

*Does your organisation effectively
manage the reporting of wrongdoing?*



MANAGING A PUBLIC INTEREST DISCLOSURE PROGRAM

A guide for public sector organisations

2011

Making a public interest disclosure

A guide for individuals working in the public sector

Handling a public interest disclosure

A guide for public sector managers and supervisors

under the
Public Interest Disclosure Act 2010 (Qld)



The Australia-wide research findings presented in this guide are primarily drawn from the final report of the *Whistling while they work: towards best practice* (Roberts, Olsen & Brown 2009), available free online at www.griffith.edu.au/_data/assets/pdf-file/0007/159199/whistling-july09-fullreport.pdf. More information about the research is at the end of this guide (see 'About the research' on p. 61), and via www.griffith.edu.au/law/whistleblowing.

In addition to Griffith University's *Whistling While They Work, Whistleblowing in the Australian public sector* (Brown 2008), we gratefully acknowledge the contributions of the [New South Wales Ombudsman](#) and the Western Australian [Office of the Public Sector Standards Commissioner](#) (OPSSC). Sections of this guide have been adapted from or informed by their publications.

Unless otherwise stated, legislation references in this guide are to the *Public Interest Disclosure Act 2010* (Qld), while chapter and page references are from Roberts et al. 2009.

There will be, from time to time, matters that raise complex issues of law, where litigation is likely or the matter is otherwise highly contentious. In these cases, seek further legal or external agency advice before taking action.

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This guide

A person who makes a **public interest disclosure** receives unique protections for disclosing information in the public interest to a proper authority about wrongdoing in the public sector; or danger to the public health or safety, the health or safety of a person with a disability, or the environment. Making a public interest disclosure is sometimes referred to as 'whistleblowing'.

This guide is designed to help public sector organisations implement internal programs to manage **public interest disclosures** (PIDs) that they receive under the *Public Interest Disclosure Act 2010* (the PID Act). The PID Act replaced the *Whistleblowers Protection Act 1994* (Qld). This guide aims to assist organisations and senior managers to develop a workplace environment where:

- employees are encouraged to disclose wrongdoing without fear of reprisal
- employees receive necessary support and feedback
- cases are dealt with or investigated in a thorough and timely manner.

This guide focuses on the key components of a PID program. However, the principles of protection and support, as outlined, apply uniformly to all employees who raise a concern. Employees should not expect repercussions for reporting any type of wrongdoing, or speaking up in defence of their rights and those of other employees, regardless of whether their disclosure satisfies the definition of a PID under the PID Act.

Key to the layout of the guide

WWTW Research findings
are in dark blue

Definitions
are in beige

Examples
are in light blue

Policy samples
are in maroon

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Your organisation's responsibilities

To implement an effective PID program, an organisation must be committed to:

- encouraging a positive reporting environment
- ensuring PIDs are dealt with in a thorough and timely manner
- supporting and protecting employees who make a PID.

To achieve this, organisations should address the following areas:

Understand the PID Act and your organisation's obligations

The PID Act aims to ensure that government is open and accountable by providing protection for those who speak out about wrongdoing (i.e. make a PID). See '[Understanding the key elements of a PID](#)' on p. 43 for more information.

Your organisation has statutory and common law duties to ensure that the workplace is safe, which include ensuring that as far as is reasonably practicable your staff are protected from the stress of making a PID or suffering a reprisal. Failure to do so may expose your organisation to liability for injury suffered by your employee as a consequence of making a PID.

See '[Your organisation's legal obligations](#)' on p. 53 for further information about the PID Act, other legislation (e.g. workplace health and safety and workers' compensation) and common law.

Build your organisational commitment

Employees are more likely to disclose wrongdoing if they know that their concerns will be appropriately handled and they will be adequately protected. The PID Act aims to provide a scheme that, in the public interest, gives special protection to PIDs. However, management have responsibility for creating an environment in which staff feel confident that making a PID is valued and taken seriously.

Your organisation's reporting program needs to be clearly communicated and supported by detailed policies and procedures, specialist skills, and appropriate training. However, no program will be effective without clearly demonstrated leadership commitment to the protection of disclosers.

Ensure an effective PID management program is in place

There are a number of aspects to an effective whistleblower management program in an organisation, including structural, operational and maintenance elements.

Structural elements include:

- management's commitment
- effective policy and procedures
- an allocation of adequate resources including specialist skills to implement a PID program.

Operational elements include:

- setting up a reporting system
- assessing and taking action on PIDs
- discloser support and protection
- reporting obligations.

Maintenance elements include:

- education and training
- visibility and communication
- review mechanism.

This can best be achieved by developing a PID program for implementation by your organisation.

Under s. 28 of the PID Act, chief executives have an obligation to establish reasonable procedures to ensure that a management program for PIDs made to the entity is developed and implemented.

The checklist in section 2.3 of this guide outlines the elements of a good practice PID program. Your organisation can use it to evaluate its existing program, and to identify areas for improvement.

Organisational commitment to the program must move beyond procedures setting out responsibilities and obligations to be fulfilled by staff, to an approach which also emphasises the responsibilities of the organisation as a whole, including the most senior management. The research into the case study agencies confirmed the value on the whole, of more organised and proactive programs, in terms of measurable results.

(Roberts et al. 2009, p. 6)

PART 1

Your organisation's PID program

1.1 Organisational commitment

Management commitment

The 'tone at the top' is critical to a successful PID program. Given that staff are more likely to report their concerns to line managers, all levels of management from the CEO to supervisors need to fully understand and support the organisation's attitude, program, policies and procedures in relation to PIDs.

Organisational commitment to ethical practices and to the PID program should be explicitly stated in your policies and code of conduct. However, for organisational commitment to be effective, leaders must personally and vocally commit to developing and maintaining an ethical culture.

Managers and supervisors must feel that the culture of the organisation truly supports reporting wrongdoing, and that identifying issues from within their team will not be seen in any way as a reflection of their own performance.

Managers and supervisors need to be trained in the process of handling PIDs by ensuring that they:

- have a positive attitude to their staff disclosing wrongdoing
- are aware of their responsibilities to their staff
- know how to recognise a PID and what action to take when they receive PIDs or other information about wrongdoing
- are able to offer genuine support to staff who disclose.

'Where senior managers in an organisation did not act ethically themselves, the effort being put into whistleblowing policies and procedures was largely wasted. The phrase "walk-the-walk" was used frequently ... One of the most disturbing criticisms that was made about leadership in the area of whistleblowing was that there are many managers who will publicly support the process but privately act against it. Put another way, the words and actions do not reconcile.'

(Roberts et al. 2009, p. 24)

Encourage all managers and supervisors to read the companion publication, *Handling a public interest disclosure: a guide for public sector managers and supervisors* (see '[Contact details](#)' on p. 62). This resource aims to help them identify PIDs and recognise how their own actions can make a difference to their staff, and discusses 12 steps for managing a PID.

This guide contains samples of policies and procedures from *Whistling While They Work* (Roberts et al. 2009). They are not intended to be adopted word for word, but used as a starting point when assessing your current procedures and developing them to suit the needs of your organisation (e.g. wrongdoing risks, ethical culture, size, dispersion, organisational structure).

While organisational cultures and levels of commitment vary significantly between organisations, this is primarily because of the nature of management in each individual agency rather than organisation type, purpose or jurisdiction.

(Roberts et al. 2009, p. 19)

Sample content for management commitment in policies or procedures

This organisation encourages any staff member who considers that he or she has witnessed wrongdoing to come forward and make a disclosure.

We aspire to an organisational climate where all staff feel confident and comfortable about making a disclosure of wrongdoing.

We believe that we have an obligation to deal with wrongdoing in this organisation. We believe that disclosing wrongdoing is in accordance with this organisation's ethical culture, in particular, acting with integrity. Further, this organisation believes that staff who come forward with disclosures of wrongdoing are acting as exemplary organisational citizens by assisting us in promoting openness, accountability and good management.

When staff come forward with information about wrongdoing, we commit to:

- *protecting the dignity, wellbeing, career interests and good name of all persons involved*
- *protecting the discloser from any adverse action taken as a result of making the disclosure*
- *treating any bullying, harassment, unfair treatment, victimisation or discrimination that results from a disclosure being made as a breach of our disciplinary procedures*
- *responding to the disclosure thoroughly and impartially*
- *where some form of wrongdoing has been found, taking appropriate action to deal with it*
- *keeping the discloser informed of the progress and outcome.*

(Roberts et al. 2009, p. 41)

Understanding the benefits

Employees who are prepared to speak up about misconduct, maladministration or other wrongdoing are well recognised as one of the most important and accurate sources of information to identify and address problems that disadvantage or endanger other people and damage the reputation of the organisation (see text box). Any organisation which values ethical behaviour and accountability must ensure that those who speak out about wrongdoing are protected.

The benefits to an organisation of encouraging staff to report wrongdoing include:

- identifying wrongdoing as early as possible
- exposing weak or flawed programs which make the organisation vulnerable to loss, criticism or legal action
- avoiding financial loss and inefficiency
- maintaining a positive corporate reputation
- reducing the risks to the environment or the health or safety of employees or the community
- improving accountability
- deterring employees from engaging in improper conduct.

- 'Whistleblowing plays a pivotal role in current public sector integrity systems.'
- Managers and casehandlers rank reporting by employees as the single most important trigger for uncovering wrongdoing.
- Reports by employees account for two out of every three wrongdoing cases recorded and dealt with by public sector organisations.
- Whistleblower reports are more likely to be substantiated and lead to change in an organisation than allegations or complaints from other sources.

(Brown, Mazurski & Olsen 2009, pp. 44–46)

There may be some risk in deciding to ignore or not manage a PID, such as:

- your organisation may miss an opportunity to deal with a problem before it escalates
- your organisation's ability to deal with the allegation appropriately may be compromised
- reprisals may occur if a PID is not managed appropriately and serious legal implications may follow
- the reputation and standing of your organisation may suffer
- public confidence in government may decline.

Making a report about public interest wrongdoing is a lot more common than previously believed. Data collected across Australia over a two-year period from public sector employees revealed that:

- 61 per cent of employees surveyed saw wrongdoing in their organisation which they considered serious
- 12 per cent of those surveyed reported some form of public interest wrongdoing.

(Brown et al. 2009, p. 40)

Developing policies and procedures

Research has shown that organisations must develop comprehensive policies, procedures and practices which ensure clarity and consistency in handling PIDs. Your policy is also an avenue for your organisation to clearly demonstrate its commitment to the process and to protecting disclosers.

- Organisations with comprehensive procedures are more likely to have employees who are aware of the procedures, have positive attitudes towards reporting wrongdoing, report wrongdoing they believe to be serious, and are treated better by managers and co-workers when they do report.
- Organisations with a high proportion of employees who are aware of their organisation's whistleblowing policies or procedures are more likely to have a higher rate of reporting wrongdoing, positive employee attitudes towards reporting wrongdoing and higher employee trust that reporting will be looked on positively by management.
- The whistleblowing procedures of organisations tend to be strong in setting out the process to be followed by disclosers (i.e. whom they should report to and what the recipient of the report should do), but weak in terms of protecting and supporting disclosers (i.e. responding to reprisals).

(Roberts 2008, p. 258; Roberts et al. 2009, pp. 34–36, 49, 101–102)

The PID Act places obligations on CEOs of public sector entities to establish reasonable procedures to ensure that:

- staff who make PIDs are given appropriate support
- PIDs made to the organisation are properly assessed and when appropriate, properly investigated and dealt with
- appropriate action is taken in relation to any wrongdoing revealed by a PID made to the organisation
- staff who make PIDs are offered protection from reprisals.

The CEO must ensure the procedures are published on the entity's website and are readily accessible to the public [s.28].

Another common factor of whistleblowing procedures is '... the tendency to develop procedures closely aligned to the legislative structure. Consequently, some procedures read like an explanatory memorandum for a statute and the legalistic nature of this language made comprehension difficult.'

(Roberts et al. 2009, p. 32)

Consulting on the policy with internal and external stakeholders — including staff, management and unions — will encourage all parties to think through the issues and can provide constructive input into your reporting system. All staff should then be trained about the policy and the procedures for making and receiving a PID (see '*Maintaining an effective system*' on p. 9).

Ensuring the necessary specialist skills are available

Your organisation should have a specialist area that can support and provide advice to leaders, managers and staff. This area should act as a central coordination point for the management of PIDs, and provide an alternative avenue, rather than through line management for disclosing wrongdoing.

Your specialist area should be notified of any PID your organisation receives, so that it can assess and, if necessary, refer a PID for further action. For example, it may be necessary to establish a support network for the discloser or refer a PID to an investigator with specialist skills.

Your organisation's procedures need to detail who is responsible for handling and dealing with PIDs. Specialist support may sit within a variety of teams and will differ from organisation to organisation. Examples of specialist areas include:

- Internal Witness Support
- Ethical Standards/Equity and Merit/Workforce Integrity
- Internal Audit/Fraud Investigation/Complaints
- Human Resources/Employee Relations.

Regardless of where the responsibility lies, specialists must consult with other teams to operate effectively. Equally, other teams should proactively promote the PID process in their regular dealings with employees (see '[An integrated organisational approach](#)' on p. 39).

The role of the specialised area, however, does not negate the responsibilities of all levels of management. Specialised areas need to work closely with supervisors, line managers and senior management to ensure disclosers are supported and protected. Line managers or supervisors need to continue managing the performance of individuals who have made a PID and there needs to be a high level of coordination between all parties involved.

If possible, it is best to make individuals responsible for different roles in the specialist unit, for example:

- PID coordinator
- case manager(s)
- investigator(s).

The PID coordinator should be a senior officer with a direct line of reporting to your CEO.

