. Whether or

not the onus is reversed, this is likely to remain an insurmountable barrier to relief in many if not most deserving cases, especially in relation to civil remedies. See point six of our *Roadmap*. Reform of the *PID Act* should recognise and not replicate this problem, in the way in which it has been replicated in NSW.

Q33. Are the provisions permitting complaints to the Queensland Human Rights Commission appropriate and effective? What role should alternative dispute resolution play in resolving disputes?

Alternative dispute resolution (ADR) has a key role to play in securing remedies and resolution of complaints of detrimental conduct. In general, this recommendation was a strength of the Ombudsman's 2017 review. However, experience shows that this role is only likely to be effective if the right to ADR is triggered early in any case, when there is still a chance that trust between an organisation and a whistleblower has not totally broken down or can be restored; and is overseen or managed by an agency or office independent of the agency, who will also then have power (and responsibility) to formally investigate the alleged detrimental conduct if the opportunity for mediation fails. Anything less, is unlikely to break through whatever issues have prevented a solution within the agency in the first instance.

This is reinforced by experience in Queensland, where the QHRC is one of the avenues of last resort rather than one with visibility of all contested whistleblowing matters, and has conciliated less than 10 matters each year. As the then Anti-Discrimination Commission noted in their submission to the Queensland Ombudsman's review (p. 3), this reinforces the limitations of such an approach: "Usually by the time a complaint of reprisal is made to the Commission the relationship between the parties has broken down almost irretrievably." They do not have the powers to investigate complaints or to make a determination on whether or not a breach of the *PID Act* has occurred. The nature of detrimental conduct investigations and resolution is also fundamentally different to the types of discrimination matters which are the core of the QHRC's work, principally addressing mistreatment of individuals based on their personal characteristics. This may be complex, but the mistreatment of whistleblowers is usually significantly *more* complex. Specialist capabilities and experience are needed. We therefore recommend that ADR functions be enhanced in the scheme, but relocated to an independent, central whistleblowing body or office.

Q34. Do you support an administrative redress scheme for disclosers who consider they have experienced reprisals?

See our answer to Q33. There is strong value in administrative redress scheme, to fast track solutions (including remedies such as compensation) without waiting for the time, conflict and costs involved in formal investigations or litigation. However, it is not appropriate, nor likely to be effective, for agencies to administer their own administrative redress schemes, with only a right of review by an external party. Under proposed improved remedies, including an enforceable agency duty to support and protect (see Q30), agencies would always have both power and responsibility to address problems administratively, once identified or conceded. The value of an additional administrative redress scheme would be if it was administered directly by an independent whistleblowing authority or office, and used to support both its ADR functions and investigative functions as part of enforcing protections.

3.9. Role of the oversight agency

Q35. Are the Queensland Ombudsman's functions and powers suitable and effective for the purpose of the oversight body?

While the Queensland Ombudsman performs an appropriate role in administering the PID scheme, including by providing education and advice to the public sector, they are not properly resourced nor have the legislative functions to fully handle and resolve complaints about detrimental conduct or how PIDs have been handled. Significant information is provided by agencies into their RAPID database; however, this is not used to identify matters where early intervention by an oversight body could and should be undertaken. Irrespective of whether the existing administrative support functions for the Ombudsman are retained or transferred to a new body or office, more robust functions are needed, including those that can only assumed by an independent specialist whistleblowing authority or office, as discussed above.

Q36. Are there any conflicts between the Queensland Ombudsman's advisory and review functions for PIDs? If yes, how could these be managed or resolved?

We do not consider there to be any tension between the QO's advisory and review functions. We do consider there to be a tension in terms of the QO's roles and a more robust function providing advocacy and support for whistleblowers. However, multiple roles can be vested within the same body provided the tension is managed effectively. The US Office of Special Counsel, for example, has an investigation and enforcement team that inquires into allegations of retaliation against whistleblowers, and a separate function providing alternative dispute resolution between whistleblowers and their agency. The conflict between these two functions is addressed through a complete internal separation, information firewalls and so on. Similarly, the tension between an oversight and advisory function and a support function could be managed through outsourcing – a whistleblowing authority could administer funds to provide whistleblowers with legal or psychological support provided by contracted third parties.

Q37. Do the roles of integrity bodies overlap during the PID process? Are changes needed or do the existing arrangements work effectively?

Yes, the roles of current agencies can overlap, and this is likely to remain the case even with effective reform. However, there is scope for significant streamlining of the processes to achieve better results, more quickly, if reform is undertaken in line with our responses to the questions above.

