

Public Interest Disclosure Procedure

Owner People and Culture (CS, PC)

CHC/2018/4243

Last Reviewed 15 May 2019

Version 1.01

1. Purpose

This procedure details the processes the department has in place for employees and members of the public to make disclosures under the *Public Interest Disclosure Act 2010* (PID Act) (referred to in this procedure as public interest disclosures or PIDs).

This procedure provides information about:

- matters that may be disclosed as a PID under the PID Act
- the procedure and proper authority to whom disclosers may make a PID in order to receive PID Act protection status
- the support, confidentiality and protection available to people making a PID and to employees who are the subject of a PID
- employees' reporting responsibilities of suspected wrongdoing under the Code of Conduct for the Queensland Public Service (the Code).

2. Scope

This procedure applies to all employees and members of the public to the extent they can make a PID within the definitions in the PID Act.

3. Delegations

Delegations are to be exercised in accordance with the department's Human Resources Delegations.

4. What is a public interest disclosure?

A PID is a disclosure of information from a departmental employee or a member of the public that meets the definition in either section 12 or section 13 of the PID Act. Specifically:

4.1 Employees may make a PID about:

- conduct of another person that could, if proved, be
 - (a) corrupt conduct, or
 - (b) maladministration that adversely affects a person's interests in a substantial and specific way
- a substantial misuse of public resources (other than an alleged misuse based on mere disagreement over a policy that may be properly adopted about amounts, purposes or priorities of expenditure)
- substantial and specific danger to the environment
- substantial and specific danger to public health or safety
- substantial and specific danger to the health or safety of a person with a disability; or
- the conduct of another person that could, if proved, be a reprisal.

4.2 Members of the public may make a PID about:

- a substantial and specific danger to the environment
- a substantial and specific danger to the health or safety of a person with a disability
- the conduct of another person that could, if proved, be a reprisal

4.2.1 Public Interest Disclosures

Under the PID Act, a person may make a PID:

- if the person honestly believes on reasonable grounds that the information tends to show the conduct or other matter
- the information tends to show the conduct or other matter, regardless of whether or not they honestly believe the information tends to show the conduct or other matter

Further:

- the evidence does not have to be admissible in court
- the person making the disclosure does not need to identify the matter as a PID for it to be treated as one, as long as it meets the definition in the PID Act
- a disclosure does not have to identify a particular person
- a disclosure may be about a matter that occurred before the commencement of the PID Act
- a disclosure may be about a matter that happened, is happening or, the discloser reasonably believes is going to happen
- it is not necessary for a discloser to have documented evidence of the conduct. Rather, it is the responsibility of the investigating officer to determine if wrongdoing has occurred

4.2.2 Proper Authority to report a PID - employees

Employees may make a PID about matters listed in section 4.1 of this Procedure to any proper authority listed below.

- the Director-General, Deputy Director-General, Assistant Director-General
- a Divisional head (e.g. Executive Director)
- a line manager or supervisor of the discloser
- the Head of Internal Audit, Internal Audit Services
- the Executive Director, Human Resources
- Chief HR Officer, People and Culture, Corporate Services the Queensland Ombudsman (in relation to maladministration)
- the Crime and Corruption Commission (CCC)
- a member of the Legislative Assembly; or
- by completing an [Anonymous Complaint Form](#) available on the Intranet.

A disclosure will be assessed by the PID Coordinator to determine if it meets the definition in either section 12 or section 13 of the PID Act.

All employees are required by section 1.1 of the Code of Conduct for the Queensland Public Service to disclose any suspicion of wrongdoing on the part of a Queensland Government employee.

4.2.3 Members of the public

Members of the public may make a PID about matters listed in section 4.2 of this procedure.

Under the PID Act, the department is the appropriate agency to receive and manage PIDs that allege substantial and

specific danger to the environment.

Proper Authority to report a PID – Members of the Public

- the Director-General of the department
- Chief HR Officer, People and Culture Corporate Services
- Deputy Director-General, Corporate Services
- the Crime and Corruption Commission
- a member of the Legislative Assembly
- any employee responsible for receiving the type of information being disclosed
- or by completing the [Complaints Form](#) published on the department's internet site.