All specialist officers must be properly trained. Their roles and responsibilities include:

PID coordinator	PID case manager(s)	Investigator(s)
<ul style="list-style-type: none"> • impartially assesses information to determine whether it is a PID • coordinates the reporting system • provides advice about PIDs and the PID Act • ensures the organisation carries out its responsibilities under the PID Act • appoints an investigator (internal or external) • oversees and coordinates investigations • establishes and maintains a confidential filing system • collates and publishes statistics on PIDs • liaises with the CEO of the organisation. 	<ul style="list-style-type: none"> • advises the discloser about what making a PID means • assesses the immediate protection needs of the discloser • listens and responds to any concerns of harassment, intimidation or victimisation in reprisal for making a PID • coordinates and provides support to the discloser • works with management to foster a supportive work environment • advises the discloser of progress • keeps records of all aspects of case management of the discloser, including all contact and follow-up action • endeavours to ensure that the expectations of the discloser are realistic. 	<ul style="list-style-type: none"> • carries out investigations • provides the discloser and subject officer with information about the investigation

The capacity of your specialist area will depend on many factors such as:

- the size of your organisation
- geographic distribution of locations
- the volume and type of PIDs received.

Decentralised or large organisations may find it useful to have a PID coordinator in a central area, with case managers in the regions or divisions, while smaller organisations may need only one person. It is essential, however, that the functions of investigators are separate from and independent of the support and protection functions of case managers, even if this requires engaging external consultants. Any investigation of reprisal must also be conducted independently of the investigation into the information contained in the original PID.

The scenarios in the following text box highlight the differing approaches.

- A suburban local government body allocates all the duties relating to whistleblowing to one part-time officer. That officer prepares and maintains the organisation's whistleblowing policies and procedures, advises the executive on those issues, and undertakes basic counselling and support training.
- A very large state department has a small centralised unit to handle whistleblowing matters and works through support officers in the various divisions and branches of the organisation.
- Another large state department allocates whistleblowing functions to three workplace assistance officers.
- A federal department has a small central whistleblowing unit which works through the harassment officer network in the organisation.
- A large police service has nine full-time staff allocated to whistleblowing matters.

(Roberts et al. 2009, p. 37)

Maintaining an effective system

An effective reporting system requires employees to be aware of and have confidence in that system. Resources put into awareness-raising and training will result in fewer difficult and complex PID cases and deter employees from engaging in improper conduct in the first place.

Educating and training

Educating staff on PID issues should be part of your organisation's induction program and ongoing training. All public sector entities should include PID matters as a component of their broader ethics and/or code of conduct training, and explain in practical terms how PIDS can be made.

Employees need to know:

- how to recognise wrongdoing
- how to make a PID
- that your organisation is committed to protecting and supporting those who report.

While computer-based training modules are an effective means of reaching a broad number of people, face-to-face training, where participants can discuss reporting scenarios, provides more in-depth learning.

Managers and supervisors require training on their obligations in relation to PIDs. Relevant information is provided in *Handling a public interest disclosure: a guide for public sector managers and supervisors*.

Any training must be continually reinforced in the workplace.

Communicating

Your policy and procedures must be readily available to all staff and members of the public. Check any standard issued under PID Act (s. 60) for specific requirements. In addition, consider developing a communication strategy to advise people of them.

Communicate your organisation's message to staff by:

- using existing internal circulars, staff newsletters and other publications
- sending emails or inserting messages in payslips
- handing out brochures, flyers or wallet-sized cards
- displaying posters
- developing themed computer wallpapers, mouse pads, notebooks, rulers or other office equipment
- providing contact details for your specialist area on internal phone lists
- creating easy links on your internet/intranet.

Many effective awareness strategies are based around themes such as:

- 'If in doubt, report' (Brown 2008)
- 'Don't ignore it — report it' (Independent Commission Against Corruption 2007)
- 'Don't be afraid to speak up' (WA OPSSC 2009)
- 'Silence isn't always golden' (Public Concern at Work 2009).

Consider these strategies to raise awareness of your PID program:

- ask managers and supervisors to brief their employees on key points of the policy and any changes. This not only helps ensure that managers understand their own role in the arrangements, but also communicates the message from managers themselves that it is safe and acceptable for employees to make a PID
- provide opportunities (e.g. at staff meetings) for staff to discuss with management scenarios and practical situations relevant to their workplace
- regular messages from your CEO, and other senior officers, either through letters, newsletters or on the intranet, will give the PID policy credibility and will demonstrate that your organisation is committed to a positive PID reporting culture
- if it is safe and appropriate to do so, publicly acknowledge an employee who has acted in the public interest by making a PID, or find constructive ways in which to openly acknowledge and discuss the wrongdoing. Ensure this complies with '*Maintaining confidentiality*' on p. 33.

Reviewing effectiveness

The effectiveness of your PID program needs to be reviewed regularly. Responsibility for this should be given to a senior officer or internal committee (e.g. your audit committee), rather than your specialist area.

A review should consider whether:

- your policies and procedures are consistent with best practice and current law
- PIDs are being recorded appropriately (see '*Keeping records*' on p. 24)
- action taken in response to PIDs is in accordance with your procedures and any standard issued by the Public Service Commission (PSC)
- confidentiality issues are being handled effectively
- staff believe they have been treated well after making a PID
- timely and constructive information is being provided to those involved
- employees are aware of, and trust in, your program.

In conducting your review it is recommended that, at a minimum, your organisation:

- extracts key information from your record-keeping system, such as outcomes and details of the support provided to those involved
- examines the level and appropriateness of resources allocated to cases
- asks disclosers and the subjects of PIDs to provide written feedback about their experience
- seeks information on how the arrangements are working from managers and supervisors with experience in dealing with PIDs
- surveys employees on their awareness, experience and confidence in the PID process.

Where the review suggests there are problems, either generally or within a local area, your organisation should take action to address them. For example, if the review shows there is confusion about whether or not a report of wrongdoing is a PID, it may be best to revisit your policy and/or improve training and communication.

1.2 Setting up a reporting system

Establishing a clear reporting system

Public sector organisations covered by the PID Act must set up a PID management program (see s. 28 and any standard issued by PSC under s. 60).

Reporting systems enable organisations to comply with their obligations under the PID Act and the *Crime and Misconduct Act 2001* (Qld) (see '[Your organisation's legal obligations](#)' on p. 53). Additionally, the *Australian Standard 8004-2003 Whistleblower protection programs for entities* recommends any medium-to-large organisation institute a reporting system.

There is no 'one size fits all' approach to reporting systems. It is best determined by your organisation's size, structure, culture, dispersion and the nature of the risks it faces. However, no matter what approach your organisation takes, your reporting system must be clear and easy to understand. It must also conform to the requirements of the PID Act and any standard issued under the PID Act, by the PSC.

If possible, a centralised specialist area should be given responsibility to handle PIDs (see '[Ensuring the necessary specialist skills are available](#)' on p. 7). Establish processes to ensure that any reports received by the organisation that may amount to a PID are forwarded centrally, while maintaining confidentiality.

Ensuring comprehensive coverage

Public sector organisations receive many different types of complaints. These can range from workplace disputes, harassment or bullying complaints, health and safety concerns, and allegations of improper conduct or wrongdoing. While only some of these matters will be PIDs, your organisation is encouraged to adopt the principle that no one should be disadvantaged because of making a complaint.

'It is better for organisations to receive too much information about wrongdoing than too little, or too late.'

(Roberts et al, 2009, p. 1)

Your organisation may choose to extend its policies, procedures and support arrangements beyond the scope of the PID Act to a broader range of wrongdoing. Protecting and supporting all employees who report wrongdoing will help your organisation meet its legal obligations to provide a safe workplace for employees (see '[Your organisation's legal obligations](#)' on p. 53). However, take care not to mislead staff that they have protection against reprisals under the PID Act where they do not.

Research suggests that organisations should identify groups of complainants who may have valuable information about wrongdoing, but for whom the risk of reprisal represents a major barrier to disclosure (Roberts et al. 2009). You may decide to incorporate such groups (e.g. contractors or volunteers) into your program's support arrangements and policy.

Sample content for comprehensive coverage in policies or procedures

If you are aware of any activity or incident that you consider is wrongdoing or would impact adversely on the operation of the organisation, we encourage you to speak up and let someone know.

However, for your disclosure to receive the unique protections of the PID Act, it must concern:

- *official misconduct*
- *maladministration*
- *a misuse of public resources*
- *danger to public health or safety*
- *danger to the health or safety of a person with a disability*
- *danger to the environment*
- *a reprisal.*

This policy applies if you are:

- *a permanent employee, whether full-time or part-time*
- *a temporary or casual employee*
- *a person employed under a contract of service.*

(Roberts et al. 2009, p. 56)

Almost half (49 per cent) of all wrongdoing observed by staff would not qualify as a PID but concerns personnel or workplace grievances. Common examples observed in Queensland include:

- bullying of staff
- favouritism in staff selection/promotion
- failure to follow staff selection procedures.

Interpersonal conflicts accompany 46 per cent of reports about public interest wrongdoing.

(Brown, Mazurski & Olsen, pp. 29–30, 37)

Separating PIDs from other matters

PIDs are often entangled with employee-related complaints, issues between personnel, or performance management concerns. In such cases, it is important to distinguish the PID from any other issues and deal with each one using the appropriate mechanisms.

An employee-related complaint is often a dispute between two parties that can be resolved by conciliation. A complainant generally 'owns' the complaint and can withdraw it at any stage. In contrast, a PID relates to a matter of public interest which, once made, is no longer 'owned' by the complainant and must be fully explored by the organisation.

Some organisations may choose to take a 'one stop shop' approach, such as a general all-purpose complaints and disclosure hotline.

(Roberts et al. 2009, p. 47)

Employees need to understand that different types of complaints or reports may have different reporting pathways, and be dealt with differently.

Sample content for separating PIDs from other matters in policies or procedures

The issue that you are considering disclosing may involve activity that is primarily aimed at you, such as harassment or bullying. These types of issues are staff-related complaints. This does not mean that you should not report them, as they are contrary to the policies of this organisation [link to employee complaints policy]. These types of issues should be reported to your line manager or a more senior manager in the first instance.

(Roberts et al. 2009, p. 56)

Whenever a report is received, managers or your specialist area should decide who within your organisation should deal with the matters raised, and guide staff to the most appropriate person.

For example:

What am I reporting?	Who do I tell?	What policy should I look at?
Workplace conflict, employee-related complaints	<ul style="list-style-type: none"> • Supervisor or manager • Human Resources • Employee complaints officer • Union representative 	<ul style="list-style-type: none"> • Employee complaints policy • Dispute handling policy
Bullying or harassment	<ul style="list-style-type: none"> • Supervisor or manager • Employee complaints officer • Equal opportunity officer • Human Resources 	<ul style="list-style-type: none"> • Bullying and harassment policy
Equal opportunity or discrimination concerns	<ul style="list-style-type: none"> • Supervisor or manager • Equal opportunity officer • Anti-Discrimination Commission Queensland 	<ul style="list-style-type: none"> • Equal opportunity policy
Workplace health and safety concerns	<ul style="list-style-type: none"> • Supervisor or manager • Workplace health and safety representative • Human Resources 	<ul style="list-style-type: none"> • Workplace health and safety policy
Personnel problems (e.g. performance issues)	<ul style="list-style-type: none"> • Supervisor or manager • Equal opportunity officer • Human Resources 	<ul style="list-style-type: none"> • Discipline policy • Equal opportunity policy • Managing unsatisfactory performance policy • Performance management policy
Process and procedure concerns	<ul style="list-style-type: none"> • Supervisor or manager • Internal auditor • Audit committee 	<ul style="list-style-type: none"> • Internal Audit • Risk management policy
Ethical or other misconduct concerns	<ul style="list-style-type: none"> • Supervisor or manager • Other senior managers • Specialist area 	<ul style="list-style-type: none"> • Code of conduct • PID policy

Stuart works for the local council undertaking street maintenance. Stuart lodges a complaint with his supervisor, Jack, because his work colleagues are regularly accepting payment for completing private jobs using council equipment during work hours. Stuart is aggrieved because his workgroup is getting behind with their delegated tasks and he does not want to be associated with dishonest practices.

Stuart and Jack do not realise that Stuart has made a PID about official misconduct under the PID Act. Jack correctly follows his council's procedures for employee complaints by approaching the workgroup and telling them about Stuart's report. The workgroup denies the allegations and no further action is taken in relation to the matter because Jack believes it would only create further problems.

Implications:

- Stuart may now be at significant risk of reprisal.
- Any investigation at a later time may be flawed because there has been opportunity for those involved to compare stories, alert witnesses, and hide, destroy or alter evidence.

Clarifying reporting pathways

Providing multiple reporting pathways is a crucial element of any organisation's PID arrangements (Roberts et al. 2009). While staff should be encouraged to disclose internally, they should also be advised of their rights to disclose (or seek review) externally. Whichever option the discloser takes, it is in your organisation's interest to provide them with clear advice on how to disclose.

Internal disclosures

Research indicates that disclosers have a clear preference to disclose internally (see text box). Therefore, the emphasis in your organisation's policy and procedures should be on encouraging employees to disclose to their supervisors and senior managers, where appropriate.

Your organisation's arrangements should provide a number of safe and accessible reporting options. They should allow employees to report wrongdoing to a person other than their line manager or someone they work with regularly where the discloser:

- believes the person is involved in the wrongdoing
- believes the person already knows about the wrongdoing and has failed to address it
- feels management will see the exposure of wrongdoing as potentially embarrassing or a poor reflection on themselves
- is concerned about confidentiality
- fears reprisals.

- Almost all (97 per cent) whistleblowers first disclose inside their organisation.
- Whistleblowers are most likely to raise their concerns with their supervisor (73 per cent).
- Less than 12 per cent of whistleblowers ever go outside their organisation — and this is typically a last resort.
- Government watchdog agencies receive less than 4 per cent of wrongdoing reports, while MPs receive about 1 per cent.
- Almost all whistleblowers bring wrongdoing to the attention of management before looking elsewhere for solutions.

