

Public interest disclosure procedure

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Version Control

Version	Date	Comments
1.0	6 December 2021	Procedure approved by Deputy Director-General, Corporate

1. Associated policy

This procedure should be read in conjunction with the [Public interest disclosure policy](#) (PID policy). For key definitions refer to Attachment 2 of the PID policy.

2. Scope

This procedure applies to:

- all employees working for the department regardless of whether they are permanent, temporary, full-time, part-time or casual employees, and persons on secondment from other departments/agencies
- other persons who perform work for the department including contractors, students gaining work experience and volunteers. For the purposes of this policy, the term contractor includes on-hired temporary labour services (agency staff), and
- other persons whose complaint or information has been assessed as a public interest disclosure (PID).

3. Procedure

The procedure has been developed to:

- promote the public interest by facilitating PIDs of wrongdoing
- ensure that PIDs are properly assessed and, where appropriate, properly investigated and dealt with
- ensure appropriate consideration is given to the interests of persons who are the subject of a PID (that is, subject officers)
- ensure protection from reprisal is afforded to the disclosers, witnesses and/or affected third parties.

3.1 PID Management Program

The department's PID management program encompasses:

- the department's commitment to encouraging the internal reporting of wrongdoing
- senior management's endorsement of the value to the department of PIDs and the proper management of PIDs
- a communication strategy to raise awareness among employees and other persons who perform work for the department about PIDs and the department's PID procedure
- a training strategy to give employees and other persons who perform work for the department (that is, agency staff) access to training about how to make a PID, information on the support available to disclosers, and advice on how PIDs will be managed
- specialist training and awareness about PIDs for senior management and other persons working for or with the department who may receive or manage PIDs, disclosers or workplace issues relating to PIDs
- the appointment of a specialist officer and unit to be responsible for issues related to the management of PIDs
- ensuring effective systems and procedures are in place so that issues and outcomes from PIDs inform improvements to service delivery, business processes and internal controls
- regular reviews of this procedure and the evaluation of the effectiveness of the PID management program.

The Director-General has designated the following roles and responsibilities for managing PIDs within the department:

Role:	Responsibilities:	Officer:
PID Coordinator	<ul style="list-style-type: none"> ▪ principal contact for PID issues within the department ▪ document and manage implementation of PID management program ▪ review and update PID procedure annually ▪ maintain and update internal records of PIDs received ▪ report data on PIDs to the Queensland Ombudsman (PID oversight agency) ▪ assess PIDs received ▪ provide acknowledgment of receipt of PIDs to disclosers ▪ undertake risk assessments in consultation with disclosers and other relevant persons ▪ liaise with other agencies about referral of PIDs ▪ allocate Investigators and Support Officers to PIDs 	<p>Director, Integrity Services Unit</p> <p>Email: integrityservices@epw.qld.gov.au</p> <p>Letter: Attention: PID Coordinator Integrity Services Unit Corporate Department of Energy and Public Works GPO Box 2457 Brisbane Qld 4001</p> <p>Telephone: (07) 3008 2924</p>
PID Support Officers	<ul style="list-style-type: none"> ▪ provide advice and information to disclosers on the PID procedure ▪ provide personal support and referral to other sources of advice or support as required ▪ facilitate updates on progress of investigations ▪ proactively contact disclosers throughout PID management processes 	<p>Appropriate PID Support Officers will be assigned by the PID Coordinator to support disclosers.</p>
Investigators	<ul style="list-style-type: none"> ▪ conduct investigations of information in PIDs in accordance with terms of reference ▪ prepare reports for delegated decision-makers 	<p>Appropriate internal or external investigators will be appointed to investigate PIDs depending upon the type of disclosure and other relevant considerations.</p>
Delegated decision-makers	<ul style="list-style-type: none"> ▪ review investigation reports and determine whether alleged wrongdoing is substantiated 	<p>Appropriate decision-makers will be appointed for investigated PIDs.</p>

3.2 Why make a PID?

Public officers (which includes employees) 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 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 that prevent fraud and other economic loss to the department
- the community’s trust in public administration is strengthened by having strong processes in place for reporting wrongdoing.

