

# Public interest disclosure procedure

## Purpose

The Department of State Development, Manufacturing, Infrastructure and Planning (the department) is committed to maintaining integrity and promoting the public interest through effective reporting, assessment and management of public interest disclosures (PID), in accordance with the [Public Interest Disclosure Act 2010 \(Qld\)](#) (the Act).

This procedure is to be read in conjunction with the department's complaints management policy.

## Scope

This procedure applies to:

- all employees of the department 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 disclosure, as defined under the Act.

## Definitions

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

## Responsibilities and accountabilities

Position	Responsibilities
<b>All employees</b>	<ul style="list-style-type: none"> <li>• Have an ethical responsibility to report suspected wrongdoing including for example corrupt conduct, maladministration, wasting of public funds, substantial and specific danger to public health and safety, the environment or a person with a disability, and reprisal action</li> </ul>
<b>Managers and supervisors</b>	<ul style="list-style-type: none"> <li>• Ensure that employees in their business area are aware of their reporting obligations as outlined above</li> <li>• Monitor and assess the workplace for signs of reprisal against a discloser or subject officer</li> <li>• Notify the Ethics and Governance (EG) unit in situations where any detrimental action has been taken against the discloser, and discuss concerns and options for addressing the situation before it escalates.</li> </ul>
<b>Ethics and Governance</b>	<ul style="list-style-type: none"> <li>• Assess and manage all PIDs in a confidential manner</li> <li>• Support the rights of all officers subject to a PID and ensure the process is fair for everyone involved</li> <li>• Maintain the department's PID reporting system, including collection, reporting and reviewing of PID data</li> <li>• Provide statistical, de-identified information to the Queensland Ombudsman about PIDs.</li> </ul>

<b>Director, Ethics and Governance</b>	<ul style="list-style-type: none"> <li>• Act as the department's PID contact officer</li> <li>• Refer all suspected PIDs to the appropriate authorities, including other entities if the matter relates to the conduct of another public-sector entity or if the entity has the necessary jurisdiction, expertise and technical knowledge to investigate or take other action.</li> </ul>
<b>Director-General</b>	<ul style="list-style-type: none"> <li>• Ensure that effective systems and procedures are in place to monitor a discloser's workplace for any signs of reprisal</li> <li>• Ensure the department has a secure and confidential reporting system to record the receipt and management of PIDs.</li> </ul>

## Procedure

### What is a Public Interest Disclosure?

A 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 wrongdoing 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 environment
- 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 Act. This means:

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

**3) PID must be made to a proper authority**

Proper authorities are persons and organisations authorised under the Act to receive public interest disclosures. Examples of proper authorities are:

- the public sector organisation that is the subject of the PID
- an agency that has authority to investigate the matter
- a Member of the Legislative Assembly (MP).

### Making a Public Interest Disclosure

A PID may be made to the department verbally, in writing, anonymously or through an authorised third party. The department is the appropriate authority to report the following types of disclosures to:

- information relating to the conduct of the department or any of its employees or agents
- anything the department has a power to investigate or remedy
- the conduct of another person that could, if proved, be a reprisal that relates to a previous disclosure made by the person to a proper authority
- the person believes that the disclosure information relates to a matter mentioned above.

Officers also have the option to make a PID to other authorities such as another public sector entity, the Crime and Corruption Commission, the Queensland Police Service or a Member of Parliament.

A PID may be made to a journalist, if a person has already made a PID to a proper authority and that authority decided not to investigate, did not take action, or did not notify the discloser within six months whether the matter would be investigated or not.

## Assessing a Public Interest Disclosure

All disclosures made to or referred to the department by another entity or Member of Parliament will be assessed by EG with reference to the Act.

In assessing a disclosure, EG will determine if:

- the disclosure constitutes a PID on the information available at the time
- the person making the disclosure is able to receive the protection of the Act
- there is a basis for the person making the disclosure believing, on reasonable grounds, the information shows the conduct, or if the person has information that tends to show the conduct
- the disclosure has been made to an individual or entity who may receive a PID and been made in accordance with the agency's procedure or as permitted by the Act.