(Donkin et al. 2008, pp. 88, 90, 92)

Sample content for internal reporting pathways in policies or procedures

Staff wishing to make a disclosure are encouraged to do so internally. Disclosures may be made to:

- *your line manager*
- *any other person in a management position within the organisation*
- *the CEO*
- *specialist areas*
- *specific officers designated to accept PIDs*
- *the Chair of the Audit Committee*
- *designated peer support officers/mentors/confidantes.*

Consider who will be the best person to receive your disclosure. If it is a matter that can be resolved by one of your line managers, make your disclosure to them. Managers can be one of your best sources of support when you are disclosing wrongdoing. However, if you think that your manager or senior people may be involved, consider disclosing to the CEO or an external body.

(Roberts et al. 2009, pp. 56–57)

External disclosures

Your PID policy and procedures should detail all external reporting pathways available to staff. Under the PID Act, PIDs can be made to any entity the discloser believes has the power to investigate and deal with the matter (see '[... to a proper authority ...](#)' on p. 49).

Your policy should include an organisational commitment to support staff if they make a PID to a proper external authority, and to help the entity deal with a PID. Include the contact details of a proper external authority most relevant to the work of your organisation.

Sample content for external reporting pathways in policies or procedures

You may choose to make a disclosure to someone external to this organisation. You can do this as a first step, or if you are not satisfied with our organisation's response to a disclosure. While we urge you to disclose to someone in this organisation, we will respect and support you if you disclose to a external authority.

You should be aware that when you disclose to an external entity, it is very likely that it will discuss your case with this organisation. We will make every effort to assist and cooperate with any entity dealing with a PID about this organisation to work towards a satisfactory outcome.

Be aware that if you make a disclosure to a person or an organisation other than one that can investigate and deal with the matter or an MP, you will not receive the protections provided under the PID Act.

(Roberts et al. 2009, pp. 57–58)

Providing advice

Organisations should tell employees how they can obtain confidential advice on making a PID. Some disclosers will need reassurance before they raise a concern or may simply want to discuss how best to make the PID, while others will benefit from knowing the option exists.

Some organisations have confidential hotlines for this purpose. If your organisation does not, encourage staff to seek advice by phoning your specialist area anonymously or discussing their situation hypothetically with a manager they trust.

Your specialist area, management or hotline can then provide the employee with more information about:

- your organisation's policies, your code of conduct and the PID Act
- how to make a PID and any alternative options
- their rights and responsibilities
- the protections and support that your organisation will provide.

Encourage employees to raise any concerns at an early stage. Employees should not be under the impression that they are expected to investigate the matter themselves or to prove or substantiate their concerns. If this is not made clear in your policy and supporting material, some employees might decide to delay making a PID in order to seek the evidence to safeguard their own position. Disclosers who raise issues at a relatively informal level, where they are amenable to resolution, should know that your organisation will still protect them (see '[An appropriate disclosure ...](#)' on p. 44).

Anonymous PIDs

Disclosers do not have to identify themselves if they provide their information to a proper public sector authority [PID Act, s. 17(1)]. If your organisation receives information about wrongdoing, you must still assess whether you have received a PID (see '*Assessing a PID*' on p. 20) even if you do not know the source of the allegation.

Disclosing **anonymously** can make it difficult to investigate the issue, to seek clarification or more information, or to provide the discloser with feedback. Despite this, make a commitment to your employees that you will accept anonymous reports and act upon those which contain enough information to support further inquiry.

Most organisations encourage disclosers to identify themselves and offer promises of **confidentiality**.

On average, 6 per cent of reports of wrongdoing were made to organisations anonymously.

(Independent analysis of WWTW research data)

Anonymously: Where the discloser does not identify themselves at any stage to anyone.

Confidentiality: Where the discloser's name is known but will not be identified without their consent, unless required by law.

Sample content for dealing with anonymous PIDs in policies or procedures

The likelihood of a successful outcome is increased greatly if, when making a disclosure, you make your identity known. Nonetheless, you are able to make a disclosure anonymously either in writing or by telephone. If you do decide to disclose anonymously, you will need to provide sufficient information for the matter to be investigated, as it will not be possible for us to come back to you for clarification or more information. Also, it will not be possible for us to keep you informed on the progress in handling your disclosure and you could experience difficulties in relying upon the protections afforded by the PID Act.

If you have reported anonymously and provided enough information for our organisation to act, we are committed to acting upon your request.

(Roberts et al. 2009, p. 58)

False or misleading information

A person who gives information to a proper authority, knowing that it is false or misleading, and intending that it be acted upon as a PID, commits a criminal offence with a maximum penalty of two years' imprisonment or 167 penalty units (PID Act, s. 66). The individual may also face disciplinary action if your code of conduct covers the provision of false information.

To discourage the misuse of your reporting system, your policy should state that any protections are not extended to those who intentionally make a PID that they know is false. This is different from information that turns out to be incorrect or unable to be substantiated.

While any assessment of whether a disclosure is false or misleading must take into account the circumstances of the individual case, indicators of a false or misleading disclosure include:

- the discloser has a history of making false or unsubstantiated complaints
- there is no information to support the allegation in any way
- the allegation is not serious or sensible, and is of such a nature that a reasonable person could not treat it as being genuine
- the allegation is, on face value, without foundation and appears to be designed to harass, annoy or embarrass the subject officer(s).

If it is established to the required standard of proof that the person knowingly provided false or misleading information and intended it to be acted upon by an authority, your organisation should consider taking disciplinary action or warn the person.

However, be careful not to take further action against the person for providing false or misleading information without having sufficient evidence, as this may be perceived by the discloser as a reprisal.

Examples of when disciplinary action is appropriate

- Natalie alleges that Angie stole government property. However, it can be proven that Natalie knew that Angie had the consent of the organisation to temporarily use the property in question.
- Mike alleges that Chris assaulted a client at a specific time and place. However, it can be proven that Mike knew that Chris was somewhere else at the time of the alleged incident.

Managing performance

Employees must understand that making a PID does not prevent supervisors or managers from addressing the employee's unsatisfactory performance or improper conduct.

Your organisation may need to take **reasonable management action** against a discloser for unsatisfactory performance or improper conduct, whether it is related to their PID or not.

In some cases, the discloser may perceive that management action is being taken in retaliation for *making* the PID.

Reasonable management action, taken by a manager in relation to an employee who has made a PID, includes any of the following:

- a reasonable appraisal of the employee's work performance
- a reasonable requirement that the employee undertake counselling
- a reasonable suspension of the employee from the employment workplace
- a reasonable disciplinary action
- a reasonable action to transfer or deploy the employee
- a reasonable action to end the employee's employment by way of redundancy or retrenchment
- a reasonable action in relation to the employee's failure to obtain a promotion, reclassification, transfer or benefit, or to retain a benefit, in relation to the employee's employment.

(PID Act, s. 45)

Determining whether management action is reasonable or unreasonable will depend on all the circumstances of a matter.

For example, in a case where a business was restructured and there was an associated increase in an employee's workload, this was held to constitute reasonable management action on the part of the employer. However, the failure to provide any assistance to the employee in relation to this increased workload meant that the employer had implemented the action in an unreasonable way.

Therefore, whenever management are contemplating taking action against a discloser, they must be able to clearly demonstrate that:

- there are sufficient grounds
- the action is reasonable, as well as proportionate and consistent with similar cases
- they have taken into account the discloser's particular circumstances
- they are not taking action because the discloser has made a PID.

It is helpful if a relevant performance management plan existed prior to the person making a PID. These plans typically identify the key responsibilities or objectives of individual staff members, and enable managers to clearly demonstrate any gaps or failures in the discloser's performance or proficiency.

Your organisation's procedures in respect of performance management, diminished performance or disciplinary policies must be followed, and all actions, conversations, decisions and reasons for decisions thoroughly documented.

Your organisation may wish to obtain legal advice prior to taking any action against a discloser to ensure that managers are not left open to allegations of taking a reprisal against the person for making a PID.

What if the discloser is implicated in improper conduct?

A discloser may seek immunity from disciplinary action for providing information about serious wrongdoing in which they have some minor involvement. The PID Act (s. 39) provides that a person's liability for their own conduct is not affected because they subsequently reveal that conduct in a PID. However, organisations may exercise discretion not to proceed with action against a discloser who has brought the matter forward.

Sample content for managing performance in policies or procedures

Be aware that making a PID does not protect you from any management, disciplinary or criminal action if you have been involved in improper conduct or your performance is unsatisfactory.

(Roberts et al. 2009, p. 57)

1.3 Assessing and resolving PIDs

Receiving a PID

Responsibility for identifying a report as a PID lies with the person in your organisation who receives the reported wrongdoing, not with the person reporting the wrongdoing. Disclosers do not need to state that their information or complaint is a PID or claim to be a discloser. Many employees may be unfamiliar with the term 'PID' and the protections attached.

Once your organisation receives a report made in accordance with the PID Act [s. 17(5)], a raft of legal obligations take effect. See '*Obligations under the PID Act*' on p. 53 for further information.

PIDs do not have to be made in writing; they can be made in any way, including in person. However, if your organisation's policies and procedures require PIDs to be made in writing, then the procedure must be followed. When a PID is received orally, your organisation must clearly document the information received (see '*Keeping records*' on p. 24).

On average, 11 per cent of reports of wrongdoing were made orally to organisations.

(Independent analysis of WWTW research data)

An organisation's policies and procedures may establish to whom a PID may be made. However, the PID Act (s. 17) provides that a PID may be made to one of the following:

- the organisation's CEO
- for a department, the Minister administering the department
- a member of a governing body if the organisation has one
- a person who directly or indirectly supervises the discloser
- an officer who has the task of receiving or taking action on the information being disclosed.

A manager who receives a PID or potential PID should immediately liaise with your organisation's specialist area, which will guide them on how to proceed. Managers should not attempt to gather evidence first as this may prematurely alert the person about whom the allegation has been made or compromise any later investigation.

Advising a specialist area of the PID does not relieve management of responsibility for managing the discloser. This role continues even if your organisation's specialist area is taking action, such as investigating the PID. Managers are still responsible for ensuring that disclosers can work in a safe environment, free from reprisals (see '*Discloser support and protection*' on p. 26) and that disclosers continue to perform (see '*Managing performance*' on p. 18). Managers should, however, consult with the specialist area on what protective or other management action is appropriate.

As officers tasked with receiving information, any staff who deal with complaints from the public or employees, as well as other customer service staff, need to be able to recognise when information they receive may be a PID. Your organisation's complaints management or customer service systems and processes should ensure that all information received is screened and, if it may be a PID, referred appropriately.

Sample content for receiving PIDs in policies or procedures

Disclosures can be made in any way, including:

- *in person*
- *in writing (by letter, email or memo)*
- *by telephoning our dedicated hotline or specialist area [provide contact details].*

All disclosures of wrongdoing will be recorded and streamed to the appropriate part of our organisation to be dealt with.

(Roberts et al. 2009, pp. 57, 79)

Assessing a PID

The onus is on your organisation to identify whether a report constitutes a PID. In assessing a potential or purported PID:

- err on the side of caution and interpret the PID Act broadly — when in doubt, assume that the discloser is protected and act accordingly
- a discloser cannot request that their information not be treated as a PID, nor does your organisation have such discretion. If the discloser is concerned about reprisals, reassure them about confidentiality (see '[Maintaining confidentiality](#)' on p. 33)
- concentrate on the allegation, the information and the evidence provided, not the identity of the discloser or their motive for disclosing the information
- do not focus on how well information is communicated, but on what is communicated. Poorly articulated allegations can still contain valid information
- it may be necessary to talk to the discloser in more detail about their disclosure.

All matters that raise a suspicion of official misconduct must be referred to the Crime and Misconduct Commission (CMC) (see [Facing the facts, CMC 2007](#), p. 22). If facts uncovered later (e.g. during the investigation) reveal possible official misconduct, they too must be referred at that time to the CMC.

What if the information is not a PID?

If it is determined that a person has not made a PID, your organisation should still ascertain:

- what the person expects to be done with their information
- whether they need any form of support or protection.

Reports that are not PIDs may still warrant investigation, a response by your organisation under normal complaint-handling mechanisms, and support or protection for the person who made the report to ensure that they do not suffer from bullying, harassment or any other detriment.

Where appropriate, the discloser should be referred to any alternative internal or external reporting avenues (see '[Separating PIDs from other matters](#)' on p. 12).

Deciding on what action to take

Your organisation's procedures must be flexible enough to respond to PIDs in a variety of ways from a detailed investigation to less formal approaches. While setting time limits to respond or take action might be appropriate in other procedures, this is unlikely to be the case with PIDs.

The following are all appropriate actions, depending on circumstances:

- providing an explanation to the discloser (e.g. if the discloser was not aware of the whole circumstances surrounding an action which appeared to them to be improper)
- resolving the PID managerially
- conducting an internal audit, or a review of an issue or the operations of a particular unit
- implementing or changing policies, procedures or practices
- formally investigating the allegations
- referring the allegations to an appropriate external entity.

Fifty-six per cent of whistleblowers state that their allegation was investigated.
(Smith & Brown 2008, p. 113)

Conducting discreet preliminary enquiries may help you to determine what course of action is appropriate. Consider whether:

- the information raises a reasonable suspicion of a problem which requires further action
- the PID is one which can be effectively investigated, given the likelihood of evidence being obtained or the length of time since the conduct occurred
- any other entity is actively investigating the matter
- any other entity has already properly investigated the matter.

Referring to other organisations

The PID Act (s. 31) allows organisations, in certain circumstances, to refer PIDs. Refer the PID to another appropriate entity:

- when the PID received relates to the conduct of another public sector entity
- if another entity has the necessary jurisdiction, expertise and technical knowledge to investigate or take other action (and your organisation does not).

Referral should only take place *following* consultation with the discloser about their risk of reprisal (if their identity is known) (see '*Assessing risks*' on p. 26). If, after consideration, the organisation considers there to be an unacceptable level of risk, the PID must not be referred [s. 31(3)–(4)].