When making a PID, the discloser receives the protections provided under the Public Interest Disclosure Act 2010 (PID Act), including:

- confidentiality – the discloser’s name and other identifying information will be protected to the extent possible
- protection against reprisal – the discloser is protected from unfair treatment by the department, employees and other persons performing work for the department as a result of making the 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 by any subject officer.

3.3 What is a PID?

A PID is a disclosure about certain wrongdoing.

The following table outlines the information that may be disclosed in a PID and who may disclose it:

PID Act:	Information that may be disclosed:	Who may disclose it?
Section 12	<ul style="list-style-type: none"> ▪ 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, or in the belief that, a person has made, or intends to make a PID. 	<ul style="list-style-type: none"> ▪ Any person - whether an employee, a contractor or a member of the public.

PID Act:	Information that may be disclosed:	Who may disclose it?
Section 13	<ul style="list-style-type: none"> ▪ corrupt conduct ▪ maladministration that adversely affects a person's interests in a substantial and specific way ▪ a substantial misuse of public resources (in certain circumstances) ▪ a substantial and specific danger to public health or safety ▪ a substantial and specific danger to the environment. 	<ul style="list-style-type: none"> ▪ Public officers, which includes employees. <p><i>Note:</i></p> <p><i>Contractors (which includes agency staff) are not considered public officers under the PID Act.</i></p> <p><i>Contractors do not attract the protections afforded under the PID Act if they disclose information listed in section 13 of the PID Act. However, contractors are still required to report any wrongdoing (including the type of wrongdoing outlined in section 13 of the PID Act) and will be offered reasonable support by the department. The level of support that may be offered to contractors by the department will depend on circumstances of each individual matter.</i></p>

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 an occupational health and safety officer reporting a safety breach
- disclosure is made anonymously – the discloser is not required to give their name or any identifying information
- discloser has not identified the material as a PID – it is up to the department to assess information received and decide if it is a PID
- disclosure is unsubstantiated following investigation – the discloser is protected when the information they provide is assessed as a PID, whether or not it is subsequently investigated or found to be substantiated.

3.4 Who can a PID be disclosed to?

A PID must be made to a 'proper authority' to receive disclosures of the type being made.

Disclosers are encouraged to make a disclosure to an appropriate area/person in the department first. If the matter is not resolved, or the discloser is concerned about confidentiality, the disclosure may be made to another appropriate authority.

Who to contact within the department:	Other authorities that can receive PIDs:
<p>Any person (including employees) can make a disclosure to:</p> <ul style="list-style-type: none"> ▪ the Integrity Services Unit ▪ a manager/supervisor ▪ the Chief Human Resources Officer ▪ Human Resources ▪ the Deputy Director-General, Corporate ▪ the Director-General 	<p>Disclosures can be made to an agency that has a responsibility for investigating the information disclosed as follows:</p> <ul style="list-style-type: none"> ▪ Crime and Corruption Commission (CCC) for disclosures about corrupt conduct, including reprisal ▪ Queensland Ombudsman for disclosures about maladministration ▪ Queensland Audit Office for disclosures about a substantial misuse of resources ▪ Department of Children, Youth Justice and Multicultural Affairs for disclosures about danger to the health and safety of a child or young person with a disability ▪ Department of Seniors, Disability Services, and Aboriginal and Torres Strait Islander Partnerships for disclosures about danger to the health and safety of a 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 ▪ The Chief Judicial Officer of a court or tribunal in relation to a disclosure about wrongdoing by a judicial officer.

A person who receives a disclosure that may be a PID, must refer the disclosure to the PID Coordinator for assessment. The disclosure must be kept confidential (to the maximum extent possible in the circumstances) and no further enquiries should be undertaken by the person in receipt of a disclosure.

Where it is identified that a disclosure gives rise to a risk to the safety and/or welfare of any person, it is incumbent on the person in receipt of the disclosure to immediately take all necessary and appropriate steps to protect any person at risk.

