

**Parliamentary Joint Committee on Corporations and Financial Services
Inquiry into Whistleblower protections in the corporate, public and not-for-profit sectors**

**Public Hearing
Brisbane 23 February 2017**

Questions on Notice to Office of the Queensland Ombudsman

QUESTION

Senator XENAPHON:

Can I just invite ... the ombudsman's office ... to comment on notice in respect of the changes that were made through the Registered Organisations Act. The relevance of that is not only the protections there for whistleblowers but dealing with the issue of the good faith fetter, which has been a significant problem; issues of exemplary damages; and issues of a civil remedy for reprisals which would change issues of onus, and the general process of dealing with them.

RESPONSE

Noting that the *Fair Work (Registered Organisations) Act 2009* (Cth) applies to parties not within the jurisdiction of the Office of the Queensland Ombudsman jurisdiction, the following general observations based on the principles which underpin the *Public Interest Disclosure Act 2010* (Qld) (the PID Act), may assist the Committee.

The test for what amounts to a public interest disclosure (PID) in the amended Fair Work (Registered Organisations) Act is broadly similar to the test in the PID Act. The PID Act provides two alternative limbs that can be satisfied to meet the test. That is, either the person making the disclosure 'honestly believes on reasonable grounds that the information tends to show the conduct or other matter, regardless of whether the information tends to show the conduct or other matter'¹ or 'the information tends to show the conduct or other matter, regardless of whether the person honestly believes the information tends to show the conduct or other matter'.²

As a safeguard against vexatious or malicious disclosures, the PID Act provides an offence provision if a person making a statement intending it to be acted on as a public interest disclosure gives information that is false or misleading.³ A public officer who contravenes that provision is also guilty of misconduct and may be subject to dismissal or disciplinary action.⁴

¹ Refer to s.12(3)(a) and s.13(3)(a) of the *Public Interest Disclosure Act 2010*.

² Refer to s.12(3)(b) and s.13(3)(b) of the *Public Interest Disclosure Act 2010*.

³ Refer to s.66 of the *Public Interest Disclosure Act 2010*.

⁴ Refer to s.67 of the *Public Interest Disclosure Act 2010*.

Protections for whistleblowers in the PID Act extend beyond the protection from reprisal, although this is a central object of the Act, and is supported by a wide-ranging definition of the types of detriment which amount to reprisal.⁵ In addition, the PID Act provides for:

- protection of confidential information relating to the public interest disclosure, including identifying information about the discloser, subject officer and other parties, with certain exceptions for the purposes of administration of the PID Act⁶
- the making of anonymous disclosures⁷
- the protection of disclosures made involuntarily under a legal requirement⁸
- immunity from civil or criminal liability or liability by way of administrative process, including disciplinary action, for a person making a disclosure,⁹ and
- waiver of any duty or obligation to maintain confidentiality or restriction on disclosure in relation to the information disclosed.¹⁰

Once the information meets the test of a public interest disclosure under the PID Act, the protections continue to apply irrespective of whether the disclosure is assessed as requiring investigation and, if so, whether it is subsequently substantiated.

QUESTION

Senator KETTER: How many public interest disclosures have been made by members of the police force? Are you able to provide that?

RESPONSE

Table 1 reports data on internal disclosures (that is disclosures by officers and staff), reported by the Queensland Police Service (QPS), to the oversight agency (the Public Service Commission prior to 1 January 2013 and the Office of the Queensland Ombudsman subsequently), over the last five years since the *Public Interest Disclosure Act 2010* (Qld) (the PID Act), came into effect.

Table 1: Internal PIDs reported by QPS

Disclosure type	Notes	2011-12	2012-13	2013-14	2014-15	2015-16
		#	#	#	#	#
Official misconduct	1	199	179	222	5	
Corrupt conduct	2			2	128	121
Other						3
TOTAL		199	179	224	133	124

Notes:

1. Official misconduct ceased to be a type of PID on 30 June 2014.
2. Corrupt conduct became a type of PID on 1 July 2014.

⁵ Refer to definition at Schedule 4 of the *Public Interest Disclosure Act 2010*.

⁶ Refer to s.65 of the *Public Interest Disclosure Act 2010*.

⁷ Refer to s.17 of the *Public Interest Disclosure Act 2010*.

⁸ Refer to s.22 of the *Public Interest Disclosure Act 2010*.

⁹ Refer to s.36 of the *Public Interest Disclosure Act 2010*.

¹⁰ Refer to s.37 of the *Public Interest Disclosure Act 2010*.