This obligation does not affect other legal obligations of organisations to refer a report, complaint, information or evidence to another entity [s. 31(5)], such as notifying the CMC of suspected official misconduct in accordance with s. 38 of the *Crime and Misconduct Act 2001*.

Before referring a PID to another entity, your organisation should compile a confidential written record regarding its consultation process with the discloser and the outcome (see '*Keeping records*' on p. 24).

A situation may arise where more than one organisation has jurisdiction to investigate a PID. Entities need to make appropriate arrangements to avoid duplicating action and to ensure the efficient and economic use of investigative resources. This may involve agreeing that one entity will investigate and take action (if necessary) or, alternatively, developing a plan for cooperative action. The discloser should, however, be provided with a single contact officer for their PID regardless of which entity will actually be dealing with it.

Sample content for deciding on what action to take in policies or procedures

We will make a decision on how to best deal with your disclosure. It may be that the person who receives your disclosure undertakes initial inquiries and decides not to take the matter any further. We will advise you of this. Where your disclosure is referred to another area of our organisation for investigation or other action, or to an external entity such as the Crime and Misconduct Commission, we will also inform you of this.

(Roberts et al. 2009, p. 79)

Managing investigations

The investigation of a PID should be carried out by trained and experienced people. If your organisation already employs investigators within a specialist unit (e.g. in an Ethical Standards Unit), your PID program only needs to link with this unit. However, those organisations without investigative capacity will need to provide some practical guidance to external consultants on undertaking an investigation.

The investigator must be independent and not have an actual or potential conflict of interest in the matter. They should be separate from any workgroup that includes the discloser or subject(s) of the PID. Where the allegation is serious, involves senior management or implicates a group of employees, you may choose to employ outside investigators in order to be perceived as objective and remove any potential conflict.

At the commencement of an investigation, the discloser should be:

- notified by the investigator that they have been appointed to conduct the investigation
- asked to clarify any matters
- asked to provide any additional material they might have
- made aware that people might attempt to guess their identity.

According to public sector organisations, the most common investigators of allegations are:

- senior managers
- CEOs
- human resource units
- internal audit/fraud investigation units
- external government entities.

(Mitchell 2008, p. 184)

All investigators need to be familiar with the PID Act, especially its confidentiality requirements and the protections for disclosers. Your organisation may ask a contracted investigator confirming in writing their understanding prior to commencing an investigation.

All interviews should be conducted in private, and care should be taken not to divulge any unauthorised information about the PID during the investigation process. Investigation techniques that are least likely to result in the discloser being identified include:

- conducting an internal audit of an area, program or activity that covers, but is not focused solely on, the issues disclosed
- alluding to a range of possible ‘triggers’ for an audit or investigation, without confirming any particular one or acknowledging that a PID has been made
- ensuring that the discloser is also called for an interview if all others in the workplace are being interviewed.

For detailed advice about planning and conducting an investigation, as well as managing its impact on staff, see [Facing the facts](#), (CMC 2007).

Preserving natural justice and confidentiality

The subject officer(s) of any PID must be afforded natural justice.

Affording natural justice does not mean that your organisation must advise the subject officer(s) of the allegation as soon as it is received or an investigation is commenced. Furthermore, the subject officer(s) need not be told about the allegation if it is not substantiated and you take no further action. The particular requirements of natural justice will vary between cases.

The PID Act s. 65(3)–(4) provides that confidential information may be disclosed for natural justice obligations. However, before information can be released, two conditions *must* be met [s. 65(5)]:

- It’s essential to release that information to provide natural justice. If it is possible for a subject officer(s) to answer allegations without the source of the allegations being identified, the release of information cannot be said to be *essential*
- it is unlikely that a reprisal will be taken against the discloser (see ‘[Assessing risks](#)’ on p. 26).

Notify the discloser before revealing their identity for any reason.

When no action is required

Your organisation can not decline to receive and manage a PID merely because it doubts the good faith of the discloser. This is because the focus should be on the information disclosed, not the identity or motive of the discloser.

Section 30 of the PID Act sets out the circumstances when no action is required. Your organisation can decide not to deal with a PID if it is reasonable to conclude that the PID:

- has already been investigated or dealt with by **another appropriate process**
- should be dealt with by **another appropriate process**
- is impractical to investigate because of its **age**.
- is **trivial** in nature.

Another appropriate process: This provision in the PID Act is designed to prevent unnecessary duplication of work. For example, if a PID is about an inappropriate contracting process which is already part of a Queensland Audit Office audit or a CMC investigation (or the entity considers the matter should be referred to an external body such as those), the entity may not need to conduct an investigation itself. However, the entity receiving the PID must be sure at least one appropriate body has dealt (or will deal) with the PID.

Age of the disclosure: Some PIDs may be about matters which happened so long ago it would be virtually impossible to investigate them. The PID Act allows entities to decline to proceed with disclosures where this can reasonably be seen to be the case. However, entities must remember that criminal charges can still be laid long after a crime has been committed, and should take care to ensure such PIDs are properly considered before any decision is made not to proceed.

Your organisation can therefore decline to proceed further with a PID, even if it may be found to be true, provided one of the reasons in s. 30(1) is satisfied. However, you must err on the side of caution in making a determination. If there is any doubt, the disclosure must be managed as a PID.

If your organisation decides not to deal with (or investigate) a PID for any of the reasons set out above, it must provide written reasons for its decision to the discloser. The reasons should explain how your organisation considers one or more of the provisions of s. 30(1) apply to the case, and why it has decided it is appropriate to take no further action. Clarity in this regard is important, as the reasons can be challenged in a review of the decision to your organisation's CEO [s. 30(3)].

Trivial: The PID Act imposes a two-part test in relation to disclosures which might be trivial. Before your organisation decides that a disclosure is trivial, it must meet both of the following criteria:

- too trivial to warrant investigation
- dealing with it would substantially and unreasonably divert your organisation's resources from their use in the performance of its functions [s. 30(1)(d)].

Keeping records

Public sector organisations have a duty under the *Public Records Act 2002* (Qld) to make, keep, manage and dispose of public records (see *Managing public records responsibly*, Crime and Misconduct Commission and Queensland State Archives 2009 or the Queensland Ombudsman website for further information).

The PID Act [s. 29(1)] provides that the CEO of an organisation must ensure that a proper record is kept about PIDs received by the organisation, including:

- the name of the discloser, if known
- the information disclosed
- any action taken on the PID
- any other information required by a standard issued under the PID Act (see s. 60).

Purported PIDs are when the discloser explicitly requests that their information be treated as a PID, but their information does not meet the conditions of the PID Act (e.g. types of wrongdoing, honest and reasonable belief/information tends to show the conduct).

The definition of a PID in this section of the PID Act includes **purported PIDs** [s. 29(3)]. Therefore, for record-keeping purposes, organisations should adopt this wider interpretation.

If a Member of Parliament (MP) or other entity refers a PID to an organisation, the name of the MP or other entity must also be recorded [s. 29(2)]. MPs who receive PIDs are not required to keep any records.

In addition, your organisation must record and properly secure the following information required by the PID Act:

- the name of the discloser, if known
- the information disclosed
- any action taken on the disclosure
- if the PID is referred, the name of the MP or organisation that referred the PID. [s. 29]

Your organisation must also record information required by a standard issued under s. 60 of the PID Act.

To achieve best practice, your organisation should also record and secure the following:

- the location of the discloser
- how the PID was made and to whom
- any notes the discloser has made or documentary evidence that supports the allegation
- the nature of the PID and its background
- whether confidentiality was requested/explained
- whether the risk of reprisal was discussed
- details of the steps taken to prevent a reprisal
- details of information provided to the discloser and any response, including dates
- any support provided or offered to the discloser.

All records should be factual and free from unnecessary statements such as observations, sentiment or personal opinions.

If the PID was made orally, ensure that the written version of the PID is accepted as accurate by the discloser.

A complete and accurate system also helps organisations identify trends or recurring issues, evaluate their program and meet their statutory obligations to keep records and report on PID matters (see '*Reviewing effectiveness*' on p. 10). For example, databases can be used to provide:

- the total number of PIDs received in a given time period
- how many PIDs were resolved
- the length of time to resolve PIDs.

The PID Act provides that the oversight agency (the PSC) may make a standard that requires an entity to give to it any or all of the information listed in s. 29. The standard can provide for the way in which and the period within which the information is to be given.

Finalising the matter

The discloser and subject officer(s) should be separately informed of the investigation findings and any steps taken as a result.

If a PID is substantiated, advise the discloser of this and of any action that will be taken in response. Actions may include one or more of the following:

- stopping the conduct or preventing it from recurring (e.g. providing training and awareness, introducing new technology)
- implementing or changing policies, procedures or practices
- offering mediation or conciliation
- taking disciplinary action against a person responsible for the conduct
- referring the conduct to the Queensland Police Service or another person, organisation or entity that has the jurisdiction to take further action (e.g. initiating legal proceedings against those involved in criminal activity).

In two out of three cases where a whistleblower knows the outcome of an investigation into their report, the investigation finds that wrongdoing occurred.

Over half (56 per cent) of whistleblowers believe that things generally became better following their report.

However, when asked about specific changes within organisations:

- 51 per cent of whistleblowers believe that their disclosure resulted in no change to their organisation
- only 22 per cent perceived positive change.

(Smith & Brown 2008, pp. 113–116)

Some disclosers will feel very dissatisfied if an investigation is unable to substantiate their report when they believe, rightly or wrongly, that their information is true. If this is the case:

- reinforce the importance of the role they have played
- reaffirm that the organisation supports them for having properly raised the matter
- inform the discloser of the usefulness of the information in preventing such issues from arising in the future
- explain why the PID was not upheld, without breaching confidentiality
- inform them of where they can go to complain, if they believe the outcome is wrong
- inform them of who to talk to if they are experiencing problems for having spoken up.

The whistleblowers who are best informed about the outcomes of investigations are the most likely to think those outcomes are satisfactory.

(Smith & Brown 2008, p. 118)

Once a matter is finalised, your organisation should debrief other staff in the workplace involved individually or in groups to:

- clarify any decisions or outcomes, without breaching confidentiality
- emphasise the opportunities to learn from the situation.

The PID Act includes provisions intended to help manage a workplace which has been affected by a PID. Under the PID Act, confidential information relating to a PID can be divulged with the written consent of the person to whom the information relates. It can also be divulged where the consent of the person to whom the information relates cannot reasonably be obtained and if it is considered that the information is unlikely to harm the interests of the person to whom the information relates, and it is reasonable in all the circumstances [s. 65(3)(d)–(e)].

Right of review

Your organisation should have an internal right of review for employees who are unhappy with your organisation's response to their information to appeal against decisions. Disclosers are also entitled to raise the matter with other appropriate entities (e.g. the Queensland Ombudsman in cases of maladministration).

1.4 Discloser support and protection

Assessing risks

Whenever a report of wrongdoing is made, your organisation has a responsibility to assess the likelihood of reprisal. While research provides some indication of the risk factors for reprisals (see text box), each report will require the consideration of all relevant factors.

Disclosers may be at a higher risk for reprisals if:

- the investigation is unlikely to be substantiated (e.g. because there is a lack of evidence)
- the wrongdoing is serious and occurs frequently
- the investigation is conducted outside the organisation
- the discloser became aware of the wrongdoing because it was directed at them
- the wrongdoer is more senior than the discloser
- there is more than one wrongdoer
- the discloser's immediate work unit is small (less than 20 people).

(Brown & Olsen 2008b, pp. 147–150)

The person receiving the PID, usually a manager or supervisor, is in a key position to quickly assess the risk of reprisal by:

- asking the discloser whom they have told about the conduct or the PID, and how they think those involved might respond
- ascertaining the likelihood of confidentiality being maintained (see '*Maintaining confidentiality*' on p. 33)
- exploring the likelihood that anyone would want, and have the opportunity, to commit a reprisal
- considering the history of the work unit in reacting to disclosures
- liaising with your organisation's specialist area to see if your organisation has an established risk assessment process
- mitigating the risk of reprisal to protect the discloser
- planning how to monitor and address any problems which may arise.

'A majority of agencies have no systematic methods in place for ensuring that when employees reported wrongdoing, assessments were made as to what if any risks of reprisal or mistreatment surrounded that report ... Such procedures are basic prerequisites for the effective management of disclosures if agencies are to anticipate and minimise problems rather than trying to deal with them in only an ex post facto fashion. Without the information afforded by early assessment of risk, agencies also leave themselves unable to properly defend themselves against later allegations of having mismanaged employees who make disclosures.'

(Brown & Olsen 2008b, p. 145)

Train managers and supervisors to ensure they have the necessary skills for such an assessment. Your organisation's specialist area should then undertake a more detailed risk assessment which can help identify the level of resources, including the organisational and personal support, needed for a particular case.

Sample content for assessing risks in policies or procedures

Whenever a manager in this organisation receives a disclosure, that person is under an obligation to consider the likelihood of the discloser suffering some form of reprisal as a result. It is the responsibility of the manager receiving the disclosure to assess the actual and reasonably perceived risk of victimisation or unlawful discrimination.