Strategic coordination of the roles performed by different integrity bodies could be enhanced by establishing a PID Steering Committee, as is provided for in the *NSW PID Act*. Membership of such a body should also include other stakeholders, including union, whistleblower advocacy or legal representatives.

In making recommendations about the distribution of oversight functions across the relevant integrity agencies – including creation of a new whistleblower protection authority or office – the Review should also pay special regard to two further lessons from the Logan City Council matter.

First, that matter demonstrated the consequences of the potential conflict in functions between investigation and protection roles. As the former CCC chair Alan MacSporran KC accurately sought to explain to the Parliamentary Crime and Corruption Committee when it reviewed their investigation, the core problem was the limited options available to the CCC to ensure that any whistleblower could actually be protected. In particular, while the CCC could have formally intervened in the Industrial Relations Commission to pursue remedies for the treatment of Ms Kelsey, it made a necessary call that this could compromise its primary job of investigating the Mayor's alleged corruption, as a key part of its decision not to do so. See Professor Brown's submission to the Commission of Inquiry into the CCC, at paragraphs 32-42 (pp.7-9).[11]

We suggest the Review ensure that the enhanced protection roles needed above, are expressed legislatively and located functionally in a manner that fully recognises and deals with the real potential for such fundamental conflict.

Second, the Parliamentary Committee in that matter assessed the CCC as having "no statutory duty" to protect a whistleblower at all, and hence as overstepping the mark – even when it is the only agency identified in the Act as having any power to bring or intervene in proceedings on a whistleblower's behalf. While we very much question the Parliamentary Committee's interpretation, it is also clear that it should now be put beyond doubt, under reformed statutory arrangements, that the responsibility of those charged with whistleblower protection functions is, indeed, to protect whistleblowers.

Q38. Are the Standards published by the Queensland Ombudsman effective? Are changes needed?

The Queensland Ombudsman's Standards provide comprehensive guidance in PID management systems, responding to a PID and keeping comprehensive information in relation to PIDs. In line with our response to question 43, there may be scope for ensuring they are suitable for all sizes and capabilities, as they appear to be designed for organisations with relatively mature PID systems.

Further, there is clear scope for identifying further key elements of PID management systems which should be required by legislation, and not simply left to the Standards. This especially applies to agency requirements to assess the risks of detriment to a whistleblower, to keep that assessment up to date (i.e. as a 'living' organisational response), and to take steps to support and protect a whistleblower in response to those risks, again on an ongoing basis. This is also a logical part of implementing an enforceable duty to support and protect, as recommended at question 25(c).

Whether the Standards are effective *in practice*, however, remains unknown without also vesting the oversight body with auditing and monitoring functions to ascertain whether public sector entities are complying with their obligations. In line with our response to question 30, proactive regulation and enforcement is vital.

[11] Submission of Professor A J Brown to Commission of Inquiry relating to the Crime and Corruption Commission, 11 April 2022 – https://www.cccinquiry.qld.gov.au/__data/assets/pdf_file/0005/726350/a-j-brown-professor-of-public-policy-and-law-griffith-university.pdf.

Q39. Do you agree with the recommendations of the Queensland Ombudsman's 2017 review?

Subject to the comments made in this submission, we broadly agree with the other recommendations of the QO 2017 review into the *PID Act*, while noting that those recommendations plainly did not go far enough on many key issues as better understood today.

3.10. Practical considerations

Q40. Should the PID legislation be more specific about how it interacts with any other legislation, process or scheme?

We would caution against revising the *PID Act* to be overly prescriptive in its interaction with other legislation, given the risk of added complexity. We prefer a principles-based approach, which avoids inconsistencies between the *PID Act* and other legislative or common law requirements. We address the interaction between the *PID Act* and workplace law above.

Q41. Should the PID legislation include incentives for disclosers? If so, how should they operate?

In principle, we support the use of incentive schemes to encourage whistleblowing. Incentive schemes, both through rewards programs and the availability of *qui tam* provisions, have a long history of success in the United States. The establishment of a whistleblowing incentive program at a federal level was endorsed by the 2017 inquiry of the Parliamentary Joint Committee on Corporations and Financial Services.

In our *Roadmap*, we suggested that the establishment of a federal whistleblower protection authority would provide an appropriate body to administer such a scheme. We would echo these comments in the Queensland context. We have not had an opportunity to consider in detail the possible design and operation of a Queensland incentive scheme, but would be glad to engage further on this matter.

Q42. Are current arrangements for training and education about the PID Act effective? How could they be improved?

Currently, the QO is provided with only limited resources to fulfill its functions under the *PID Act* in respect of training and education. It is therefore necessarily constrained in the number of persons it can train and educate, as well as in the methods for doing so.