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 in relation to the disclosure, or
 - failed to notify the discloser within six months of making the disclosure whether or not 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 by the confidentiality provisions of section 65 of the PID Act.

3.5 How to make 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)
- provide as much information as possible about the suspected wrongdoing, including:
 - who was involved
 - what happened
 - when it happened
 - where it happened
 - whether there were any witnesses and, if so, who they are
 - any evidence that supports the PID, and where the evidence is located
 - any further information that could help the investigation of the PID
- provide this information in writing.

Where necessary, the department will provide reasonable assistance to a person who wishes to make a disclosure. Such assistance may include:

- providing an interpreter if a person has language difficulties or is hearing or vision impaired, or
- advising a person where they can get further help and information.

The costs of arranging reasonable assistance will be borne by the division to which the disclosure relates.

It is an offence under the PID Act to intentionally give false or misleading information intending it 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 (subject to natural justice and human rights considerations). In addition, giving of false or misleading information by persons performing work for the department (for example, contractors or agency staff) may result in termination of their contracts/engagements with the department.

3.6 Assessing a PID

To determine whether a disclosure is a PID, the department will undertake an assessment. The disclosure will be assessed in accordance with:

- the PID Act
- the Public Interest Disclosure Standards issued by the Queensland Ombudsman
- this procedure (sections 3.3, 3.4, 3.5, 3.6 and 3.11), and
- any other relevant departmental procedure(s).

All of the information provided by a discloser will be considered by the department when assessing a PID.

If there is any doubt as to whether a disclosure is a PID, further information may be obtained to inform the decision.

Mere disagreements over policy do not meet the threshold for a PID under the PID Act.

Where a discloser states they are making a PID, but it is assessed that the disclosure is not a PID, the department will advise the discloser:

- that their information has been received but was not assessed as a PID
- the reasons for the decision
- any action the department proposes to take in relation to the matter
- any other options the discloser has in relation to the matter.

3.7 Referring a PID

If the department decides there is another public sector entity that is better able to deal with the PID, the PID may be referred to that entity. This may be because:

- the PID concerns wrongdoing by that entity or an employee of that entity
- that entity has the power to investigate or remedy the wrongdoing arising from the PID.

Before referring the PID to another public sector entity, the department will conduct a risk assessment, and will not proceed with the referral if there is an unacceptable risk of reprisal.

It may also be necessary to refer the PID to another public sector entity because of a legislative obligation, for example, refer a matter to the CCC where there is a reasonable suspicion that the matter involves, or may involve, corrupt conduct (as per section 38 of the *Crime and Corruption Act 2001*). The confidentiality obligations of the PID Act permit appropriate persons of the department to communicate with another public sector entity about the referral of a PID. These persons will exercise discretion in their contacts with any other entity.

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

3.8 Risk assessment

Upon receiving a PID, the department will conduct a risk assessment to assess the likelihood of the discloser (or witnesses or affected third parties) suffering reprisal as a result of having made the PID.

This assessment will take into account the actual and reasonably perceived risk of the discloser (or witnesses or affected third parties) suffering detriment and will consult with the discloser (or witnesses or affected third parties) to the extent practicable.

If the discloser is anonymous, a risk assessment will be undertaken on the basis of information available in the PID. The risk assessment will also take into account 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 (or 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 (or witnesses or affected third parties) and review the risk management plan if required.

3.9 Managing alleged or suspected reprisals

Section 41 of the PID Act makes it an offence for a person to take a reprisal because, or in the belief that, another person has made, or intends to make, a PID.

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

- attend to the safety of the discloser (or 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, where it meets the PID definition criteria under the PID Act
- where appropriate, refer the alleged reprisal to a relevant external agency, such as the CCC or the Queensland Police Service.

3.10 Declining to take action on a PID

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

- 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.

If a decision is made not to investigate or deal with a PID, the department will give the discloser written reasons for that decision.