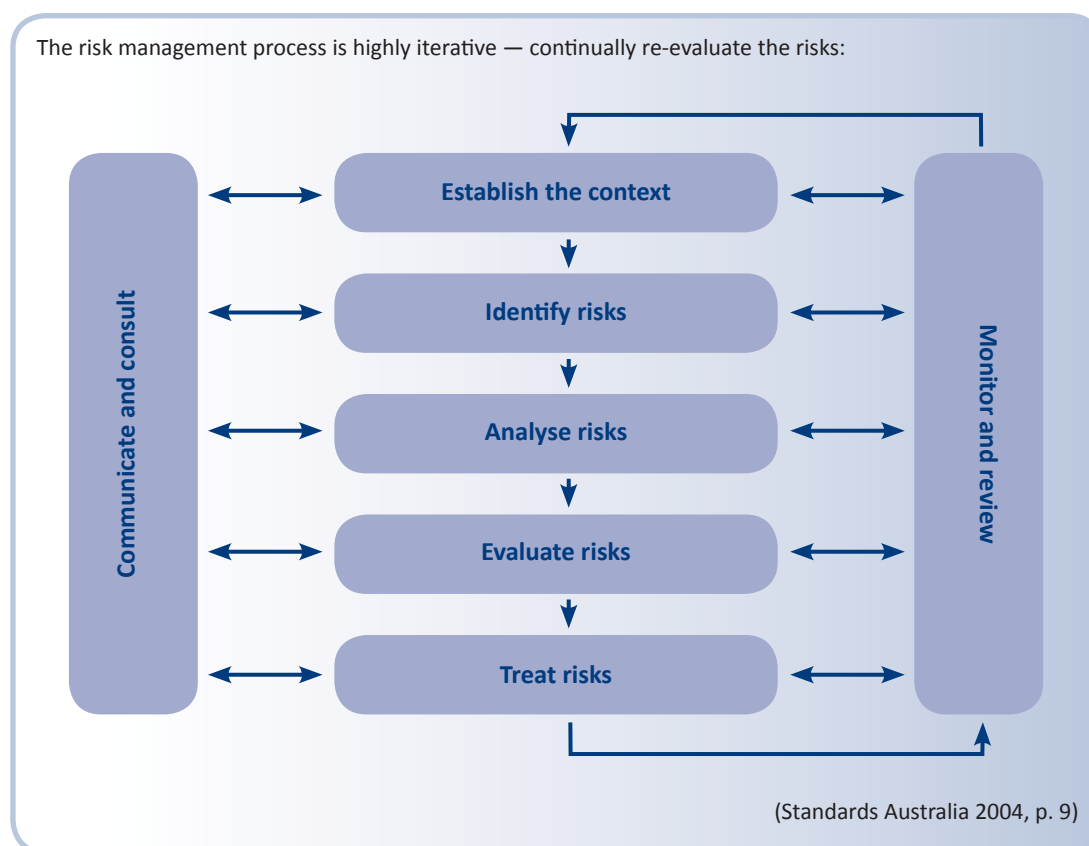
The process of risk assessment must include input from the discloser.

Having assessed the risk, that manager is responsible for notifying [name of specialist area].

Consistent with the level of assessed risk, we will put in place arrangements to protect the discloser and, where practicable, their anonymity.

(Roberts et al 2009, p. 79)

Risk assessment should be an ongoing process reviewed at key milestones and may even be necessary after the matter has been closed.



Providing support

The need for support

Reporting wrongdoing is rarely an easy experience and support — both informal and professional — is essential for a discloser and must be part of any program to manage PIDs.

Difficulties in reporting wrongdoing are not confined to reprisals. Disclosers may find that their lives and careers are affected more generally, through changes in the way they view themselves and their organisation.

Disclosers who are treated well may still end up with negative feelings as a result of their experience.

Almost half of whistleblowers (43 per cent) report negative impacts. These include:

- less trust in their organisation
- disempowerment or frustration
- increased stress, anxiety or mood swings.

(Smith & Brown 2008, p. 133)

If disclosers are properly supported and perceive the procedures used are fair, they are more likely to accept your organisation's decision about their information, even where the allegation is unsubstantiated.

Disclosers have needs as individuals — to be heard, understood and respected. The Wood Royal Commission into police corruption noted that 'the most conspicuous needs' of disclosers were for:

- more personal contact at an early stage
- greater support from supervisors
- appreciation for their action by the organisation.

(Wood 1997, p. 375)

Organisational support

Ideally, a discloser should be able to access support from several sources. This may involve the case manager working with line management to foster a supportive work environment or appointing a peer support officer. A case manager should discuss possible sources of assistance with the discloser and seek their agreement to divulge their identity so that support can be arranged.

Support from management

Management are ideally placed to ensure that the discloser is supported in their workplace by management and staff. They must monitor the workplace for signs of harassment or victimisation, anticipate problems before they arise, and intervene when necessary.

Managers and supervisors can support the discloser by:

- acknowledging that making the PID was the right thing to do and is appreciated by the organisation
- making a clear statement of support to the discloser — 'I will help you with this'
- assuring the discloser that management will take all reasonable steps to protect them
- undertaking to keep the discloser informed of what is happening.

Your organisation's specialist area and senior executives should be aware that managers may find the experience difficult and stressful, and may also need support, particularly in cases where a manager has concerns about the performance of the discloser.

Support and investigators

It is important that the discloser and investigator understand that the investigator must be, and remain, impartial and therefore cannot provide the discloser with support.

Support from mentors, peer support officers or confidantes

Your organisation should nominate a senior officer whom the discloser trusts to act as the discloser's support person in the workplace and to assist them throughout the process. The support person can be the case manager for the PID, but your organisation should consider in each case who is best placed to provide the assistance each discloser requires. Such people are often referred to as mentors, peer support officers or confidantes.

Consult the discloser before nominating a person to take on this responsibility. Brief the support officer on their role, which may include:

- providing a sounding board and positive reinforcement
- attending interviews or meetings with the discloser
- acting as a liaison point with management and investigators
- referring the discloser to professional help as needed
- providing a balanced, independent view of what, if anything, is occurring in their workplace.

Some organisations have in place mentor, peer support or confidante networks, where any employee can contact nominated officers to discuss workplace concerns. Disclosers can be directed to suitably trained officers in these networks.

Support from Employee Assistance Programs (EAPs)

Many public sector organisations have established EAPs which provide free, confidential and professional counselling services to employees who experience problems affecting their work. Disclosers should be advised how to access these services.

Support via facilitated discussion

In some instances, facilitated discussion may be an appropriate avenue of providing support to the discloser (e.g. when a PID results in workplace conflict or where no wrongdoing has been established).

Discussion may include, but is not limited to, mediation, conciliation or negotiation. It requires both parties to have a genuine interest in reaching a conclusion, and is most appropriate when any ongoing working relationship between the discloser and subject officer(s) needs to be preserved.

Facilitated discussion should only be undertaken by an appropriately skilled and trained person.

It may take place:

- as a series of separate meetings between the facilitator and each party, where the facilitator acts as a go-between
- face-to-face, where the discloser and subject officer(s) meet with the facilitator in a joint session
- a mix of the two.

Sample content for providing organisational support in policies or procedures

We will initiate and coordinate action to support you if you make a disclosure, particularly if you are suffering detriment as a result. Actions may include:

- providing moral and emotional support
- advising you about the resources available in our organisation to handle any concerns you may have as a result of making a disclosure
- appointing a mentor, confidante or other support officer to assist you throughout the process
- referring you to our Employee Assistance Program or arranging for other professional counselling
- generating support for you in your work unit (if appropriate)
- ensuring that any suspicions of victimisation or harassment are dealt with
- maintaining contact with you
- negotiating with you and your relevant support officer and case manager a formal end to your involvement with the support program, when it is agreed that you no longer need assistance.

If you feel that you may need support as a result of making a disclosure, you are urged to contact [name of case manager in specialist area]. This person is separate to any investigator of your matter.

All managers in the organisation are under an obligation to notify the PID coordinator if they believe any staff member is suffering detriment as a result of reporting a wrongdoing.

(Roberts et al. 2009, pp. 107–108)

Personal support

Disclosers should also be encouraged to use their own support networks. These include:

- **Co-workers:** Collegial support is one of the greatest assets disclosers can have when making a PID.
- **Family and friends:** Outside support is especially important if the discloser thinks they might be treated badly inside their workplace for reporting.
- **Unions or professional associations:** Such organisations are very useful sources of support and information for members. Unions may be able to advise on reporting options, help disclosers if they are being treated poorly as a result of reporting, or refer disclosers to legal advisory services.

‘The best support is psychological and comes from colleagues.’

(Brown & Olsen 2008a, p. 214)

The most common sources of support for whistleblowers are:

- work colleagues
- family
- union/professional association
- supervisor
- counsellors.

(Brown & Olsen 2008a, p. 215)

The subject officer(s)

The employee(s) about whom the report is made is likely to find the PID experience stressful, so ensure you do not forget their rights and needs.

Once it is appropriate to advise the subject officer(s), reassure them that the PID will be dealt with impartially, fairly and reasonably, and is only an allegation until evidence collected shows otherwise. Provide them with information about their rights, and the progress and outcome of any investigation. Also, consider appointing a support officer or referring them to an Employee Assistance Program to ensure that they receive appropriate support.

Ongoing support

Providing support and information to the discloser, subject officer(s) and staff needs to be ongoing.

The discloser’s case manager should meet with them periodically or whenever something significant occurs (e.g. the start or completion of an investigation, when any decisions are made or outcomes released or the return of the subject officer(s) to the workplace) to:

- advise them of progress
- ensure that they are not suffering any detriment
- obtain any further information that may be relevant.

Sharing information

A discloser can easily become concerned or dissatisfied if they feel they are being left in the dark or that nothing is happening. Under the PID Act (s. 32), your organisation is required to provide the discloser with reasonable information about the PID. The minimum is:

- confirmation the disclosure has been received
- a description of the action proposed to be taken by your organisation
- if action has been taken, a description of the results of the action.

The information must be given to the discloser in writing.

Further information may be proscribed by a standard issued by the PSC under the PID Act. In any event, best practice would require that managers, in consultation with specialist areas, ensure that a discloser also understands:

- that your organisation has assessed their information as a PID and what this means
- what your organisation has done or intends to do (e.g. notifying others)
- the likely timeframes involved
- their involvement in the process (e.g. providing further information to investigators)
- the protections that will apply
- their responsibilities (e.g. maintaining confidentiality)
- that your organisation will keep their identity confidential unless this is unreasonable or impractical
- how your organisation will update them on progress and outcomes
- who to contact if they want further information or are concerned about reprisals.

Managers and specialist areas should make every attempt to answer all questions or concerns the discloser may raise. Disclosers can also be referred to:

- your organisation's PID policy or procedures
- *Making a public interest disclosure: a guide for individuals working in the public sector.*

David spoke with his supervisor Brian about the conduct of a colleague, Michelle. David alleged that Michelle was regularly leaving the workplace at 4 pm yet Michelle's timesheet showed that she finished work no earlier than 5 pm. David felt this was unfair to the others in the workplace who had to 'carry' Michelle's duties. Brian told David he would look into the matter.

Two weeks passed and David did not see any change in Michelle's behaviour. David again approached Brian, who told David that he had spoken with Michelle and dealt with the matter. David was not told of the nature of the discussion or its outcome. In fact, Brian had taken no action.

David noticed over the next few weeks that Michelle's behaviour remained unchanged. David approached Brian's supervisor Tom and described the events to date. Tom told David he would speak to Brian about it. David did not hear anything further for another three weeks, while Michelle continued to leave early.

Exasperated, David spoke to Michelle about what he believed was her improper conduct. Michelle objected to David's approach, and made an employee complaint to Brian about David for making false accusations about her. In response, David made an employee complaint about Michelle and Brian.

Lessons to be learned:

PIDs can become unnecessarily complex and disruptive to the workplace, so the discloser must be:

- kept informed of the action taken and its outcome
- responded to promptly, diligently and efficiently.

Balance the requirement to inform the discloser with the need to maintain confidentiality. Be careful not to release information if it will impact upon:

- anyone's safety
- the investigation of the allegation
- the reputation or standing of the person(s) who is the subject of a PID, given that they remain innocent of the allegation until proven otherwise.

Sample content for sharing information in policies or procedures

If you have made a disclosure, we undertake to provide you with advice and assistance on the process and to inform you of the outcome. This will include information on the action taken or proposed to be taken as a result of your disclosure, and the reasons for this decision.

Your notification will not contain any information likely to adversely affect any person's safety or their personal privacy.

(Roberts et al. 2009, pp. 107–108)

Manage expectations

The discloser must be prepared for what is likely to be a difficult process. If a discloser has unrealistically high expectations, they may become dissatisfied with either the way in which your organisation is dealing with a PID or the outcome of an investigation.

At the outset, your specialist area or a manager should discuss with the discloser what outcome they want, and whether your organisation will be able to deliver. Reassure the discloser of the value of their role in bringing the information to light, but stress that it is now the responsibility of the organisation to resolve the matter. This conversation should happen as soon as possible in the process.

Investigators have a role in providing information about how investigations will proceed.

The majority of whistleblowers are not satisfied unless an investigation confirms their disclosure and the organisation takes action in response.

(Smith & Brown 2008, p. 118)

Information on progress

Regular communication is an important way of reassuring disclosers that their PID is being taken seriously. If the discloser receives no feedback, they may assume that nothing is being done and decide to take their concerns elsewhere.

An individual should be nominated as the point of contact for the discloser for the purposes of keeping them informed. This may be the PID coordinator, case manager or line manager. It should be a person who is readily accessible to the discloser and informed of the overall handling of the matter.

Disclosers should be advised, in general terms, of progress in dealing with their PIDs. For each individual matter, develop a timeline for communicating with the discloser. Any time a decision is made, inform the discloser of the reasons. Also encourage the discloser to ask their contact for updates or feedback.

However, the discloser should also be advised that certain information (e.g. the outcome of any disciplinary action) may not be provided because of your organisation's legal obligation to maintain confidentiality in relation to other employees.

Reasonable information must include at least the following:

- confirmation the PID was received
- a description of the action proposed to be taken by your organisation
- if action has been taken, a description of the action (s. 32(2)).

Other information that could be provided includes:

- a summary of the assessment or investigation
- conclusions and recommendations flowing from the investigation
- action flowing from the conclusions or recommendations
- systemic issues or prevention opportunities brought to light.

The receiving organisation or the organisation to which the PID is referred is required by the PID Act (s. 32) to provide **reasonable information** to a person making a PID or the MP or entity that referred the PID. The information must be given in writing.

If a person makes an anonymous PID, an organisation is under no obligation to respond to a request to provide information unless the organisation is satisfied that the person who is making the request is the discloser.

