

DPC Public Interest Disclosure (PID) Procedure

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1 Purpose

This document supports the Department of the Premier and Cabinet's commitment to assessing and responding to any Public Interest Disclosures (PID). This means that we:

- encourage internal reporting of wrongdoing
- support and provide feedback to disclosers
- manage the risk of reprisal associated with a PID
- protect the rights of subject officers.

2 What is a Public Interest Disclosure?

A Public Interest Disclosure (PID) is a disclosure in the public interest, of information about wrongdoing in the public sector. For an allegation to be considered a PID it must meet three criteria:

1) Public interest information about substantial and specific wrongdoings or danger

Any person, including a public sector officer, may disclose information about:

- a substantial and specific danger to the health or safety of a person with a disability
- a substantial and specific danger to the environment¹
- reprisal action following a PID.

A **public sector officer** may also disclose information about:

- corrupt conduct by another person
- maladministration that adversely affects someone'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.

2) PID must be an appropriate disclosure

An appropriate disclosure meets the subjective and objective tests set out in the *Public Interest Disclosure Act 2010* (PID Act)². This means:

- the discloser honestly and reasonable believes the information provided tends to show the conduct or danger; or
- the information tends to show the conduct or danger regardless of the discloser's belief.

¹ See PID Act Schedule 2

² See PID Act ss 12(3) and 13(3)

3) *PID must be made to a Proper Authority*

Proper authorities are persons and organisations authorized under the PID Act³ to receive public interest disclosures. Examples of proper authorities are:

- The public sector entity that is the subject of the PID
- An agency that has authority to investigate the matter
- A Member of the Legislative Assembly (an MP).

3 Making a Public Interest Disclosure

A PID may be made to the Department of the Premier and Cabinet verbally or in writing, and may also be provided anonymously or through an authorised third party. Visit <http://www.qld.gov.au/contact-us/complaints/index.html> for details of how to submit a PID online.

A PID may also be provided in writing either to:

Executive Director, Governance and Integrity (as PID Coordinator)
PO BOX 15185, City East
Brisbane, QLD 4002

or Email: DPCfeedback@Premiers.qld.gov.au

4 Roles and Responsibilities

4.1 Director-General

The Director-General, as Chief Executive Officer of the department has overall responsibility for ensuring that:

- all employees are aware that they are required to conduct their duties to high professional and ethical standards and always act in the public interest ([Code of Conduct for the Queensland Public Service](#))
- reasonable procedures are in place to deal with a PID and that those procedures are published to enable members of the public and employees to access them
- PIDs are promptly and properly assessed, investigated and dealt with, including appropriate action being taken in relation to any wrongdoing in a PID
- employees making a PID receive support and protection from reprisal
- all legislative obligations in relation to reporting and investigation are met
- all matters involving suspected corrupt conduct are assessed against the *Crime and Corruption Act 2001* section 40 guideline and treated accordingly, including referral to the Crime and Corruption Commission where appropriate.

4.2 PID Coordinator

The Executive Director, Governance and Integrity will perform the role of departmental PID Coordinator. This role will be responsible for the overall coordination and implementation of the PID process within DPC. The Associate Director-General, Governance and Engagement is the Crime and Corruption Commission Liaison Officer and has direct access to the Director-General.

The key responsibilities of the PID Coordinator include:

- receive and assess PIDs on behalf of the department
- refer PIDs to other agencies where required and involve higher authorities (i.e. CEO, Audit Committee and external agencies) in management decisions
- assess the risks of reprisal
- put in place means to monitor for any signs of reprisal
- take action on the PID, which may involve making recommendations to the Director-General for the appointment of an investigator
- informing the discloser of reasonable information

³ See PID Act s15

- identifying how issues raised in PIDs can be used to inform improvements to service delivery, business processes and internal controls
- regularly evaluate and monitor the effectiveness of PID policies and procedures
- promote awareness of PIDs throughout the department as part of a complaints management awareness strategy to all staff, including targeted promotion to officers who may be required to manage a PID
- retain records of and report on PIDs to the Queensland Ombudsman as required.

4.3 Executive Directors, managers and supervisors

Executive Directors, managers and supervisors are responsible for maintaining an ethical culture and leading by example through:

- providing clear guidance to staff on how to handle complex issues which may involve misconduct, while maintaining confidentiality and natural justice
- ensuring that employees in their business area are aware of their obligations in relation to the requirements of this policy
- continually monitoring and assessing the workplace for signs of reprisal against a discloser or subject officer under the principles of natural justice and taking appropriate actions to protect that person or persons
- ensuring that, if PID allegations are substantiated, investigation recommendations are implemented quickly to reduce the risk of reoccurrence
- retaining management responsibility for their workplace and staff to the maximum extent possible during any PID process
- notifying Human Resources in situations where any detrimental actions are taken against the discloser and discuss concerns and options for addressing the situation before it escalates.