If there is doubt whether the disclosure is a PID, EG should assume that the disclosure is protected by the 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.

## Referral to another entity

When a decision is made to refer a matter to another entity, or the department is statutorily bound to refer the matter to an oversight agency (e.g. suspected corrupt conduct to the Crime and Corruption Commission), the referral is done in accordance with the legislative and administrative processes under the Act. This includes a requirement for EG not to refer a PID to another agency if there is an unacceptable risk that a reprisal would happen because of the referral. EG will consult with the discloser, where possible, to consider the level of risk.

## A decision not to investigate a disclosure

All PIDs must be assessed by EG and a decision made on what action to take, if any. 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 the disclosure should be dealt with by another appropriate process
- the age of the disclosed information makes it impractical to investigate
- the department reasonably considers the disclosure does not warrant an investigation and that treating the matter as a PID would not be an appropriate use of departmental resources
- 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 to review a decision not to consider information as a PID or not to investigate or deal with a PID within 28 days of receiving the EG assessment advice. 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 Act, 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
- the entity investigated the disclosure but did not recommend taking any action
- the discloser was not notified within six months of making the disclosure whether or not the disclosure was to be investigated or dealt with.

## Risk assessment

As soon as possible after receiving a PID, a risk assessment is conducted by EG to determine the level of risk of a reprisal to the discloser and to anyone associated with the disclosure.

Where a risk has been identified, appropriate protections will be put in place - proportionate to the level of risk and potential consequences of a reprisal. This may include:

- developing specific strategies to reduce the level of risk to the discloser in the workplace
- consideration of the suspension or secondment of the person about who the disclosure is made (the subject officer).

If deemed necessary, EG, in consultation with the discloser and any other relevant stakeholder, will develop a protection plan for the discloser and provide ongoing support, including:

- acknowledging that making 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, EG will:

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

EG 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.

EG may continue to monitor the discloser's welfare (in association with the relevant manager) for an additional period after the PID has been finalised to identify and resolve any unreported support needs.

## 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 identities and details of the disclosure remain confidential.

Subject officers are not automatically assumed to have engaged in the conduct alleged about them. The rules of natural justice apply to any subject officer under investigation in respect of an allegation. In such instances, and through EG, 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 assessment, fact finding and necessary referral processes may all be conducted prior to a subject officer being advised of a PID. The subject officer need not be told about an allegation if it is:

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

Anyone who has an allegation made against them should be reassured by EG that the PID will be assessed impartially, objectively and reasonably and that it is only an allegation until evidence is collected to show otherwise. They should be provided with information of their rights, and the progress and outcome of any investigation undertaken.

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

Protection exists for anyone who has an intentionally false PID made against them. It is an offence under section 66 of the 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 disciplinary action being commenced against the discloser.

It is the responsibility of EG 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 the progress of 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 procedure.

## Reference documents

- [Public Interest Disclosure Act 2010](#)
- [Public Sector Ethics Act 1994](#)
- [Crime and Corruption Act 2001](#)

## Related documents

- [Complaints management policy](#)
- [Customer complaints procedure](#)
- [Queensland Ombudsman's Public interest disclosure guides](#)

## Document control

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2.1	18/05/2018	Senior Project Officer, Corporate Services (Incorporating MOG changes)	Executive Director, Corporate Services, DSDMIP

## Appendix A – Definitions

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

Term	Definition
Discloser	An individual (public service officer or member of the general public) who provides public interest information to the department that may constitute a PID.
Natural justice	Natural justice involves decision-makers informing people of the case against them or their interests; giving them a right to be heard; not having a personal interest in the outcome; and acting only on the basis of logically probative evidence.
Public interest	Considerations 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 a substantial and specific way, substantial misuse of public resources, substantial and specific: danger to public health and safety the environment) made to a proper authority.
Public service officer	An employee, member or officer of an agency or entity.