Maintaining confidentiality

Confidentiality not only protects the rights of those who are involved in a PID matter; it also maintains the integrity of your organisation's reporting system and fulfils any other legal obligations that may exist in that regard.

The PID Act (s. 65) refers to the preservation of confidentiality of information gained in the administration of the Act. The provision makes it an offence — carrying a maximum penalty of 84 penalty units — for a public officer who receives confidential information under the PID Act to make a record of the information or intentionally or recklessly disclose the information to anyone except:

- for the purpose of the PID Act
- to discharge a function under another Act (e.g. to investigate a PID)
- for a proceeding in a court or tribunal
- if authorised under a regulation or another Act.
- if the person to whom the information relates consents in writing
- if the consent of the person to whom the information relates cannot reasonably be obtained, and the disclosure of information would be unlikely to harm the interests of that person and would be reasonable in the circumstances.

Confidentiality provisions under the PID Act only apply to people who have gained the information because of their involvement in administering (implementing or carrying out) the PID Act. This means that if a person happens to come across the information, and it is not part of their usual work, the confidentiality provisions of the PID Act may not apply. However, it is likely that an employee will still be subject to confidentiality obligations through sources such as their employment contract, work policies, general common law obligations and, in certain cases, through legislative provisions that cover their particular place of employment.

Procedures must be in place to ensure the confidentiality of PIDs. Reporting the matter through the typical hierarchical chain has pitfalls when managing sensitive PID information. Ideally, only people who are involved in the management of the PID need to know about it. For this reason, organisations need to develop procedures where the person who receives the PID directly informs the relevant specialist area.

Organisations need to have a secure electronic- and paper-filing system. Your organisation's specialist area also needs to have processes in place to ensure sufficient security to hold confidential material such as:

- a classification system indicating the level of confidentiality and who is authorised to have access to documents
- a prominent warning on the front of paper files stating that criminal penalties apply to any unauthorised disclosure of information about a PID
- password-protected electronic files
- a tracking system that identifies who has had access to the PID file and when.

CONFIDENTIAL

The material in this file relates to a public interest disclosure made under the *Public Interest Disclosure Act 2010 (Qld)*.

Unless in accordance with the Act, it is an offence to reveal information that might identify either a discloser or a person who is the subject of the disclosure.

Maximum penalty: \$8400 fine.

Staff can make inferences about a discloser's identity from all sorts of information. Great care needs to be taken, such as:

- referring to the discloser as 'the person' instead of 'he' or 'she'
- being careful about when and how conversations occur with the discloser
- not putting information on an unsecured computer
- not giving confidential information to others to copy, type or send
- not including confidential information in emails or faxes with general or shared access
- blacking out names, addresses or phone numbers on some documents
- not leaving messages on desks or a phone service
- ensuring documents are not left on the photocopier.

Your organisation should make it clear to the discloser that all efforts will be made to keep their name confidential but that you cannot guarantee that others will not try to deduce (correctly or otherwise) their identity. When the discloser has already voiced their concern to colleagues or their manager before making the PID, it is worth pointing out that others may assume they are the source.

Sample content for maintaining confidentiality in policies or procedures

Maintaining confidentiality is very important in the handling of a disclosure. Confidentiality not only protects you, the discloser, against reprisals, but any other people affected by your disclosure.

When we talk about confidential information, what we mean is:

- *the fact a disclosure has been made*
- *any information that may identify you or any person who may be the subject of a disclosure*
- *the actual information that has been disclosed*
- *information relating to the disclosure that, if known, may cause detriment.*

In protecting your confidentiality, we will ensure that the details of your disclosure, the investigation and related decisions will be kept secure.

Be aware that, while every attempt to protect confidentiality will be made, there will be occasions when disclosure of your identity may be necessary. These include:

- *providing natural justice to the subject officer*
- *responding to a court order or legal directive (e.g. subpoena, notice to produce, direction by a parliamentary committee)*
- *in court proceedings.*

We will advise you if your identity needs to be revealed for any reason listed above and seek your consent, if possible. We will attempt as far as possible to avoid a situation where your identity will need to be revealed even though you have not given consent.

While we are prepared to take all steps necessary to protect the confidentiality of the information that you have provided, you also have some obligations. The fewer people who know about your disclosure — both before and after you make it — the more likely it is that we will be able to keep your identity confidential and protect you from any detriment reprisal. We encourage you not to talk about your disclosure to your work colleagues or any other unauthorised person.

(Roberts et al. 2009, pp. 56, 80–81)

Alternatives to confidentiality

In practice, it may be impossible to keep the identity of a discloser confidential from subject officers, managers and colleagues. Advising the discloser that confidentiality is always maintained may be damaging.

Your organisation needs to determine:

- Who knows about the disclosure? Has the discloser told anybody?
- Has the discloser previously flagged their intention or complained to colleagues?
- Is the discloser's identity obvious from the information provided?
- Can the allegations be investigated and procedural fairness provided without identifying the discloser (see '*Preserving natural justice and confidentiality*' on p. 22)?
- What is the risk to the discloser if their identity is revealed? What does the discloser perceive the risks to be (see '*Assessing risks*' on p. 26)?
- What is the risk to the investigation if anything about the discloser's identity is revealed at this point?

If it is unlikely that the discloser's identity can be kept confidential, consider other options to minimise negative staff reactions and the risk of reprisals (see '*Protection options*' on p. 37).

Providing protection

What is reprisal?

The PID Act [s. 40(1)] provides that a person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that, anybody has made, or may make, a PID. Under the PID Act [s. 40(3)], such action is a reprisal or the taking of a reprisal.

The PID Act (schedule 4) defines 'detriment' as including:

- personal injury or prejudice to safety
- property damage or loss
- intimidation or harassment
- adverse discrimination, disadvantage or treatment about a person's career, profession, employment, trade or business
- financial loss
- damage to reputation.

In order to be considered a reprisal, there must be a causal link between the detriment and a PID or an intention to make a PID. It is sufficient if making the PID is the *substantial* ground for causing detriment, even if there is another ground [s. 40(5)].

Whistleblowers generally find they are treated well as a result of reporting. However, reprisals almost always come from the workplace, and managers (not co-workers) are likely to be responsible. About one in four whistleblowers report poor treatment:

- 13 per cent by management only
- 4 per cent by co-workers only
- 5 per cent by both.

Where bad treatment does occur, it is unlikely to involve a single action such as a sacking or demotion, and more likely to involve a series of smaller incidents over time. The most common types of reprisal when they do occur include:

- harassment
- undermining of authority
- heavier scrutiny of work
- ostracism by colleagues.

These actions can be achieved more or less surreptitiously and camouflaged in subtle ways by apparently legitimate conduct.

(Smith & Brown 2008, pp. 123, 128–129)

Employees in your organisation must never act in a way that could be seen as:

- victimising, bullying, intimidating or harassing a discloser (e.g. withdrawing resources, denying them a promotion or reference without appropriate reasons, forcing them to transfer or take leave)
- acting negligently or failing to exercise their duty of care
- dealing unfairly with a discloser (e.g. different treatment compared with non-disclosers)
- acting against a discloser but not the person who is the subject of a PID
- failing to properly assess and deal with PIDs in a timely manner.

Disclosers may face difficulties seeking compensation for reprisal because of the:

- burden of establishing proof of reprisal to the required standard
- costs of taking legal action
- risks of the action failing.

Casehandlers and managers rate insufficient evidence as the most common reason that allegations of reprisal are not substantiated.

(Brown et al. 2008, p 274; Brown & Olsen 2008a, p. 23)

Anyone who is proven to have taken a reprisal or conspires to cause a reprisal commits an indictable offence and is liable to two years imprisonment or a fine of 167 penalty units (s. 41). They can also be liable in damages to anyone who suffers detriment as a result (s. 42).

Unrelated disciplinary or other work-related action against a discloser may be considered as reasonable management action and therefore not detriment under the PID Act (see '*Managing performance*' on p. 18).

Protection in your organisation

Under the PID Act (s. 28), organisations must establish reasonable procedures to protect their officers from reprisals that are, or may be, committed against them by the organisation or its officers. The PID Act also includes a provision (s. 43) which can make an organisation vicariously liable for reprisals in some circumstances. Organisations may also be in breach of duty of care obligations if they fail to take practical action to prevent, stop or correct any disadvantage to a discloser from making a PID. The action taken to prevent, or in response to, a PID will depend on the level of risk of reprisal, its seriousness and other circumstances.

Every allegation of reprisal must be taken seriously, recorded and responded to. Each allegation of reprisal must be assessed separately from the initial allegation, as a potential fresh PID under the PID Act.

All of those involved — supervisors, case managers, investigators, support officers or mentors — need to continually monitor the work environment for signs of detriment and, if necessary, take corrective action early. By ignoring or not challenging harassment, your organisation is in effect condoning it and problems are likely to escalate. You may also expose your organisation to liability for damages.

If reprisal action against a discloser is suspected, your organisation's specialist area should be notified immediately. Managers must not conduct an inquiry or gather information first, as a criminal offence may have been committed and their actions may compromise a subsequent investigation.

Any investigations of reprisal should be handled by an experienced and qualified person who has not been involved with the initial PID. Even if you do not have evidence to prove a reprisal to the criminal standard of proof, employees may still be subject to disciplinary or management action.

Sample content for providing protection in policies or procedures

You should not suffer any form of detriment as a result of making a disclosure, including:

- *unfair treatment*
- *harassment*
- *intimidation*
- *victimisation*
- *unlawful discrimination.*

This organisation is committed to ensuring that no disciplinary or adverse action, including workplace reprisals by managers, occurs as a result of you making a disclosure.

If any of the above does occur, you have the right to request that we take positive action to protect you. Tell the person who is handling your disclosure immediately. All managers must notify [name of specialist area] of any allegations of reprisal action against a discloser, or if they themselves suspect that reprisal action against a discloser is occurring.

Where we become aware of reprisal action against you, we will take immediate steps to ensure a senior and experienced officer who has not been involved in dealing with your initial disclosure will investigate your concerns of reprisal. You will be kept informed of the progress of the investigation and the outcome.

Where we establish that reprisal action is occurring, we will take all steps possible to stop that activity and protect you. The nature of the action that we will take is dependent upon the circumstances and seriousness of the reprisals that you are likely to suffer.

Any employees found to have engaged in reprisals will be the subject of disciplinary action.

(Roberts et al. 2009, pp. 79–80, 107)

Protection options

Early intervention

Managers and supervisors need to consider whether the culture of their organisation is conducive to reprisals or conflict. They can take action to create a climate where reporting is valued by:

- confronting general workplace prejudices about making a PID
- conducting an ‘awareness session’
- reminding staff that they all must report wrongdoing
- warning staff that committing a reprisal is a criminal offence and a breach of your organisation’s code of conduct
- reinforcing that it is management’s role to resolve the situation
- training staff about the importance of the PID Act scheme, including disclosing wrongdoing and protecting disclosers
- increasing management supervision of the workplace
- exercising independent judgment and setting an example for staff.

Holding supervisors and managers responsible

Your specialist area, CEO or another senior manager can inform the direct supervisor and line manager of the discloser that they will be held responsible for supporting the discloser and ensuring they do not suffer harassment, victimisation or any other form of reprisal by colleagues or any subject(s) of the disclosure (NSW Ombudsman 2009).

Changing work arrangements

Occasionally, workplace conflict leads to a total and irreparable breakdown in relationships between disclosers and their managers or co-workers. When this occurs, the following management options exist:

- granting the discloser a leave of absence during the investigation of the PID
- reorganising the workplace to change seating or supervisory arrangements
- facilitating a voluntary transfer or relocation of the discloser or the subject(s) of the PID to another position or location acceptable to them (provided the new position is on the same pay and conditions, including at least equal seniority, responsibilities, opportunities for advancement and accessibility between their home and place of work)
- suspending or dismissing subject(s) of the PID found to have engaged in serious misconduct (NSW Ombudsman 2009).

Be careful that any action taken constitutes reasonable management action (see '[Managing performance](#)' on p. 18) and does *not* have a negative impact upon the discloser.

If it is necessary for a person to be moved, the decision on whether this person is the discloser or the subject(s) of the PID will depend on the circumstances of each case. Difficulties arise when an investigation into a PID is ongoing and there are no grounds to justify either suspension or relocation of either the subject(s) or discloser of the PID.

Injunctions

An application for an injunction about a reprisal may be made to the Queensland Industrial Relations Commission under the *Industrial Relations Act 1999* (Qld) or to the Supreme Court (PID Act, ss. 48–49). Pursuant to s. 51 of the PID Act, the Industrial Relations Commission or Supreme Court may grant an injunction if it is satisfied that a person has engaged, is engaging or is proposing to engage in:

- committing a reprisal
- aiding, abetting, counselling or procuring a person to commit a reprisal
- inducing or attempting to induce (i.e. by threats, promises) a person to commit a reprisal
- being in any way knowingly involved in committing a reprisal.

An application for an injunction can not be made if a complaint has been made under the *Anti-Discrimination Act 1991* (Qld) about a reprisal. However, procedures are available under Part 7 of the *Anti-Discrimination Act 1991* for a complainant to make an application for an order protecting their interests.

1.5 An integrated organisational approach

Roles and responsibilities of key players

Responding to PIDs, as well as properly protecting disclosers, is a shared responsibility.

Commitment to your organisation's PID program must move beyond procedures setting out the responsibilities and obligations that must be fulfilled by staff, to an approach which also emphasises the responsibilities of the organisation as a whole, including all management.

Any ethical culture, including one that encourages employees to make disclosures, depends on:

- **Leadership**
The 'tone at the top' and belief that leaders can be trusted to do the right thing.
- **Management reinforcement**
Supervisors in the organisation's hierarchy setting the right example of behaviour for staff and encouraging ethical behaviour.
- **Employee commitment**
Employees committed to reporting wrongdoing and peers supporting those who 'do the right thing' by reporting.
- **Specialist support**
Experts trained and skilled in handling reports of wrongdoing who can support the organisation in fulfilling its obligations.

