

# Corporate Services

## Questions and Answers

**Title:** Public Interest Disclosures

### Table of Contents

1.	Where can I find information on Public Interest Disclosures?.....	3
2.	What is a Public Interest Disclosure?.....	3
3.	Why make a PID?.....	4
4.	Who can make a PID?.....	4
5.	What is a public officer?.....	5
6.	Are there any implications if I want to make a PID but remain anonymous?.....	5
7.	What do I do if a member of the public wants to make a PID?.....	6
8.	Who should I talk to if I believe I have received a PID?.....	6
9.	How are PIDs assessed?.....	6
10.	Are PIDs always confidential?.....	7
11.	Will my identity be kept confidential if I make a Public Interest Disclosure?.....	7
12.	Is there support available to employees who make a PID?.....	7
13.	Does the PID Act provide me with any specific protection if I make a PID?.....	8
14.	Are there any limits on protections I have under the PID Act?.....	9
15.	Can my manager still take action against me if I have made a PID?.....	9
16.	Is there any support available for subject officer/s?.....	9

Title: Corporate Services, Q&As – Public Interest Disclosures

Approval Date:

Page: 1

Version: 1.0

17. What happens if the information turns out to be false or misleading?..... 10

18. What is meant by reprisal action? ..... 10

19. What might a reprisal involve? ..... 10

20. What should I do if I think I might be at risk of reprisal? ..... 11

21. What immediate action can be taken to reduce the risk of reprisal?..... 11

22. Should I advise a member of the public to protect themselves against reprisal? ..... 12

23. What happens if someone does take reprisal against a discloser? ..... 12

24. Can the department reduce the risk of reprisal?..... 13

25. Can I appeal if I disclose something and am advised no action will be taken? ..... 13

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Title: Corporate Services, Q&As – Public Interest Disclosures

Approval Date:

Page: 2

Version: 1.0

*The following Questions & Answers (Q&A's) have been developed for guidance purposes only. Full details are contained in the relevant legislation. Ethical Standards / Central Complaints and Review Unit are available to assist with enquiries as necessary.*

## 1. Where can I find information on Public Interest Disclosures (PIDs)?

In the first instance you can refer to the department's policy 'Public Interest Disclosures' (PID) and the Q&As that support the policy.

The policy should also be read in conjunction with the *Public Interest Disclosure Act 2010* (the PID Act) and the Queensland Ombudsman's (Ombudsman's) Public Interest Disclosure Standard No.1, which further prescribes the department's obligations when managing PIDs.

More information can also be obtained from the Ombudsman's publications *Managing/Making/Handling a PID* on the [Qld Ombudsman website](#).

## 2. What is a Public Interest Disclosure?

In general terms a PID is the disclosure of information of public interest involving wrongdoing within the public sector. The PID Act provides a framework on:

- who can make a disclosure;
- the types of matters that can be disclosed;
- how PIDs can be managed; and
- how certain protections can be offered to those who make a PID.

A PID must be made by a person to an appropriate entity, within the meaning of the PID Act. A PID relates to the disclosure of wrongdoing within the public sector and commonly includes allegations of corrupt conduct, maladministration, **substantial** and **specific** danger to the health and safety of a person with a disability, the environment or to public health or safety or reprisal against a person who had made a PID.

Title: Corporate Services, Q&As – Public Interest Disclosures

Approval Date:

Page: 3

Version: 1.0

**Substantial** means: ‘of an extensive or significant degree’. For example: conduct that places public health, safety or the environment at significant or a great risk of danger.

**Specific** means: ‘precise or particular’

A full definition of what would constitute a PID can be found in section 12 and section 13 of the PID Act.

### 3. Why make a PID?

A disclosure of suspected wrongdoing is an important component for ensuring that everyone in the department upholds the highest standards of integrity and accountability. Employees and members of the public are an important source of information for identifying and resolving wrongdoing and are encouraged to speak up because reporting suspected wrongdoing is vital to the integrity of the department and the wellbeing of vulnerable members of society. .

