

Public Interest Disclosure procedure

1. Purpose

This procedure describes the processes for maintaining integrity and promoting the public interest through effective assessment, investigation, management and reporting of a Public Interest Disclosure (PID). Accordingly, the Department of State Development and Infrastructure (the department) will provide support and protection to employees and others who disclose matters in the public interest. This procedure demonstrates this commitment, in accordance with the *Public Interest Disclosure Act 2010* (the PID Act) issued by the Queensland Ombudsman.

2. Scope

This procedure applies to:

- » all departmental employees and non-employees including contractors, consultants, volunteers and any other person or entity who provides the department with services on a paid or voluntary basis
- » any member of the general public making a public interest disclosure as defined under the PID Act.

3. Associated policy

This procedure is to be read in conjunction with the [Complaints management policy](#).

4. Procedure

4.1 What is a PID?

Under the PID Act, any person can make a disclosure about a:

- » substantial and specific danger to the health or safety of a person with a disability
- » the commission of an offence, or contravention of a condition imposed under a provision of legislation mentioned in Schedule 2 of the PID Act, if the offence or contravention would be a substantial and specific danger to the environment
- » reprisal because of a belief that a person has made, or intends to make, a disclosure.

In addition, a public sector officer can make a disclosure about the following public interest matters:

- » corrupt conduct
- » maladministration that adversely affects a person's interests in a substantial and specific way
- » a substantial misuse of public resources
- » a substantial and specific danger to public health or safety
- » a substantial and specific danger to the environment.

A discloser can have either a 'reasonable belief' that wrongdoing has occurred or provide evidence which tends to show the wrongdoing has occurred.

A disclosure amounts to a PID and is covered by the PID Act even if the:

- » discloser reports the information as part of their duties, such as an auditor reporting a fraud or a workplace health and safety officer reporting a safety breach
- » disclosure is made anonymously
- » discloser has not identified the material as a PID, as it is up to the department to assess the information received and decide if it is a PID
- » disclosure is unsubstantiated following investigation. The discloser is protected when the information provided is assessed as a PID, whether it is subsequently investigated or found to be substantiated.



4.2 Why make a PID?

Employees and members of the general public, who are prepared to speak up about public sector misconduct, wastage of public funds, suspected unlawful activity or danger to health, safety or the environment, can be the most important sources of information to identify and address problems in public sector administration. The department values and supports the disclosure of information about wrongdoing because:

- » implementing systems for reporting and dealing with wrongdoing contributes to the integrity of the department
- » the outcomes of PIDs can include improvements to systems, policies or procedures that prevent fraud and other economic loss
- » the community’s trust in public administration is strengthened by having strong processes in place for reporting wrongdoing.

When making a PID, disclosers receive the protection provided under the PID Act, including:

- » confidentiality – the discloser’s name and other identifying information will be protected and maintained in confidence to the extent possible
- » protection against reprisal – the discloser is protected from detrimental treatment by the department, its employees or other persons following a PID
- » immunity from liability – the discloser cannot be prosecuted for disclosing the information but is not exempt from action if they have engaged in wrongdoing
- » protection from defamation – the discloser has a defence against an accusation of defamation for making a PID.

4.3 Who can make a PID?

Any person can make a PID to the ‘proper authority’.

Disclosers are encouraged to make a disclosure to an appropriate departmental officer first. If the matter is not resolved, or the discloser is concerned about confidentiality, the disclosure may be made to another appropriate agency.

Who to contact within the department	Other agencies that can receive PIDs
<p>Disclosers can make a PID to:</p> <ul style="list-style-type: none"> » any person in a management or supervisory position » the Integrity and Workplace Relations Team » the Chief Executive Officer, Coordinator-General or Deputy Directors-General. 	<p>Disclosures can be made to an agency that has a responsibility for investigating the information disclosed:</p> <ul style="list-style-type: none"> » Crime and Corruption Commission (CCC) for disclosures about corrupt conduct including reprisal » Queensland Ombudsman (QO) for disclosures about maladministration » Queensland Audit Office for disclosures about a substantial misuse of resources » Child Safety, Seniors and Disability Services for disclosures about danger to the health and safety of a child or young person and/or person with a disability » Office of the Public Guardian for disclosures about danger to the health and safety of a person with a disability » Department of Environment and Science for disclosures about danger to the environment » A member of the Legislative Assembly (MP) for any wrongdoing or danger <p>The Chief Judicial Officer of a court or tribunal in relation to a disclosure about wrongdoing by a judicial officer.</p>

A disclosure can also be made to a journalist if the following conditions have been met:

- » a valid PID was initially made to a proper authority; and
- » the proper authority:
 - decided not to investigate or deal with the disclosure, or
 - investigated the disclosure but did not recommend taking any action, or
 - failed to notify the discloser within six months of making the disclosure whether the disclosure was to be investigated or otherwise dealt with.