Your organisation's PID policy and procedures should contain a description of the roles and responsibilities of the key players in your organisation's PID arrangements. Not surprisingly, this is highly contextual and depends on factors such as your organisation's governance framework and size. Examples of roles and responsibilities are provided on the following page (based on Roberts et al. 2009, pp. 116–117).

Use this 'roles and responsibilities' table in conjunction with the '[Organisational checklist](#)' on p. 55 to identify key officers who are responsible for ensuring that your organisation meets its statutory obligations and provides protection to all those affected by a PID. Revisit this process at least annually as part of your risk assessment process.

	Senior managers	Managers and supervisors	Specialist area	All staff
Leading by example to create an organisational culture that encourages, values and supports disclosing	✓	✓		
Ensuring that strategies to prevent public interest wrongdoing are included in the organisational business plan so that they are treated as an integral part of work activities	✓			
Ensuring that a management plan is developed to set up a PID framework in the organisation	✓		✓	
Ensuring that procedures for making, receiving and managing PIDs are in place and evaluated on a regular basis	✓		✓	
Ensuring employees have access to information on your organisation's policy and reporting options	✓	✓		
Receiving PIDs made orally or in writing	✓	✓	✓	
Forwarding all PIDs and supporting evidence to your organisation's specialist area	✓	✓		
Supporting disclosers	✓	✓	✓	✓
Linking the discloser to other support mechanisms	✓	✓	✓	
Identifying and addressing any risks of reprisal that the discloser may face	✓	✓	✓	
Ensuring that PIDs are addressed quickly and effectively	✓	✓	✓	
Taking all reasonable steps to ensure that disclosers are not subject to reprisals or any form of detriment	✓	✓	✓	
Ensuring that the rights of those who are the subject of a PID are protected and natural justice is accorded	✓		✓	
Keeping confidential the identity of the discloser and subject(s) of the PID	✓	✓	✓	✓
Deciding on what appropriate action to take following a PID	✓	✓	✓	
Ensuring that all involved in conducting investigations understand the principles of the PID Act	✓		✓	
Taking action following the outcome of any investigation or review, including taking any disciplinary or management action required	✓	✓	✓	
Implementing organisational change necessary as a result of a PID	✓	✓	✓	
Reporting offences to the appropriate authorities, particularly criminal offences to the police and official misconduct to the CMC	✓		✓	
Establishing clear lines of authority and accountability	✓	✓		
Implementing staff awareness and training		✓	✓	
Disclosing public interest wrongdoing	✓	✓		✓
Identifying areas where opportunities for public interest wrongdoing may occur and/or management systems are inadequate	✓	✓	✓	✓
Reporting to the PSC on PIDS	✓		✓	

Embedding policies and procedures

Your PID policy should not stand in isolation. An internal integrated complaint and disclosure tracking and assessment system will help ensure that all reports about your organisation are dealt with in the most appropriate manner (see '*Separating PIDs from other matters*' on p. 12).

Your organisation's code of conduct should indicate the standard of conduct to which your employees should aspire. In addition, your organisation's policies and procedures should contain information on the specific standards of conduct required of staff in your organisation.

Every organisation should also have a Fraud and Corruption Control strategy in place to address wrongdoing. See the CMC's *Fraud and corruption control: guidelines for best practice*, CMC 2005, for details on how a reporting system forms part of a wider strategy.

Examples of an integrated approach to embedding the program in everyday action include:

- being clear about what is unacceptable conduct
- raising employees' awareness of their responsibility to disclose and how to do so
- ensuring supervisors know how to receive a PID and 'own' its management
- linking the performance management of managers and supervisors to their ethical conduct
- informing staff of changes which have resulted from employee PIDs wherever possible
- publicly acknowledging particular disclosers (with their consent)
- ensuring that management are visible and approachable, and are openly communicating on this issue and leading by example.

'Link organisational responses to whistleblowing to the responsibility of public employers to provide their staff with safe, healthy workplaces, free of wrongdoing and of detrimental action, in the interests of a professional public sector and a climate of continuing high job satisfaction and equality of employment opportunity for employees who speak up about possible wrongdoing.'

(Roberts et al. 2009, p. 116)

1.6 Oversight body

The PSC is the oversight body for PIDs in Queensland. It has the following functions:

- monitoring the management of PIDs, for example:
 - monitoring compliance with the PID Act
 - collecting statistics about PIDs
 - monitoring trends in relation to PIDs.
- reviewing the way in which organisations deal with PIDs
- performing an education and advisory role.

The PSC can issue standards about the way in which organisations are to deal with PIDs (s. 60). The PSC is required to report on the operation of the PID Act yearly. The report is to contain information about the performance of the PSC in relation to its functions and requirements under the PID Act, as well as statistical information about PIDs. This replaces reporting by individual organisations and will provide a more holistic view of the management of PIDs in Queensland.

Further information about the role of the PSC and the assistance available to organisations can be found on the PSC's website – www.psc.qld.gov.au.

PART 2

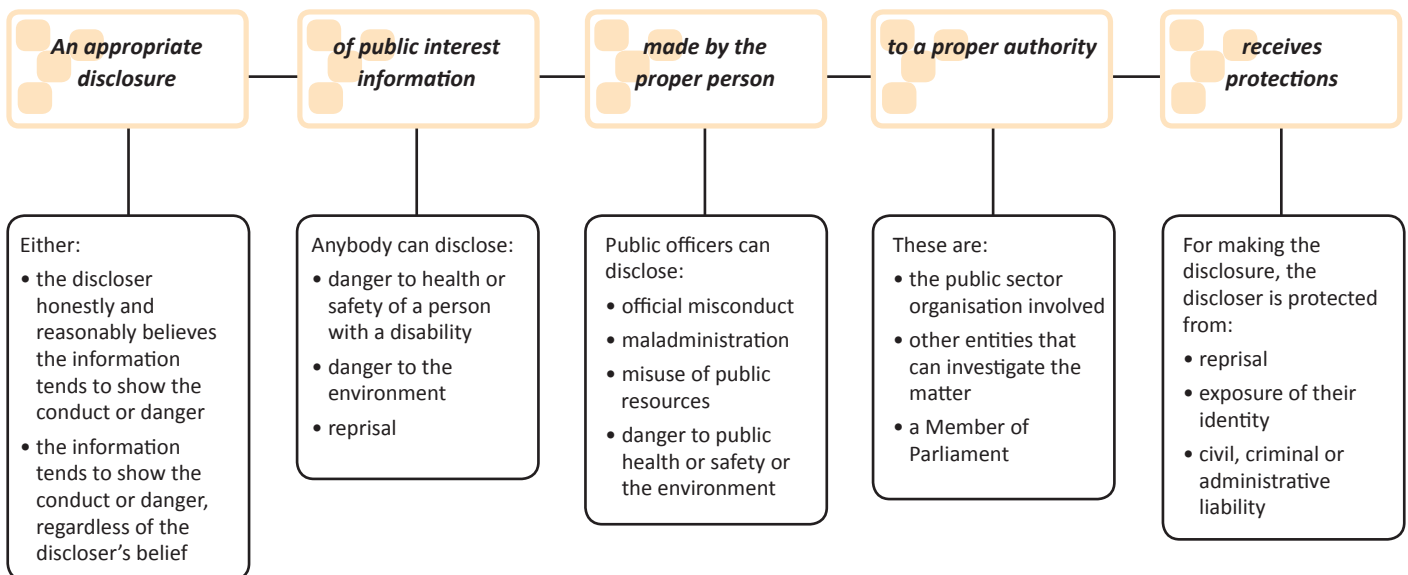
Further information

2.1 Understanding the key elements of a PID

The PID Act aims to promote the public interest and ensure that government is open and accountable. It does this by providing a framework for making a PID and protection for those who do.

A PID is different from a general complaint about dissatisfaction with a product or service or a decision by government, and is different from an employee-related complaint that can be resolved by agreement between parties (see *'Separating PIDs from other matters'* on p. 12). A PID is an appropriate disclosure of public interest information to a proper authority, for which the person making the disclosure receives protections.

The elements of a PID, as shown in the figure below, will be described in turn.



An appropriate disclosure ...

For a PID to fall under the PID Act, there are two alternative tests [ss. 12(3), 13(3)].

The first is that the discloser must have an **honest belief**, on **reasonable grounds**, that their information **tends to show** the conduct or danger concerned. Even if it turns out that a discloser has provided incorrect information or their allegation is unable to be substantiated, their PID is still protected by the PID Act, provided they honestly believed on reasonable grounds that the information was true. This is often referred to as a subjective test.

The second test is that the information **tends to show** the conduct or danger, regardless of whether the discloser honestly believes the information tends to show the conduct or danger. It is often referred to as an objective test.

Sometimes when a person makes a PID there is existing workplace conflict and the person's motives may not appear to be to serve the public interest. The objective test will enable the focus to be placed on the substance of the disclosure. It will also cover the situation where the information provided is vital but there are doubts about its status under the subjective test because the discloser supplied it innocently, ignorantly or without fully understanding its significance.

A **belief** is more than a suspicion (which is a state of apprehension). A belief is an inclination towards accepting rather than rejecting a proposition. An **honest** belief is a belief that is genuinely held.

To determine what are **reasonable grounds**, the test applied is whether, from an objective viewpoint, the basis for the belief is just and appropriate in all the circumstances.

Tends to show means that there must be sufficient information that indicates the conduct or danger occurred.

Stated simply, a belief cannot be based on a mere allegation or conclusion which is unsupported by any facts or circumstances. For example, it is not sufficient for a person to base a PID on the statement: 'I know X is accepting bribes to grant planning permits to Y developer'. This is a mere allegation unsupported by any further facts or circumstances.

However, it is not necessary for the discloser to provide sufficient information to establish that the conduct or danger occurred or probably occurred. In some circumstances, hearsay or second-hand information may support the allegation, provided that the information is trustworthy (e.g. depending on how the information was obtained, its level of detail). It is not necessary for the disclosed information to be admissible in a court proceeding.

Note that the threshold under the PID Act is higher than the statutory obligation under s. 38 of the *Crime and Misconduct Act 2001* to notify the CMC of all suspected official misconduct.

While these tests may seem broad there are a number of filters against misuse or abuse of public interest disclosure legislation.

Filters against misuse or abuse of PID legislation

Information which should not amount to a public interest disclosure (i.e. does not trigger either legal protection or investigation under the PID Act)	1	False or misleading information (i.e. intentional)
	2	Information which does not satisfy a subjective or objective test that it concerns wrongdoing (i.e. is not based on an honest reasonable belief about, and/or does not tend to show, wrongdoing)
	3	Entirely a policy dispute
	4	Entirely an employee complaint
	5	Frivolous (abuse of process)
Information which need not necessarily be investigated (even though the discloser may still require protection for having made the disclosure)	6	Incorrect information (e.g. unintentional)
	7	Trivial matters
	8	Old matters
	9	Matters already investigated, litigated or more appropriate for litigation

(Brown 2009, p. 21)

Information that disclosers may provide to your organisation in support of their allegations includes:

- the names of any people who witnessed the wrongdoing or who may be able to verify the allegations or events
- correspondence or other supporting documents
- a diary of events and conversations or file notes
- dates and times when the wrongdoing occurred.

An appropriate disclosure ... of public interest information ...

Sections 12 to 13 of the PID Act outline the types of matters that can be disclosed under the PID Act. The information may be about an event or conduct that has happened, is happening or may happen. However, if staff witness wrongdoing that is not covered under the PID Act, your organisation must still listen to and address their concerns (see '*What if the information is not a PID?*' on p. 20).

A particular issue could fall into multiple categories; for example, maladministration could also amount to official misconduct or a misuse of public resources. Your organisation must provide relevant staff with the necessary support to identify wrongdoing correctly.

Official misconduct

Official misconduct is wrongdoing by a public officer in carrying out their duties or exercising their powers. Pursuant to s. 14 of the *Crime and Misconduct Act 2001* (the CM Act), it must involve one of the following:

- dishonesty or lack of impartiality
- breach of the trust placed in a person by virtue of their position
- misuse of officially obtained information.

The conduct must also be a criminal offence or serious enough to justify dismissal if proven (CM Act, s. 15). For example:

- stealing at work
- accepting money or another benefit in return for selecting a specific supplier of goods or services (i.e. secret commissions).

Maladministration

Defined in schedule 4 of the PID Act, maladministration is widely defined to cover an act or failure to do an act that was unlawful, unreasonable, unfair, improper, unjust, improperly discriminatory or based on a mistake of law or fact or otherwise wrong. It must adversely affect someone's interest in a **substantial** and **specific** way; for example, an unreasonable decision about:

- eligibility for public housing
- a planning or development application.

Misuse of public resources

PIDs can also relate to a **substantial** misuse of public resources. A PID cannot be based on an individual disagreeing with policy that may be properly adopted about amounts, purposes or priorities of expenditure.

Examples of PIDs involving a **substantial** misuse of public resources include:

- negligent accounting practices
- a contract for the supply of goods or services which does not comply with tendering policies.

Although the terms **substantial** and **specific** are not defined in the PID Act, dictionaries indicate that:

Substantial means 'of a significant or considerable degree'. It must be more than trivial or minimal and have some weight or importance (e.g. conduct that is moderately serious).

Specific means 'precise or particular'. This refers to conduct or detriment that is able to be identified or particularised as opposed to broad or general concerns or criticisms.

Danger to public health or safety

PIDs in this category concern any **substantial** and **specific** danger to the health or safety of the public. The concept of public health includes the health or safety of individuals who are under 'lawful care or control' (e.g. public or private hospital patients), using community facilities or services provided by the public or private sector, or in employment workplaces. In the examples below, the conduct affecting one individual could potentially affect the care or control of a much wider group of people:

- a nurse's negligence that results in the death or injury of a hospital patient
- a corrective services officer assaulting a prisoner.

