

22 February 2023

Public Interest Disclosure Review Secretariat
Strategic Policy and Legal Services
Department of Justice and Attorney-General
GPO Box 149
BRISBANE QLD 4001

Submitted via: PIDActReview@justice.qld.gov.au

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

Thank you for the opportunity to comment on the review of the *Public Interest Disclosure Act 2010* (the Act).

As the Public Advocate for Queensland, I undertake systemic advocacy to promote and protect the rights and interests of Queensland adults with impaired decision-making ability.¹

To this end, the Act plays a vital role, allowing any member of the public to gain the protections of the Act when reporting substantial and specific dangers to the health and safety of a person with disability.

This provision of the Act was carried over from the *Whistleblower Protection Act 1994*. It acknowledges that people with disability are particularly vulnerable to abuse, and consequently allows people (and particularly disability service providers) to report practices and actions that threaten the safety and wellbeing of people (clients).²

In the review of the Act released by the Queensland Ombudsman in 2017, it was recommended that this provision be removed. In making this recommendation, the Ombudsman noted low numbers of reports being made under the provision, and that there are a 'range of alternative legislative and administrative schemes' that allow such reports to be made about people with a disability.³

It appears that this recommendation potentially did not consider factors including:

- A low level of public awareness about the Act itself, meaning that people are unlikely to be aware that they can make reports of this nature. Given that one of the functions under the Act is for the Ombudsman to promote and provide education about the Act,⁴ there may need to be some consideration given to the development of a public awareness campaign regarding the Act and how it works.
- The alternative legislative and administrative schemes available through which to report issues for people with disability are largely 'complaint' based mechanisms, where specific issues must be reported to agencies which have relevant jurisdiction. The Act, however, allows for a 'no wrong door' approach, where referrals can be made from one agency to another more appropriate agency while still guaranteeing whistle-blower protections.
- People with disability can have specific vulnerabilities that do not allow them to speak out for themselves. The Act makes it possible for another person to report concerns, which is appropriate in these circumstances.

¹ *Guardianship and Administration Act 2000* (Qld) s 209.

² Explanatory Note, *Whistleblower Protection Bill 1994* (Qld) p13.

³ Clarke, P. (2017). *Review of the Public Interest Disclosure Act 2010*. Brisbane, QLD: Queensland Ombudsman p25.

⁴ *Public Interest Disclosure Act 2010* (Qld) s 59.

Unfortunately, as has been evidenced at the hearings of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, people with disability remain exposed to practices that threaten their safety and wellbeing. It is therefore critically important to maintain any existing safeguards that encourage reporting of such practices and make individuals and communities safer.

Other issues


The establishment of a 'clearing house' to support the administration of the Act was noted as an idea in the issues paper. It is anticipated that a clearing house would assist in making reporting under the Act more accessible, especially for members of the public. Although my role as Public Advocate does not allow me to act for individuals, my office nevertheless receives numerous calls and enquiries from people who are confused or simply do not know how to raise potential issues that they wish to pursue. The establishment of a clearing house to which to make reports may resolve some of this confusion and would likely result in more consistent handling of enquiries, particularly in relation to the referral of issues to the proper authorities.

The establishment of a clearing housing will, however, need to be balanced with the 'no wrong door' provision of the current Act, which should be retained for members of the public when reporting concerns. The proposed clearing house will also need to establish strong working relationships with Ethical Standards Units (or equivalent) across government to ensure that clear and consistent policies associated with the referral of public interest disclosures are maintained.

As a final comment, in order to elevate public understanding of the legislation under review, I would support use of the words 'whistle-blower protection' in an amended title.

Thank you again for the opportunity to provide feedback regarding the review of the *Public Interest Disclosure Act 2010*. If you require clarification of any recommendations included in this submission, please contact my office on 07 3738 9513.

Yours sincerely



John Chesterman (Dr)
Public Advocate