QUESTION

Senator KETTER:

... You said that the majority of the complaints were in respect of corrupt conduct or fraud. So you do not have a rough idea of the agency breakdown?

RESPONSE

Table 2 presents data on the number of public interest disclosures reported to the oversight agency (the Public Service Commission prior to 1 January 2013 and the Office of the Queensland Ombudsman subsequently), over the last five years since the *Public Interest Disclosure Act 2010* (Qld) (the PID Act), came into effect. The table separately identifies disclosures made by 'public officers' under s.13 of the PID Act and disclosures made by 'any person' under s.12 of the PID Act.

Table 2: PIDs reported by disclosure type

Disclosure type	Notes	2011-12		2012-13		2013-14		2014-15		2015-16	
		#	%	#	%	#	%	#	%	#	%
s.13 disclosures											
Official misconduct	1	1062	89.8	1036	90.9	658	90.8	26	4.9	-	-
Corrupt conduct	2	-	-	-	-	-	-	415	77.6	514	87.9
Maladministration		34	2.9	15	1.3	16	2.2	40	7.5	15	2.6
Misuse of public resources		31	2.6	33	2.9	20	2.8	15	2.8	17	2.9
Public health & safety		7	0.6	4	0.4	7	1.0	5	0.9	5	0.9
Environment		0	0.0	0	0.0	2	0.3	1	0.2	5	0.9
subtotal		1134		1088		703		502		556	
s.12 disclosures											
Disability		26	2.2	41	3.6	14	1.9	20	3.7	23	3.9
Environment		2	0.2	0	0.0	3	0.4	4	0.7	1	0.2
Reprisal		21	1.8	11	1.0	5	0.7	9	1.7	5	0.9
subtotal		49		52		22		33		29	
TOTAL	3	1183		1140		725		535		585	

Notes:

1. Official misconduct ceased to be a type of PID on 30 June 2014. However, 26 PIDs about official misconduct made in 2013-14 were reported to the oversight agency in 2014-15.
2. Corrupt conduct became a type of PID on 1 July 2014.
3. A PID may include more than one type of disclosure (for example, corrupt conduct and maladministration); therefore, the number of PIDs by disclosure type may exceed the number of PIDs reported by agency type.

Analysis of the data shows that:

- most PIDs (on average 89%) were about 'corrupt conduct' (or prior to 1 July 2014 'official misconduct')
- between 2-3% of PIDs were about maladministration
- on average, 2.8% of PIDs concern misuse of public resources
- less than 2% of PIDs were about reprisal action.

Table 3 compares the number of public interest disclosures by agency type:

Table 3: PIDs reported by agency type

Disclosure type	Notes	2011-12		2012-13		2013-14		2014-15		2015-16	
		#	%	#	%	#	%	#	%	#	%
Departments	1										
Queensland Police Service						227	32.5	136	27.6	125	22.1
Department of Education and Training						35	5.0	62	12.6	72	12.7
Queensland Health						67	9.5	49	9.9	53	9.3
Department of Communities, Child Safety and Disability Services						35	5.0	21	4.2	27	4.7
Department of Transport and Main Roads						25	3.5	8	1.6	22	3.8
Department of Housing and Public Works						18	2.5	7	1.4	15	2.6
Other						29	4.1	9	1.8	18	3.1
subtotal		961	83.3	626	56.1	436	62.5	292	59.3	332	58.8
Local councils		119	10.3	96	8.6	83	11.9	68	13.8	59	10.4
Universities		9	0.8	32	2.9	23	3.3	11	2.2	5	0.9
Statutory authorities		3	0.3	220	19.7	111	15.9	103	20.9	130	23.0
GOCs		54	4.7	136	12.2	39	5.6	12	2.4	34	6.0
Public service offices		8	0.7	6	0.5	6	0.9	6	1.2	5	0.9
TOTAL	2	1154		1116		698		492		565	

Notes:

1. Due to structural changes resulting in amendments to the database the breakdown for agency data for 2011-12 and 2012-13 can not be provided.
2. A PID may include more than one type of disclosure (for example, corrupt conduct and maladministration); therefore, the number of PIDs by disclosure type may exceed the number of PIDs reported by agency type.

Analysis of the data shows that:

- most PIDs (on average 60% in each of the past four years) are made about State Government departments and public service offices
- approximately 11% of PIDs are made about local governments each year
- PIDs made about public universities represent on average 2% of PIDs each year.

It should be noted that comparisons of PIDs about statutory authorities and Government Owned Corporations are influenced by changes in the governance structures of agencies over time.