While some public officers may only need to know of their duty to recognise and report public interest wrongdoing, a significant number of front-line supervisors and managers require training in what constitutes public interest wrongdoing, the steps to take if they become concerned such conduct is occurring, and how to appropriately support staff who raise concerns. An added complexity is the constant movement of officers in and out of these roles.

The establishment of a dedicated whistleblowing authority or office would provide impetus for additional focus on training across the Queensland public service. Such a body should be funded accordingly.

Q43. How could an effective PID scheme provide for the needs of First Nations Peoples, culturally and linguistically diverse people and those in regional or remote communities?

We consider that more work can and should be done to ensure the *PID Act* is accessible and responsive for all Queenslanders who interact with the scheme, and particularly First Nations Peoples, culturally and linguistically diverse people and those in regional or remote communities. Consideration should be given to ensuring up to date information on whistleblower protections are expressed in a way that is accessible (including potentially being available in different languages, including First Nations languages) and that whistleblower-facing staff at a whistleblowing authority are trained in cultural safety.

There is also a particular context relating to reprisal risk in regional or remote communities, where it is less likely a whistleblower's identity can be kept confidential. There may also be a heightened risk of ostracism, and difficulties offering protection against social and other reprisals in communities where work and social life overlap.[12] One important consideration is that Indigenous councils are local government entities covered by the *PID Act*; these councils are often small and regionally based. By the very nature of these organisations, public officers may face an increased risk of reprisal for reporting serious wrongdoing.

The *PID Act*, and any standards with which public sector entities need to comply, must therefore be designed taking into account the range of organisations within its jurisdiction in terms of size and capacity. The oversight body tasked with assisting public sector entities should develop practical resources to assist small entities meet their obligations, including what strategies are effective in mitigating detriment when confidentiality is not possible, and ensure that any training and awareness activities extend to remote and regional communities.

Q44. Is the PID Act accessible and easy to understand? How could the clarity of the Act be improved?

It is critically important that the structure and language of the *PID Act* is as simple and non-legalistic as possible to ensure it can be understood by all potential whistleblowers. We therefore strongly support taking a principles-based approach to any redrafting of the legislation, rather than it being overly prescriptive or procedural.

[12] 4. L. Zipparo 1999, Encouraging public sector employees to report workplace corruption, Australian Journal of Public Administration, 58(2), p.83-93.

Appendix: Institutional roles in whistleblowing oversight in Queensland

The following mapping by Olsen (PhD in progress) builds on roles first articulated in Loyens, K., & Vandekerckhove, W., 2018, 'Whistleblowing from an international perspective: A comparative analysis of institutional arrangements'. *Administrative Sciences, 8*, 30-45.

Function	**Role**	**Description**	**Current responsibilities & gaps - Partial (yellow) or total (red)**
Advisory	Awareness	General awareness-raising of the importance of whistleblowing in detecting and deterring wrongdoing	Queensland Ombudsman (QO), also public sector entities and CCC
	Training	Dissemination of information, skill development and capacity-building targeted at specific stakeholder groups	QO
Support	Prevention	Early intervention in high-risk whistleblowing matters through advice and assistance to the whistleblower and/or the organisation	Advice and assistance provided by QO but no mechanism to identify high-risk matters
	Conciliation	Access to alternative dispute resolution process	QHRC
	Legal support	Access to free legal advice tailored to the specific and individual needs of whistleblowers	-
	Psychosocial support	Access to career coaching and mental health services	-
Investigative	Investigation of wrong-doing	Investigation of the alleged wrongdoing aimed at fact finding and causal allocation of facts to outcomes	Various bodies, including public sector entities, CCC, QO, EPA
	Investigation of detriment	Investigation of alleged detriment against a whistleblower	CCC – but only in relation to reprisal
	Review of investigations	Independent review of investigation of alleged wrongdoing or detriment by an organisation	CCC – but only in relation to corrupt conduct or reprisal
Adjudicative	Corrective action	Action taken to remediate and sanction wrongdoing	Public sector entities and CCC in relation to corrupt conduct
	Protection	Action taken to redress and compensate harm done whistleblowers	-

Institutional	Auditing	Systemic and individual reviews of organisations' compliance with legislative and administrative requirements	-
	Monitoring	Ongoing review of the implementation of the system, including through annual reporting on key performance indicators	QO – but limited reporting in terms of regime effectiveness as opposed to outputs
	Coordination	Strategic coordination of roles performed by specific stakeholder groups across the system	-
	Policy evaluation	Regular consideration of the adequacy and effectiveness of the legislative and administrative whistleblower protection framework	QO – but not on an ongoing basis