As employees we have an obligation under the Code of Conduct for the Queensland Public Service (the Code), section 1.1(d) to commit to the highest ethical standards and meet our obligations to report suspected wrongdoing not consistent with the Code.

### 4. Who can make a PID?

Anybody can make a disclosure about the following and receive the protections under the PID Act (section12)

- danger to the health or safety of a person with a disability;
- danger to the environment; and/or
- a reprisal.

All public officers of organisations other than government owned corporations can make a PID about the following conduct and receive the protections (section13)

- corrupt conduct;
- maladministration;
- misuse of public resources; and/or
- danger to public health and safety.

Title: Corporate Services, Q&As – Public Interest Disclosures

Approval Date:

Page: 4

Version: 1.0

A PID can be made if a person honestly and reasonably believes the disclosure can show wrongdoing or danger and that the information is of public interest and is made to a proper authority. Whether or not a disclosure will be recognised as a PID will be determined by the department taking into consideration the type of information supplied and who has made the disclosure.

If you are unsure about whether or not something you know could become a PID talk to your manager about it in the first instance. If you are still not sure you can seek further advice from a senior manager, the Manager, Ethical Standards; or the Manager, Central Complaints and Review Unit.

## **5. What is a public officer?**

A public officer includes:

- Queensland government department or agency employee;
- local government employees or councillors;
- statutory body employees;
- public university or TAFE institute employees;
- members of Parliament and their staff; or
- Queensland Police officers.

## **6. Are there any implications if I want to make a PID but remain anonymous?**

PIDs can be made anonymously, but can be more difficult for the department to manage, as you will not be able to be contacted to provide additional information if required. You should also consider that if you make a disclosure anonymously you will not receive any advice about the outcome of your disclosure (as the department will not know your identity).

The department is also unable to provide any direct support or protection to you if you choose to remain anonymous.

Title: Corporate Services, Q&As – Public Interest Disclosures

Approval Date:

Page: 5

Version: 1.0

## 7. What do I do if a member of the public wants to make a PID?

If a member of the public contacts you and states that they want to make a PID, you must forward the disclosure to either Central Complaints and Review Unit (if the PID relates to danger to a person with a disability) or to Ethical Standards (for all other PIDs) to assess whether the information disclosed actually falls within the definition of a PID. A member of the public may state that they want to make a PID; however, what they are really making is a complaint and the department will assess and determine if the information disclosed falls within the definition of a PID.

## 8. Who should I talk to if I believe I have received a PID?

If you receive a complaint you should take a cautious approach and maintain confidentiality to the extent necessary and seek advice from your line manager in the first instance. The Manager, Ethical Standards or Manager, Central Complaints and Review Unit, with particular reference to a complaint made by a member of the public in relation to a person with a disability.

You do not need to determine if a complaint is eligible to be assessed as a PID. These responsibilities are held with Ethical Standards or Central Complaints and Review Unit.

## 9. How are PIDs assessed?

Ethical Standards or Central Complaints and Review Unit will assess each disclosure to determine whether it falls within the legislative meaning of a PID. A staff member receiving a complaint shall promptly forward the concern to Ethical Standards or Central Complaints and Review Unit for assessment and does not need to further assess PID eligibility.

Ethical Standards or Central Complaints and Review Unit will formally assess each disclosure and provide advice to the delegate of eligibility and advise a level of risk of reprisal. Advice will be provided to the delegate of what, if any, action is required by the region or service unit to minimise any risk of reprisal.

If the information falls outside that scope, the complaint will still be dealt with; however, this will not be a PID under the PID Act. While standard confidentiality processes will be maintained,

Title: Corporate Services, Q&As – Public Interest Disclosures

Approval Date:

Page: 6

Version: 1.0

the particular requirements for confidentiality, support and protections provided by in accordance with the PID Act, will not apply.

#### **10. Are PIDs always confidential?**

No. Information about a PID can be disclosed; however, this only occurs in specific circumstances. These circumstances are outlined in Section 65 of the PID Act.