When an employee receives a PID from a member of public, it must be treated seriously and confidentially. The PID can be referred to:

- their line manager or supervisor
- a Business Group or Divisional head (e.g. Deputy Director-General, Assistant Director-General, Executive Director)
- Chief HR Officer, People and Culture, Corporate Services
- Executive Director, Human Resources
- The PID Coordinator, Chief HR Officer, People and Culture; or
- Deputy Director-General, Corporate Services.

The PID Coordinator (Chief HR Officer, People and Culture) must be advised either by the complainant or the person to whom the complaint was made.

4.2.4 Anonymous disclosures

A discloser may remain anonymous. However if you choose to be an anonymous discloser, the department cannot contact you to clarify your disclosure or to seek additional information. This may limit the agency's ability to investigate an allegation. Further, if you are an anonymous discloser, it will not be possible to keep you informed of progress in handling the disclosure; or to offer you PID Act protections.

4.2.5 Employees making disclosures to journalists

Disclosure to a journalist is **an avenue of last resort**. An employee may only make a disclosure to a journalist when they have made a PID using this procedure, and the department —

- decided not to investigate or deal with the disclosure
- investigated the disclosure, but did not recommend taking any action in relation to the disclosure; or
- did not notify the employee, within 6 months after the date the disclosure was made, whether or not the disclosure was to be investigated or dealt with.

In these circumstances **only**, will the disclosing employee retain PID status.

4.3 Determining whether a disclosure is a PID

4.3.1 Initial action and referral

All PIDs received must be referred as soon as possible to the PID Coordinator (Chief HR Officer, People and Culture) to determine any further action. If there is any doubt about whether a disclosure is a PID, it should still be managed as if it were a PID until the assessment has been completed by the PID Coordinator.

The department has a statutory obligation under the *Crime and Corruption Act 2001* to refer suspected corrupt conduct to the CCC. If the matter is assessed and found to meet the corrupt conduct criteria, it will be referred to the CCC for direction. If the disclosure is not assessed as suspected corrupt conduct, the matter may be referred to Human Resources (CS) for action as suspected misconduct.

4.3.2 No further action

The department may decide to take no further action on a PID where:

- the allegations have already been dealt with by another appropriate process
- the allegations should be dealt with by another appropriate process
- the age of the information makes it impractical to investigate the matter
- the information is considered trivial or too demanding of resources to warrant investigation
- the entity that has jurisdiction to investigate the matter has notified the department that investigation is not warranted.

Written reasons for not taking any further action must be provided to the person making the disclosure.

If the person making the disclosure is not satisfied, they may apply to the Director-General for a review of the decision within 28 days after receiving the written reasons.

If the PID relates to suspected corrupt conduct by employees of another Queensland Government agency, the PID Coordinator will refer the complaint to the relevant agency.

Following consultation with the discloser, PIDs regarding danger to public health or safety and danger to the health and safety of a person with a disability will be referred to the appropriate government entity to be dealt with. The PID Coordinator must assess the risk of reprisal prior to referring a PID to another agency.

4.3.3 Advising the discloser of PID action

Once the matter has been assessed as a PID, the department will advise the discloser:

- that their information has been received and assessed as a PID
- the action to be taken by the department in relation to the disclosure, which could include referring the matter to an external agency, or investigating
- the likely timeframe involved
- the name and contact details of the departmental support officer they can contact for updates or advice
- of the discloser's obligations regarding confidentiality
- the protections the discloser has under the PID Act
- the commitment of the department to keep appropriate records and maintain confidentiality, except where permitted under the PID Act
- how updates regarding intended actions and outcomes will be provided to the discloser
- contact details for the department's employee assistance program (refer to section 4.4.2).

4.4 Protection for disclosers

Under the PID Act, the department must establish reasonable procedures to support and protect disclosers from reprisals that are, or may be, taken against them as a result of making a PID and to support them through the investigation process.

Information about the discloser's identity or personal affairs, the information disclosed in the PID and the fact that a PID has been made will be kept confidential. Disclosers will be consulted prior to any action that could identify them to a third party. Only departmental officers directly involved in dealing with the matter will be advised of the details of the PID.