A person who makes a disclosure to a journalist in these circumstances is protected under the PID Act. However, disclosers should be aware that journalists are not bound under the confidentiality provisions of section 65 of the PID Act.

4.4 Making a PID

A discloser can make a PID in any way, including anonymously, either verbally or in writing. To assist in the assessment, and any subsequent investigation of a PID, disclosers are requested to provide:

- » contact details (this could be an email address that is created for the purpose of making the disclosure or a telephone number if the matter was made anonymously)
- » as much information as possible about the suspected wrongdoing, including who was involved, what, when and where it happened or whether there were any witnesses and any evidence that supports the PID
- » information in writing via email to complaints@dsdilgp.qld.gov.au

It is an offence under the PID Act to intentionally give false or misleading information intending it to be acted on as a PID. Employees may be subject to disciplinary action for intentionally giving false or misleading information in a PID or during an investigation into a PID. Mere disagreements over policy do not meet the threshold for a PID under the PID Act.

4.5 Communication with disclosers

Under the PID Act, the department must give reasonable information to a discloser.

The department will acknowledge receipt of the PID in writing as soon as practicable. The discloser will be provided with information that meets the requirements of the PID Act and the PID standards including:

- » the action that will be taken in response to the PID
- » the protections under the PID Act
- » confidentiality obligations of the discloser and the department
- » support arrangements.

The department will maintain contact with the discloser and provide regular updates during the management of the PID.

In accordance with the PID Act, after finalising action in response to the PID, the department will advise the discloser in writing of the action taken and the results of the action.

4.5 Deciding whether a matter is a PID

The disclosure will be assessed by the department in accordance with the PID Act, the PID standards, the department's PID procedure and any other relevant policies and procedures.

Investigation of a PID will be done with consideration for the:

- » principles of natural justice
- » obligations under the PID Act to protect confidential information and protect officers from reprisal
- » interests of subject officers.

If as a result of investigation, the information about wrongdoing provided in the PID is substantiated, appropriate action will be taken.

If there is any doubt as to whether a matter is a PID, further information may be obtained to inform the decision. If doubt remains, the matter will be considered and managed as a PID.

Whether or not the investigation substantiates wrongdoing, the department will review systems, policies and procedure to identify whether there are improvements that can be made and consider if staff training is required.

4.6 Agreeing to act on a PID

Where a discloser states they are making a PID and the department assesses that the matter is a PID, the discloser will be advised:

- » that their information has been received and assessed as a PID
- » the action to be taken by the department in relation to the disclosure, including the possibility of referring the matter to an external agency
- » the likely timeframe involved
- » the name and contact details of the PID support officer they can contact for updates or advice
- » the discloser's obligations regarding confidentiality
- » the protection they have under the PID Act
- » the department's commitment to keep appropriate records and maintain confidentiality, except where permitted under the PID Act
- » how updates about intended actions and outcomes will be provided to the discloser
- » contact details for the department's employee assistance program (for employees only).

4.7 Declining to act on a PID

Under the PID Act, the department may decide not to investigate or deal with a PID in various circumstances including:

- » the information disclosed has already been investigated or dealt with by another process
- » the information disclosed should be dealt with by another process
- » the age of the information makes it impractical to investigate
- » the information disclosed is too trivial and dealing with it would substantially and unreasonably divert the department from the performance of its functions
- » another agency with jurisdiction to investigate the information has informed the department that an investigation is not warranted.

Where a discloser states they are making a PID and the department assesses that the matter is not a PID, the discloser will be advised:

- » that their information has been received but was not assessed as a PID
- » the reasons for the decision
- » the review rights available if the discloser is dissatisfied with the decision and how to request a review
- » any action the department proposes to take in relation to the matter
- » any other options the discloser has in relation to the matter.

If the discloser is dissatisfied with the decision, they can request a review by writing to the department's Chief Executive within 28 days of receiving the written reasons for the decision.

4.8 Referring a PID to another entity

If the department determines there is another proper authority that is better able to deal with the PID, the PID may be referred to that agency. This may be because:

- » the PID concerns wrongdoing by that agency or an employee of that agency
- » that agency has the power to investigate or remedy the matter
- » the department is statutorily bound to refer the matter to an oversight agency e.g. suspected corrupt conduct to the CCC.