If the discloser is dissatisfied with the decision not to investigate or deal with a PID, they can request a review by writing to the Director-General of the department within 28 days of receiving the written reasons for the decision.

3.11 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 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 PID, which could include referring the matter to an external agency, or investigating the PID
- the likely timeframe involved
- the name and contact details of the PID 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 Service.

The department, through the PID Support Officer, 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. Any information provided to the discloser regarding the action taken and the results of the action, will be subject to information privacy laws.

The discloser need not be given information outlined above, including the outcome advice, if the information would be likely to adversely affect:

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

If a PID has been made anonymously and the discloser has not provided any contact details, the department will not be able to acknowledge the PID or provide any updates or outcome advice.

3.12 Confidentiality

Section 65 of the PID Act makes it an offence for a person to make a record of, or intentionally or recklessly disclose, confidential information received in the administration of the PID Act to anyone, except where authorised to do so by the PID Act.

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

- to do something in accordance with the PID Act (for example, for a full investigation of the PID)
- if authorised under another Act or regulation (for example, in accordance with a requirement under the *Crime and Corruption Act 2001*, the *Right to Information Act 2009* or the *Information Privacy Act 2009*)
- for a proceeding in a court or tribunal (for example, during criminal prosecution processes)
- to provide for the safety or welfare of a person, and/or
- for natural justice/procedural fairness (after considering the risk of reprisal).

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.

Disclosers are reminded that they are required to maintain the confidentiality of all matters connected with their PID, including not to discuss the PID with work colleagues or other unauthorised persons. Please note that the confidentiality provisions in section 65 do not preclude disclosers from sharing this information with union representatives/approved support persons/legal representatives.

3.13 Support for disclosers

The department recognises that providing appropriate support to a discloser is an important feature of effective PID management.

An assessment will be undertaken to identify the support needs of the discloser. Where appropriate, a PID Support Officer will be assigned to the discloser. The PID Support Officer will assist the discloser to access information about PIDs, protections available under the PID Act and the PID management process.

Subject to the needs and circumstances of the discloser, PID Support Officers will:

- proactively contact the discloser to check on their welfare
- provide updates to the discloser on the progress of the investigation or action taken by the entity
- support the discloser by liaising with the PID Coordinator to arrange specific support services to meet the needs of the discloser (for example, information, counselling or skills training).

Where practicable, information and support will be provided to the discloser until the matter is finalised.

Disclosers may seek assistance from their union (where applicable) or legal advisor. A discloser may also access the free professional counselling services of the department's Employee Assistance Service.

Making a PID does not prevent reasonable management action. If the discloser is an employee or a person performing work for the department (such as agency staff), the discloser will continue to be managed in accordance with normal, fair and reasonable management practices during and after the handling of the PID.

In addition, a person does not cease to be liable for their own conduct because the person disclosed it as a PID.

3.14 Investigating a PID

If a decision is made to investigate a PID, this will be done with consideration for the:

- principles of natural justice
- obligation under the PID Act to protect confidential information
- obligation under the PID Act to protect disclosers, witnesses and/or affected third parties 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.

Irrespective of the outcome of the investigation, where necessary, the department will review systems, policies and procedures to identify whether there are improvements that can be made (for example, training of staff and/or changes to policy, procedure, controls or governance arrangements).

3.15 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 support subject officers and 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 will be handled confidentially and in accordance with information privacy laws
- 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 Employee Assistance Service for support.

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

Subject officers may seek assistance from their union (where applicable) or legal advisor.

3.16 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
- anonymised data is reported to the Office of the Queensland Ombudsman in their role as the 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.

3.17 Human rights considerations

Under the *Human Rights Act 2019*, public entities (which includes the department and public service employees) must act and make decisions in a way that is compatible with human rights, including by giving proper consideration to human rights when making decisions with respect to disclosures and/or PIDs. The human rights that may potentially be affected by a decision relating to a disclosure and/or PID will depend on the relevant circumstances.

4. Approval

Approved by:

Robyn Turbit
Deputy Director-General, Corporate

Date: 6 December 2021