When confidentiality is not possible (e.g. in a very small workplace or when the disclosure has become public knowledge), the discloser will be consulted about the risk of reprisal and will receive protection and support. The relevant manager will inform employees of the work unit that the department has zero tolerance of reprisal action and maintaining confidentiality is required by the PID Act, the department's Public Interest Disclosure Policy and this Procedure.

4.4.1 Risk assessment

The PID Coordinator will undertake a risk assessment of possible reprisal action as a matter of priority. The risk assessment will be conducted in collaboration with the discloser as they are best placed to provide information about the perceived risk of reprisal.

4.4.2 Case Management Support for Disclosers

Disclosers will be offered and provided appropriate support and advice by a suitable Case Manager. The selection of a Case Manager will be made after consultation between the PID Coordinator and the discloser. The person chosen as the Case Manager must be impartial and not have had any prior involvement in the complaint, either as a witness or a subject officer.

The Case Manager will maintain regular contact with the discloser through a mutually agreed method and schedule. The PID Coordinator will provide access to resources for the Case Manager that provide guidance on their responsibilities and available support.

Regular risk appraisals must be undertaken by monitoring the situation during the investigation phase to reduce the possibility of reprisal action against the discloser. The discloser must be consulted about their perceptions of risk, as they are best placed to know the likely risks relating to employees involved in the PID.

Where the risk level is assessed as anything greater than low, a case management strategy will be developed and implemented to mitigate the risk. In some circumstances, relocation to another work group or location may be considered. Relocation can only occur with the consent of the discloser and, in the case of relocation to another department, with the consent of the other department's chief executive.

Disclosers and their families can seek free, professional and confidential counselling through Benestar, the department's employee assistance provider, details of which are published on the intranet.

4.4.3 Members of the Public who are Disclosers

The department will also take all reasonable action to support members of the public who make PIDs through regular contact and advice throughout the process.

4.4.4 Subject officers

Employees who are the subject of a PID will be afforded procedural fairness (natural justice), and will be considered innocent of any allegation until evidence proves otherwise. Employees must be given the opportunity to respond to an allegation before a delegated decision-maker makes a final determination following the completion of the investigation.

Subject officers and their families can seek free, professional and confidential counselling through Benestar, the department's employee assistance provider, details of which are published on the intranet.

4.4.5 When employees do not receive the protections under the PID Act

The PID Act protections are not available to a person if they:

- fail to follow the correct disclosure process
- intentionally give false or misleading information
- make a PID directly to or through the media instead of or before using this procedure (e.g. making a disclosure to a journalist **before** following due departmental process).

4.4.6 Reprisals

Under the PID Act:

- disclosers incur no criminal or civil liability (e.g. for defamation) for PIDs made appropriately;
- it is a criminal offence for a public officer to take reprisal action against a discloser (s 41 of the PID Act);
- the CCC can investigate suspected reprisals against public sector employees;
- a public sector employee can ask the department for relocation if they suffer from or are at risk of reprisal.

Reprisals against a discloser, or fears that the discloser may be subject to reprisal action, must be reported immediately to the Case Manager, PID Coordinator (Chief HR Officer, People and Culture), Executive Director, Human Resources or the employee's manager/supervisor. The PID Coordinator must be advised in every case and will refer allegations of suspected corrupt conduct to the CCC.

In the event that reprisal action is taken, disclosers may lodge a complaint with the Anti-Discrimination Commission (*Anti-Discrimination Act, 1991*, Chapter 6 and 7) or apply for an injunction through the Queensland Industrial Relations Commission (QIRC) or the Supreme Court. A discloser cannot concurrently apply to both the QIRC and the Supreme Court (s 49 of the PID Act). Also, a discloser cannot apply for an injunction about a reprisal (under section 49 or 50 of the PID Act) if the person makes a complaint under the Anti-Discrimination Act 1991 about the reprisal.

Disclosers may also lodge a claim for damages through the District or Supreme Courts (s 42 of the PID Act). The department may be held liable if an employee commits an act of reprisal in the course of employment. If the discloser is an employee, they may lodge a claim against the department. The department must be able to demonstrate that it took reasonable steps to prevent reprisal against the discloser occurring (s43 of the PID Act).

4.4.7 Reasonable management action

Reasonable management action is not a reprisal action and may be taken against an employee who has made a PID. However, the manager's reason(s) for taking management action must not include the fact the employee has made the PID and must be in accordance with departmental policies and processes, including procedural fairness principles.