5 Assessing a Public Interest Disclosure

All disclosures made to the department or referred to it by another entity or member of the Legislative Assembly will be assessed by the PID Coordinator with reference to the PID Act and PID Standards. In assessing a disclosure, the PID Coordinator will determine if:

- the person making the disclosure is able to receive the protection of the PID Act and if the disclosure concerns a matter about which a PID can be made⁴
- the person making the disclosure honestly believes on reasonable grounds that the information tends to show the conduct or if the person has information that tends to show the conduct⁵
- the disclosure has been made to a proper authority, i.e. an individual or entity who may receive a PID, and has been made in accordance with the agency's procedure or as permitted by the PID Act⁶.

If there is doubt whether the disclosure is a PID, the PID Coordinator should assume that the disclosure is protected by the PID Act and manage the disclosure as if it were a PID. It is not necessary for the discloser to identify a matter as a PID. It is the department's responsibility to identify a PID as such and address it accordingly.

Each separate allegation will be reported as a separate PID, unless the matters are clearly linked and it would be reasonable to view them as a single disclosure.

The department will consider any disclosure received and assess whether it is a PID.

6 Referral to another entity

Where it is decided that a matter is to be referred to another entity, or when the department or the CEO is statutorily bound to refer matter to an oversight agency (e.g. suspected corrupt conduct to the CCC), the referral will be done in accordance with the legislative and administrative processes provided for under the PID Act. This includes a requirement for the PID Coordinator to not refer a PID to another agency if there is an unacceptable risk that a reprisal would happen because of the referral.

⁴ See PID Act ss. 12, 13 and 19

⁵ See PID Act ss. 12(3), 13(3) and 19(3)

⁶ See PID Act s. 17

In considering whether an unacceptable risk exists, the PID Coordinator will, wherever possible, consult with the discloser.

7 A decision not to investigate the disclosure

Action must be taken on a PID unless it is assessed that no action may be taken⁷. The department will provide written reasons to a discloser of its decision not to investigate or otherwise deal with a PID where:

- the matter has already been investigated or dealt with through another appropriate process
- the department reasonably considers that the disclosure should be dealt with by another appropriate process
- the age of the information disclosed makes it impractical to investigate
- the department reasonably considers that the disclosure is minor enough not to warrant an investigation and that treating the matter as a PID would not be using departmental resources appropriately
- another entity that has jurisdiction to investigate the disclosure has notified the department that investigation of the disclosure is not warranted.

A discloser may apply to the Director-General for a review of a decision not to consider information as a PID or not to investigate or deal with a PID within 28 days of receiving such reasons. Alternatively the discloser may contact another appropriate agency in relation to the PID.

Even if no action is taken by the department, PID confidentiality requirements and protections continue to apply.

Under the PID Act⁸, a discloser may make a PID to a journalist if they have already made essentially the same disclosure to a public sector entity that is a 'proper authority' and:

- the entity has decided not to investigate or deal with the disclosure, or
- the entity investigated the disclosure but did not recommend taking any action, or
- the discloser was not notified within six months of making the disclosure whether or not the disclosure was to be investigated or dealt with.

8 Risk assessment

As soon as possible after receiving a PID, a risk assessment will be conducted by the PID Coordinator to determine the level of risk of a reprisal to the discloser and to any other persons associated with the disclosure.

Appropriate protections, proportionate to the level of risk and the potential consequences of a reprisal, will be put in place where a risk has been identified. This may include developing specific strategies to reduce the level of risk to the discloser in the workplace and may include consideration of the suspension or secondment of the person about who the disclosure is made (the subject officer).

If the risk is determined to be sufficiently high, the PID Coordinator will, in consultation with the discloser and any other relevant stakeholder, develop a protection plan for the discloser and provide ongoing support including:

- acknowledging that the making of the PID was the right thing to do and is valued
- making a clear statement that the department will support the discloser through this process
- ensuring that the discloser has appropriate support and protection from reprisal
- regularly checking the discloser's well-being where warranted
- providing information to the discloser about the department's employee assistance mechanisms
- liaising with the officers responsible for occupational health and safety if the discloser's health becomes a concern.