Before referring the PID to another agency, the department will conduct a risk assessment and will not proceed with the referral at that time if there is an unacceptable risk of reprisal.

The confidentiality obligations of the PID Act allow appropriate departmental officers (such as the PID Coordinator and the Integrity and Workplace Relations team) to communicate with another agency about the referral of a PID.

The discloser will be advised of the action taken by the department.

4.9 Risk assessment and protection from reprisal

Disclosers should not suffer any form of detriment as a result of making a PID. On receiving a PID, the department will conduct a risk assessment to assess the likelihood of the discloser, witnesses or affected third parties suffering reprisal action because of having made the disclosure. This assessment will consider the actual and reasonably perceived risks and will include consultation with the discloser.

If the discloser is anonymous a risk assessment will be undertaken based on information disclosed in the PID. The risk assessment will also consider the risk to persons who may be suspected of making the PID.

Consistent with the assessed level of risk, the department will develop and implement a risk management plan and arrange any reasonably necessary support or protection for the discloser, witnesses or affected third parties.

The department will regularly reassess the risk of reprisal while the PID is being managed, in consultation with the discloser, and review the risk management plan if required.

In the event of reprisal action being alleged or suspected, the department will:

- » attend to the safety of the discloser, witnesses or affected third parties as a matter of priority
- » review its risk assessment, risk management plan and any protective measures needed to mitigate any further risk of reprisal
- » manage any allegation of a reprisal as a PID in its own right.

4.10 Confidentiality

While the department will make every attempt to protect confidentiality, a discloser's identity may need to be disclosed to:

- » provide natural justice to subject officers
- » respond to a court order, legal directive or court proceedings.

The department will ensure that communication with all parties involved will be arranged discreetly to avoid identifying the discloser wherever possible.

Disclosers should be aware that while the department will make every attempt to keep their details confidential, it cannot guarantee that others will not try to deduce their identity.

4.11 Support for disclosers

Disclosers should maintain confidentiality about having made a PID, the information disclosed in the PID and the identify of anyone referred to in the PID. This ensures the integrity of any investigative process and minimises the risk of reprisal against the discloser or others.

The department acknowledges that for officers who make a PID the experience may be stressful. The department has a legal duty of care to support and protect employees who fulfil their obligations to report wrongdoing and will endeavour to support disclosers by:

- » providing information about the PID process and progress of the disclosure
- » conducting a risk assessment of reprisal
- » referring them to the department's employee assistance program (for employees only) and/or other specialist assistance for support
- » monitoring the workplace for possible reprisal or conflict.

4.12 Rights of subject officers

The department acknowledges that for officers who are the subject of a PID the experience may be stressful. The department will endeavour to protect their rights by:

- » assuring them that the PID will be dealt with impartially, fairly and reasonably in accordance with the principles of natural justice
- » confirming that the PID is an allegation only until information or evidence obtained through an investigation substantiates the allegation

- » providing them with information about their rights and the progress and outcome of any investigation
- » referring them to the department's employee assistance program (for employees only) and/or other specialist assistance for support.

Information and support will be provided to a subject officer until the matter is finalised.

4.13 Record-keeping

In accordance with its obligations under the PID Act and the *Public Records Act 2002*, the department will ensure that:

- » accurate data is collected about the receipt and management of PIDs including, where appropriate, terms of reference for any investigation and stored securely in confidential files
- » anonymised data is reported in a timely manner to the Office of the QO in their role as oversight agency, through the PID reporting database.

Records about disclosures, investigations and related decisions will be kept secure and accessible only to appropriately authorised people involved in the management of the PID.

5. Delegations

Delegations are to be exercised in accordance with the department's Delegation Schedules. Delegation Schedules are reviewed on a regular basis to ensure they remain current and relevant to the operational needs of the department. It is recommended that delegate authority levels are confirmed prior to exercising any powers in relation to this policy and supporting procedures.

6. Responsibilities

See Complaints management policy for responsibilities and accountabilities relevant to this procedure.

7. Human rights compatibility

The department is committed to respecting, protecting and promoting human rights.

Under the *Human Rights Act 2019* (HR Act), the department has an obligation to act and make decisions in a way that is compatible with human rights and, when making a decision, to give proper consideration to human rights.

When making a decision about Public Interest Disclosures, decision-makers must comply with this obligation.

Further information on the HR Act is available on the department's intranet (internal link) and from the Queensland Human Rights Commission (external link).

8. Definitions

Unless otherwise defined, the terms in this procedure have the meaning as set out in *Public Interest Disclosure Act 2010* and in the relevant Public Interest Disclosure Standards.