It is important to note that the duty of maintaining confidentiality does not affect the department's obligations to provide subject officers with natural justice. So when investigating, or otherwise dealing with a PID, it may sometimes be necessary to disclose confidential information (such as the identity of the discloser) to a subject officer in order to provide them with sufficient information to respond to the allegations.

#### **11. Will my identity be kept confidential if I make a Public Interest Disclosure?**

The PID Act creates a duty of confidentiality. It does not provide an absolute guarantee of anonymity for disclosers.

If you make a PID and a delegate or an officer investigating the matter needs to identify you during the process of managing the PID, they will first contact you and request your consent. If you do not consent to the disclosure of your identity they will not do so. However, if you choose this option the delegate or investigator will need to consider whether the process can continue. You must also be aware that in certain circumstances it may be necessary for your identity and the information you disclosed to be further disclosed to enable a full investigation to be completed; or for procedural fairness; or to provide protection against reprisal.

#### **12. Is there support available to employees who make a PID?**

The department provides a range of support mechanisms to any employee who makes a PID. These include:

##### *Management support*

- Management are ideally placed to ensure the discloser is supported at the workplace. Management must monitor the workplace for signs of harassment or victimisation and

Title: Corporate Services, Q&As – Public Interest Disclosures

Approval Date:

Page: 7

Version: 1.0

anticipate problems before they arise. Managers shall support disclosers by acknowledging that making the PID was the right thing to do and is supported by the department, assuring the discloser that management will take all reasonable steps to protect the discloser and undertake to keep the discloser informed as they can.

- The delegated officer, in consultation with Ethical Standards or Central Complaints and Review Unit, will nominate a support person from within the discloser's own region, or within a relevant workgroup, if appropriate. For low level support, this may include a staff member from Ethical Standards or Central Complaints and Review Unit. In medium or high risk of reprisal assessments, a nominated support person from their workgroup will be allocated to support the discloser.

#### *Personal support*

- Disclosers will be encouraged to use their own support networks such as work colleagues, family, union/ professional association, supervisor and/ or counsellors. It should be noted; however, that when communicating with work colleagues that confidentiality is paramount and they too must maintain confidentiality.

#### *Employee Assistance Service (EAS)*

- The services of the EAS are available to a discloser who is a departmental employee before, during or after the investigation of a PID and any subsequent action arising.

### **13. Does the PID Act provide me with any specific protection if I make a PID?**

There are protections under the PID Act for those who make legitimate PIDs including immunity from any civil or criminal liability arising from making the disclosure and protection from defamation action.

#### 14. Are there any limits on protections I have under the PID Act?

The PID Act only provides you with protection if you make the disclosure in the appropriate way. For example; if you disclose information to a journalist prior to making a PID to a proper authority you will not be protected.

If you knowingly make a false or misleading disclosure intending that it be acted on as a PID you will not receive protection under the PID Act.

#### 15. Can my manager still take action against me if I have made a PID?

Yes. A manager cannot take action against you for making the PID. However, as you are still an employee of the department a manager is not prevented from taking 'reasonable management action' should it be necessary. For example: managing the work performance of an employee who has made a PID. However, reasonable management action can only be taken if the manager's reasons for taking the action do not include the fact that the person has made the PID.

#### 16. Is there any support available for subject officer/s?

The PID Act requires the department to ensure appropriate consideration is given to the interests of the person/s subject of the PID.

There are various means of support available to employee/s who are subject of a PID.

- A contact person will be appointed by delegates to support subject officer/s throughout the investigation process. The purpose of the contact person is to provide advice on how the investigation is progressing and to assist them if they experience any difficulties in the workplace while the investigation process is progressing.
- Subject officer/s may also seek assistance from their union or private legal representative (at their own expense).
- The department's Employee Assistance Service is available for support.

The employee/s subject of an investigation is likely to find the process stressful. Their rights and needs should not be forgotten. When advising the subject officer/s of the investigation,

they need to be reassured that the PID will be dealt with impartially, fairly and reasonably, and is only an allegation until evidence collected shows otherwise.