Where a reprisal is alleged or suspected of occurring, the PID Coordinator will:

- attend to the discloser's safety and/or that of any other affected parties as a matter of priority

⁷ See PID Act s. 30

⁸ See PID Act s. 20

- take all practical steps to minimise the possibility of reprisal by reviewing the risk assessment and protective measures provided to the discloser
- manage any allegation of reprisal as a PID in its own right.

The PID Coordinator will advise the discloser when all organised support arrangements have been completed, although the obligation to provide protection from reprisal and maintain confidentiality about PID matters continues after the investigation is closed. The PID Coordinator may continue to monitor the discloser's welfare (in association with the relevant manager) for an additional period after the PID has been finalised so that any unreported support needs can be identified and resolved.

9 Disclosures made about an individual

The department will ensure that all people involved in PIDs (as discloser or subject officer) are offered an appropriate level of support and case management. Action will be taken to ensure where possible that people's identities and the details of the disclosure remain confidential.

Subject officers who have had a PID made against them are assumed to be innocent of any adverse allegation until there is evidence to the required standard of proof to show otherwise. The rules of natural justice apply to any subject officer under investigation in respect of an allegation made against them. In such instances, and through the PID Coordinator, the subject officer has the right to:

- know the substance of the allegations if a decision is going to be made about their conduct
- have a reasonable opportunity to put their case forward (whether in writing, at a hearing or otherwise)
- have a decision maker act fairly and without bias.

Providing natural justice does not mean that the subject officer should be advised of the allegation as soon as it is received. The subject officer need not be told about an allegation if it is:

- misleading
- has no substance
- not intended to act on the allegation.

Persons against whom an allegation has been made should be reassured by the PID Coordinator that the PID will be assessed impartially, objectively and reasonably and that it is only an allegation until any evidence collected shows otherwise. They should be provided with information of their rights, and the progress and outcomes of any investigation undertaken.

Employees who are the subject of an allegation may seek assistance from their legal representative or union, or may utilise the services of the department's employee assistance program for advice and counseling.

Protection exists for those against whom an intentionally false PID is made. It is an offence under section 66 of the PID Act, punishable by up to two years imprisonment, to intentionally make a false or misleading statement intending it to be acted upon as a PID. Making a false and misleading disclosure may also result in a disciplinary action being commenced against the discloser.

The *Code of Conduct for the Queensland Public Service* provides that "we will support employees who report genuine concerns of wrongdoing and manage any reports of wrongdoing in a fair, transparent and consistent manner". As such, staff will have performed their duty in participating in an investigation and should not be treated adversely because of any involvement in this process. Any substantiated allegations of adverse treatment on these grounds may result in disciplinary action being taken.

It is the responsibility of the PID Coordinator to provide feedback to the PID discloser about the progress and the outcome of PIDs. The department also undertakes to keep a discloser who is not a public officer informed of progress on their PID.

Any apparent conflict between disclosure and confidentiality will be risk-managed by the department through a clear focus on the prevention of fraud, wrongdoing and unethical behavior as outlined in this policy.



10 Reporting Responsibilities

The PID Coordinator is responsible for recording and reporting information regarding PIDs received by the department.

The PID Coordinator will maintain a record of each PID which will include:

- the name of the person making the PID (if known)
- the subject of the PID
- any action taken on the PID
- any other information needed to comply with the reporting requirements of the Queensland Ombudsman, including:
 - a. the date the disclosure was received, and who it was received from
 - b. the status of the discloser (i.e. entity staff, staff from another entity, member of the public, anonymous)
 - c. the gender and status of the subject officer (staff member, non-staff member)
 - d. the relationship between the discloser and the subject officer
 - e. the geographical location of the subject officer
 - f. a summary of the allegation/information received
 - g. the involvement of an external agency/party
 - h. the action taken to minimize the risk of reprisal
 - i. the date the inquiry/investigation commenced and was completed
 - j. the outcome of the assessment, inquiry/investigation
 - k. the date the PID was resolved or closed
 - l. when the outcome was advised to the discloser
 - m. if no action was taken, the reason for the decision
 - n. other legal processes associated with the disclosure.

All documentation relating to a PID will be stored in a confidential file and secured in a locked area. No details will be placed on personal files. If an employee is transferred to another agency the PID file remains the property of DPC.

11 Approval and review

The PID Coordinator is responsible for the preparation, review and maintenance of this document. It will be reviewed annually, unless circumstances dictate that a review should be undertaken sooner to ensure that the contents accord with relevant legislation and standards.