The Director-General or delegated officer will determine whether an investigation is required based on the seriousness of the allegations and any CCC recommendations. Where there is a decision to investigate, a specialist officer will be engaged to undertake the investigation. During this process, all parties named in the disclosure, and in subsequent interviews, will be contacted for an interview where they may provide their version of events.

At the conclusion of the interview stage, the investigator prepares a report for the delegated decision maker, which may include recommendations, and makes a determination on the balance of probabilities whether the complaint (or each allegation) has been substantiated.

An investigation may result in one or more of the following outcomes:

- disciplinary action being commenced

- a recommendation that there be administrative changes
- a recommendation that corruption prevention strategies be developed
- a criminal charge
- the complaint being dismissed as unsubstantiated.

4.5 After the investigation

At the conclusion of the investigation, the Delegate receives the investigating officer's report, considers the recommendations, then makes a decision regarding any recommended action/s.

The discloser will be provided with reasonable information in writing about the action taken on their disclosure and the results. Before information is released, consideration must be given to possible adverse impact on:

- anybody's safety; or
- the investigation of an offence or possible offence; or
- the necessary confidentiality about an informant's existence or identity.

The discloser will be advised of the conclusion of any organised support arrangements following completion of the investigation and the finalisation of action taken. This will signal the end of the reporting process and the finalisation of the process.

5. Reporting requirement

The department must report to the Queensland Ombudsman (QO) statistical information about PIDs and any other information requests regarding management of Public Interest Disclosures. Information provided to the QO will be de-identified.

6. Forms

- Employees – [Anonymous Complaint Form](#)
- Members of the public – [Complaint Form](#)

7. Employee complaints and appeals

Employees who are the subject of allegations of wrongdoing do not have any grievance or appeal rights against a person who makes a PID, providing the discloser is acting in good faith and the information is not intentionally false or misleading.

Employees who are dissatisfied with the outcome of their employee complaint may be entitled to lodge an appeal in accordance with Directive – Appeals which can be found on the Public Service Commission website at <https://www.forgov.qld.gov.au/directives-policies-and-guidelines>

An appeal may commence by giving the Industrial Registrar an appeal notice. Further information on starting an appeal and appeal rights is available from the Queensland Industrial Relations website <https://www.forgov.qld.gov.au/appeal-decision-affecting-your-employment>

8. Related Documents

- [Public Interest Disclosure Policy](#)
- [Corrupt Conduct Complaints Management Procedure](#)
- [Code of Conduct for the Queensland Public Service](#)

- [Crime and Corruption Commission guideline: Corruption in focus: A guide to dealing with corrupt conduct in the Queensland public sector](#)
- [Queensland Ombudsman Public Interest Disclosure Standard No 1/2019](#)
- [Queensland Ombudsman Public Interest Disclosure Standard No 2/2019](#)
- [Handling a Public Interest Disclosure – A guide for public sector managers and supervisors](#) (case manager resource)

9. Further information

For advice or assistance, employees should contact: the PID Coordinator, Chief HR Officer, People and Culture.

10. Storage of Information

All documentation relating to a PID must be stored in a confidential electronic file, or if hard copies exist, they must be secured in a locked area. No details are to be placed on personnel files. If an employee is appointed to another department/agency, the file remains the property of the department.

All information should be managed in accordance with the Queensland Government Information Management Framework, which includes the *Public Records Act 2002* and the Records Governance Policy. The departmental Recordkeeping Policy and Retention and Disposal Policy and Procedure also refer. In addition, personal information should be managed in accordance with the *Information Privacy Act 2009*.

11. Review

This procedure shall be reviewed within two years of the **Last Reviewed** date.

12. Approval

Signed:

Kirsten Herring
A/Director-General
Department of Environment and Science

Date: 23 December 2018

13. Version history

Date	Version	Action	Description / comments
23 December 2018	1.00	Approved by Acting Director General	New document
15 May 2019	1.01	Approved by A/Chief HR Officer	Minor updates to reflect changes to delegations and document references.

14. Keywords

Discloser, PID; Public; Interest; Disclosure; Misconduct; Corrupt Conduct, Complaint; Protection; Reprisal, Whistle-blower.