### **17. What happens if the information turns out to be false or misleading?**

Making a false or misleading PID may lead to serious consequences. It is an offence under the PID Act for a person to knowingly provide false and misleading information, with the intention of it being treated as a PID.

### **18. What is meant by reprisal action?**

Reprisal occurs if a person causes, or attempts to cause, or conspires to cause detriment to another person, because of, or in the belief that:

- the person has made a PID;
- intends to make a disclosure under the Act;
- the person is going to be involved in a proceeding under the Act; or
- has been, or intends on being involved in a proceeding under the Act against any person.

### **19. What might a reprisal involve?**

Detriment (or threats of action) include, but are not limited to:

- personal injury or prejudice to safety;
- property damage or loss;
- intimidation or harassment;
- adverse discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business;
- financial loss; and/or
- damage to reputation, including personal, professional or business.

Title: Corporate Services, Q&As – Public Interest Disclosures

Approval Date:

Page: 10

Version: 1.0

## 20. What should I do if I think I might be at risk of reprisal?

If you have made or are making a PID you are entitled to take action to protect yourself. This might include:

- discussing the matter with your regional executive director, regional director, director, manager or the PID liaison officer;
- requesting a transfer to another work area within the department, or a changed seating or supervisory arrangement where this may be appropriate;
- applying to the PSC for relocation outside of the department;
- making a civil claim for damages through the District or Supreme Court or making a complaint under the *Anti-Discrimination Act 1991*;
- lodging a workers' compensation claim, if you have sustained an injury as a result of the reprisal action;
- lodging a complaint or appeal if the reprisal action adversely impacted you (refer to PSC Directives on Appeals);
- applying to the Queensland Industrial Relations Commission (QIRC) or the Supreme Court for an injunction against reprisal action; and/or
- reporting the matter to the Queensland Police Service if you believe your personal safety is at risk, or a criminal offence has occurred.

## 21. What immediate action can be taken to reduce the risk of reprisal?

Risk management action in the workplace may include:

- Determining whether the parties involved are likely to have ongoing contact in the workplace and relocating parties if necessary;
- Implementing additional management supervision in the workplace, or offering support and counselling to the discloser; and/or

Title: Corporate Services, Q&As – Public Interest Disclosures

Approval Date:

Page: 11

Version: 1.0

- Supporting the employee in obtaining assistance or protection from other agencies (e.g., the Queensland Police Service) if they have concerns regarding safety outside of work.

## 22. Should I advise a member of the public to protect themselves against reprisal?

Unlike public officers who make a disclosure, the department does not have any employment relationship with the discloser who is a member of the public. It is therefore limited in the level of support it can provide.

You should make a member of the public aware of the protective actions they can take and their right to do so. The actions they can take include:

- commencing proceedings in a court under section 42 of the PID Act;
- making a complaint about a reprisal under the *Anti-Discrimination Act 1991* (s44). However if the person commences proceedings in a court, they cannot subsequently make a complaint under the *Anti-Discrimination Act 1991*;
- contacting the Queensland Workplace Rights Ombudsman who can provide information and advice to Queensland workers about their workplace rights and obligations; and/or
- reporting the matter to the Queensland Police Service if they believe their personal safety is at risk, or a criminal offence has occurred.

## 23. What happens if someone does take reprisal against a discloser?

If you believe that reprisal action is being taken against you, report this to your manager or supervisor in the first instance, or to the Manager, Ethical Standards.

A reprisal is a criminal offence under the PID Act and could result in a fine or a term of imprisonment.

**24. Can the department reduce the risk of reprisal?**

Ethical Standards or the Central Complaints and Review Unit will assess the risk of reprisal. Where necessary, they will formulate (in consultation with the delegate) a strategy to manage the risk.

If the risk assessment indicates that the risk of reprisal is sufficiently high, a formal protection plan will be developed in consultation with the discloser and other stakeholders as appropriate.

**25. Can I appeal if I disclose something and am advised no action will be taken?**

After receiving the written reasons, a discloser may apply to the Director-General or delegated officer, for a review of the decision.