Refer to **Appendix A** for definitions of key terms referred to in this procedure.

9. Related documents, forms and templates

- » Complaints management policy
- » Complaints about the Coordinator-General
- » Complaints about the Director-General
- » Customer complaints policy and procedure
- » Individual employee grievances procedure
- » PID Management Program

10. References

- » [Public Interest Disclosure Act 2010](#)
- » [Public Sector Ethics Act 1994](#)
- » [Crime and Corruption Act 2001](#)
- » [Public Records Act 2002](#)
- » [Queensland Ombudsman's Public Interest Disclosure Standards](#)
- » [Queensland Ombudsman's Public Interest Disclosure Guides](#)

11. Further information

For further information or clarification, please contact:

- » your manager or supervisor
- » your business support officer
- » Integrity and Workplace Relations (ethics@dsdilgp.qld.gov.au)

12. Storage of information

All information should be managed in accordance with the [Public Records Act 2002](#), and the whole-of-Government [Records Governance policy](#). In addition, personal information should be managed in accordance with the [Information Privacy Act 2009](#).

13. Document control

Document owner	Director, Integrity & Workplace Relations			
Contact details	ethics@dsdilgp.qld.gov.au			
Next review (annually)	March 2025			
Supersedes	Public Interest Disclosure procedure v2.2			
Version	Issue Date	Reason	Author	Approver
1.0	07/09/2017	New Procedure	Senior Complaints Officer	Deputy Director-General, Business Solutions and Partnerships
1.1	18/05/2018	Incorporate MoG changes	Senior Project Officer, Corporate Services	Executive Director, Corporate Services
2.0	20/10/2020	Major update following new standard requirements	Senior Ethics Advisor	Deputy Director-General, Corporate
2.1	01/07/2021	MoG changes and rearrangement of layout	Principal Project Officer, Ethics, Compliance and Risk	Executive Director, People and Performance
2.2	05/12/2023	Annual Review (light review only to update references)	Principal Advisor, Workplace Relations	Executive Director, People and Performance
2.3	05/03/2023	Machinery of Government department name change only	Senior Governance Officer, Corporate Governance, People and Performance	Director, Integrity & Workplace Relations, People and Performance

Appendix A: Definitions

The key terms referred to in this procedure are as follows:

Term	Definition
Chief Executive Officer	» Defined in schedule 1 of the <u>Public Interest Disclosure Act 2010</u> as the chief executive of a department. The Director-General is the chief executive of the Department of State Development and Infrastructure.
Corrupt Conduct	» Corrupt conduct is conduct of any person, regardless of whether the person holds or held an appointment, which meets the three elements outlined in section 15(1) or 15(2) of the <u>Crime and Corruption Act 2001</u>
Delegate	» The person authorised to perform a specific task or function on the Director-General or Minister’s behalf. Delegations and authorisations are recorded in the department’s delegation schedules.
Discloser	» An individual (public service officer or member of the public) who provides public interest information to the department that may constitute a PID.
Maladministration	» Defined in schedule 4 of the <u>Public Interest Disclosure Act 2010</u> as administrative action that— a) Was taken contrary to law; or b) Was unreasonable, unjust, oppressive, or improperly discriminatory; or c) Was in accordance with a rule of law or a provision of an Act or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory in the particular circumstances; or d) Was taken – i. For an improper purpose; or ii. On irrelevant grounds; or iii. Having regard to irrelevant considerations; or e) Was an action for which reasons should have been given, but were not given; or f) Was based wholly or partly on a mistake of law or fact; or g) Was wrong.
Natural justice	» Natural justice or procedural fairness applies to any decision that can affect the rights, interests or expectations of individuals in a direct or immediate way. The rules of natural justice are: • avoid bias • give a fair hearing • act only on the basis of logically probative evidence.
Public interest	» Consideration affecting the good order and functioning of the community and government affairs.
Public interest disclosure	» An appropriate disclosure of public interest information (such as a report of corrupt conduct, reprisal, maladministration that affects a person’s interests in substantial and specific way, substantial misuse of public resources, substantial and specific danger to public health and safety to the environment) made to a proper authority. » Refer to chapter 2 of the <u>Public Interest Disclosure Act 2010</u> for the full legal definition of a public interest disclosure
Reprisal	» Reprisal involves causing, attempt to cause, or conspiring to cause detriment to another person in the belief that they or someone else: has made or intends to make a disclosure; or has been or intends to be involved in a proceeding under the <u>Public Interest Disclosure Act 2010</u> against any person.