Danger to the health or safety of a person with a disability

Any **substantial** and **specific** danger to the health or safety of a person with a **disability** can also be the subject of a PID. Examples include:

- disability service officers physically or sexually abusing clients
- inadequate decision-making for the care of a mental health patient.

Under s. 11 of the *Disability Services Act 2006* (Qld), **disability** refers to a condition that results in a substantial reduction of a person's capacity for communication, social interaction, learning, mobility, or self-care or management, and requires care.

Danger to the environment

This refers to any **substantial** and **specific** danger that is an offence, or the contravention of a condition imposed under Queensland environmental legislation (as listed in schedule 2 of the PID Act). Examples include:

- a shipping company discharging oil into the coastal waters of Queensland
- any person or business clearing trees without a permit.

Reprisal

A reprisal is a form of detriment to a person because it is believed that the person has made or will make a PID. For example:

- threatening or harassing a discloser or their family
- discriminating against a discloser in subsequent job applications.

An appropriate disclosure of public interest information ... made by the proper person ...

PIDs must be made by an individual, not by an organisation or company.

Anybody, whether a public officer or not, can make a PID about the following conduct and receive protections under the PID Act (s. 12):

- danger to a person with a disability
- danger to the environment
- a reprisal for making a PID.

All **public officers** can make a PID about the following conduct and receive the protections (ss. 13, 18, 19):

- official misconduct.

Only **public officers** of organisations other than government owned corporations can make a PID about the following conduct and receive the same protections (s. 13, 18):

- maladministration
- misuse of public resources
- danger to public health or safety
- danger to the environment.

PIDs do not need to be voluntary; the discloser may be legally required to provide information (s. 22).

A **public officer** includes (PID Act s. 7):

- Queensland government department or agency employees
- local government employees or councillors
- statutory body employees
- members of government appointed boards or committees
- public university or TAFE institute employees
- Members of Parliament and their staff
- judicial officers
- police officers.

For certain parts of the PID Act, a **public officer** also includes:

- local government corporation employees
- government owned corporation employees. (PID Act, s. 7):

Public officers may be engaged on a permanent, temporary or casual basis and may include persons engaged under a contract of service. However, it does not include volunteers and contractors.

An appropriate disclosure of public interest information made by the proper person ... to a proper authority ...

PIDs must be made to a proper authority, but disclosers have a range of avenues to choose from inside and outside their organisation.

The four types of proper authorities listed in the PID Act include:

- the public sector entity in which the conduct or danger occurred [s. 15(1)(a)(i)]
- another public sector entity that can investigate the PID (e.g. the police, CMC, Queensland Ombudsman or Queensland Audit Office) [s. 15(1)(a)(ii)]
- a public sector entity where the conduct of another person could constitute a reprisal for a PID [s. 15(1)(a)(iii)]
- a Member of Parliament (s. 14).

Public sector entities include (s. 6):

- state government departments and agencies
- local governments and corporations
- courts and tribunals
- statutory bodies
- TAFE institutes and public universities
- parliamentary committees.

While the PID Act [s. 17(2)] does not specifically oblige public sector entities to establish procedures for receiving PIDs, if there are reasonable procedures, the employee must use them.

If an employee wishes to provide information about a **public sector entity** other than their own, and they are concerned about the protections under the PID Act, their organisation should advise them to make their PID to the entity concerned or to another proper authority that can investigate the matter. Under the PID Act, your organisation can only receive a PID if:

- it concerns your organisation or one of its officers
- it has the authority to investigate the matter.

Disclosures to external entities

PIDs can also be made to any public sector entity that the discloser believes has the power to investigate and deal with the matter [s. 15(1)(a)(ii)]. The proper authority for receiving a discloser's PID depends on the type of information.

When the disclosure relates to:	The proper authority is:
Official misconduct	→ Public organisation concerned → CMC
Maladministration	→ Public organisation concerned → Queensland Ombudsman
Misuse of public resources	→ Public organisation concerned → Queensland Audit Office
Danger to public health or safety	→ Public organisation concerned → Health Quality and Complaints Commission
Danger to public health or safety of a person with a disability	→ Public organisation concerned → Disability and Community Care Services → Adult Guardian
Danger to environment	→ Public organisation concerned → Department of Environment and Resource Management
Reprisal	→ Public organisation concerned → CMC

It should be made clear to staff that, when they report to another entity, it is very likely that entity will discuss their case with the organisation involved. At the time of making their PID, disclosers should reveal any concerns they have for their safety or career in the event that their case is referred back to the relevant organisation for investigation. Public sector entities are obliged under the PID Act to first consider whether there is a risk of reprisal before referring a PID.

Disclosers may have information which relates to more than one of the categories in the previous table; for example, a decision may constitute both maladministration (under the Queensland Ombudsman's jurisdiction) and a substantial misuse of public resources (under the Queensland Audit Office's jurisdiction). In such cases, disclosers have multiple external reporting avenues available to them. A PID can also be made to more than one proper authority. In such a case, the protection created by the Act will apply to each of the PIDs. The investigating entities need to work together to decide on the best course of action.

A Member of Parliament can also receive PIDs. MPs do not have any authority to investigate PIDs, so the MP will need to decide which public sector entity they believe can appropriately deal with the matter (s. 34). Although MPs may, following consideration, raise a PID in parliament, they should do so with care as to the identity of the discloser, the status of any ongoing investigation, and any possible damage to a person's reputation prior to the completion of an investigation will need to be considered (see *Standing rules and orders of the Legislative Assembly* 2004 for further information).

Disclosures about the judiciary, local government corporations and government owned corporations

To protect the independence of courts, tribunals and the judiciary, and the commercial operations of local government and government owned corporations, a PID concerning officers of these organisations can be made only to the organisations themselves. The exception to this is official misconduct, which disclosers can report to the CMC [ss. 16(2)(b), 18(3), 19(2)]. The CEO of an organisation also has a statutory obligation under s. 38 of the *Crime and Misconduct Act 2001* to notify the CMC of suspected official misconduct.

Disclosures to a journalist

Public sector employees have a duty to keep official information confidential. The PID Act includes a provision to permit disclosures to a journalist, but only as a last resort. A PID can be made to a journalist if the organisation to which the PID was made or referred:

- decided not to investigate or deal with the disclosure
- investigated the disclosure but did not recommend the taking of any action
- did not notify the discloser within six months of the PID being made whether or not the disclosure was to be investigated or dealt with. (s. 20)

A person who makes a PID to a journalist in compliance with these requirements receives the protections of the PID Act. However, the journalist does not receive the protections of the PID Act (e.g. against liability for defamation), nor are they bound by the requirement of the PID Act to keep matters confidential.

This provides a further incentive for organisations to listen to disclosers, act promptly on their concerns and take all reasonable steps to protect them from reprisals. If organisations do not, disclosers may exercise this option and air their concerns to the media.

Ensure that disclosers are kept informed of what decisions are made in relation to the disclosure and relevant advice is provided on the progress of dealing with the disclosure. Disclosers should also be informed of their rights and responsibilities about making disclosures to a journalist.

Entities that cannot receive a PID

Disclosers are not protected under the PID Act unless they make the PID to a proper authority (s. 17). The PID Act channels PIDs to agencies that can take action while protecting the reputation and interests of people referred to in the PID, particularly if the allegations turn out to be unfounded.

Even if the PID has already been or is subsequently made to a proper authority, providing information to the following bodies is not protected under the PID Act:

- the media, except in accordance with s. 20 of the PID Act
- unions or professional associations
- federal government departments and agencies
- private organisations
- organisations operating outside of Queensland.

Your organisation has discretion to determine whether providing information to one of these parties is reasonable, or not unreasonable or a last resort to ensure a significant danger to the public is addressed. Although discussions between employees and third parties (such as unions) are not protected under the PID Act, it is not recommended that organisations take detrimental action against employees for doing so, particularly if this has been done to get advice about available options.

An appropriate disclosure of public interest information made by the proper person to a proper authority ... receives protections

Under the PID Act, disclosers are protected in three ways.

1. Confidentiality

- The discloser's identity will be protected, where possible (see '*Maintaining confidentiality*' on p. 33). (s. 65)

2. Immunity

For making the PID, the discloser has immunity from:

- civil liability; e.g. for defamation
- criminal liability; e.g. for breaching confidentiality or secrecy
- workplace or administrative sanctions; e.g. disciplinary action or termination of employment. (s. 36)

These immunities only apply to action taken in relation to the discloser making, or intending to make, a PID. This does not include unrelated disciplinary or other work-related management action against a discloser, or the discloser's own involvement in any wrongdoing.

3. Protection from reprisal (see '*Providing protection*' on p. 35)

- It is an indictable offence to cause detriment to a person for making a PID, with a maximum penalty of two years' imprisonment or a fine of up to 167 penalty units.
- Public sector entities must establish procedures to protect their staff from reprisals.
- Disclosers have the right to apply for an injunction in the Queensland Industrial Relations Commission or Supreme Court to prevent a reprisal.
- In appeals or reviews of disciplinary action, appointments or transfers, or unfair treatment, reprisal is a ground for appeal.
- Disclosers who are public service employees have the right to appeal to the Public Service Commission for relocation.
- Disclosers who suffer reprisal have the right to make a civil claim for damages, or make a complaint under the *Anti-Discrimination Act 1991*. (ss. 36–56)

Except in rare circumstances, the protections provided to a discloser do not cease. If it turns out that the discloser knew their PID was false or misleading, they will not receive the protections of the PID Act.

2.2 Your organisation's legal obligations

Obligations under the PID Act

Under the PID Act, your organisation has an obligation to:

- develop a management plan for handling PIDs (see *'Ensure an effective PID management program is in place'* on p. 2)
- develop policies and procedures to ensure those making PIDs are given support and protection, PIDs are properly assessed and dealt with, and appropriate action is taken in relation to any wrongdoing (see *'Developing policies and procedures'* on p. 6)
- receive and identify reports that constitute a PID (see *'Receiving a PID'* on p. 19)
- consider the risk of reprisal before referring a PID to another public sector organisation (see *'Assessing risks'* on p. 26)
- provide reasonable information to disclosers (see *'Sharing information'* on p. 31)
- maintain confidentiality (see *'Maintaining confidentiality'* on p. 33)
- establish reasonable procedures to protect their officers from reprisals (see *'Providing protection'* on p. 35)
- maintain proper records about PIDs (see *'Keeping records'* on p. 24).

Under the PID Act, a person suffering a reprisal can bring action against not only the person causing the reprisal, but also the person's employing organisation. The organisation has a defence if it can show on the balance of probabilities that it took reasonable steps to prevent the reprisal happening (s.43). Organisations which do not properly implement the requirements of the PID Act and any standards issued under it run the risk of exposing themselves to vicarious liability. In hearing a claim for damages for a reprisal, a court can grant any appropriate remedy including exemplary damages.

Obligations under common law

Aside from the PID Act, organisations have other legal obligations that may arise in relation to employees who disclose wrongdoing. Under common law, organisations have a duty of care to provide a safe workplace for their employees and to take reasonable steps to ensure that their employees do not become ill or injured.

In the great majority of cases, individuals who disclose wrongdoing are members of staff. Making a PID can be a stressful process. Stress is recognised as a legitimate and serious workplace concern and may subsequently result in serious injury being sustained on the part of the employee. Organisations must therefore develop adequate mechanisms for preventing and dealing with stress, and generally provide a safe and respectful workplace for employees.

For example, managers and supervisors are responsible for taking all reasonable steps

In 2001, the New South Wales District Court awarded a police officer (the discloser) \$664 270 in damages (*Wheadon v. State of NSW*, unreported, District Court of New South Wales, No. 7322 of 1998 [2 February 2001] per Cooper J.).

The police officer made a report to internal affairs alleging corruption on the part of a senior officer. The officer claimed that, because of his disclosure, over the following decade he was subject to harassment and victimisation and was denied welfare assistance, leading to psychiatric illness.

The court found that the NSW Police (the employer) had breached their duty of care to the officer by failing to:

- properly investigate the allegations
- provide a proactive system of protection
- give support and guidance
- proactively provide financial assistance
- prevent ostracism of the discloser by colleagues
- assure the discloser that, as an employee, they had done the right thing by reporting.

to prevent inappropriate behaviour at work, which includes harassment, bullying, discrimination and victimisation. Failure to take steps to deal with such behaviour can have direct and significant consequences for employers. In certain circumstances, disclosers may seek compensation from your organisation if management have failed to take reasonable steps to protect them and they have suffered injury as a result.

While PID legislation provides disclosers with explicit protection against reprisals and enables individuals to seek compensation, organisations may choose to employ discretion and develop reporting and support programs that go beyond the legislative requirements of the PID Act (see '[Ensuring comprehensive coverage](#)' on p. 11).

Obligations under other legislation

Other state legislation also aims to create a work environment in which proper standards of ethical conduct are widely understood and practised in the Queensland public sector. Both individuals and organisations have responsibilities under these statutes. However, organisations should also seek to ensure that their policies, procedures and practices support their employees in fulfilling any duties they may have.

Under certain Acts, employees of public sector organisations are required to report knowledge of serious wrongdoings using appropriate internal or external channels:

- official misconduct under the *Crime and Misconduct Act 2001* (see below)
- police misconduct under the *Police Service Administration Act 1990* (Qld)
- harm to children under the *Child Protection Act 1999* (Qld).

Public Sector Ethics Act 1994 (Qld)

Making a PID is in accordance with the Queensland public sector's ethical culture; specifically, acting with integrity.

Crime and Misconduct Act 2001

Principal officers of Queensland units of public administration have a statutory obligation under s. 38(2) of the CM Act to notify the CMC of all matters that they suspect involve official misconduct. Additionally, anyone can report suspected official misconduct to the CMC and receive legal protections under the CM Act similar to those outlined in the PID Act (e.g. immunity from criminal, civil or disciplinary liability; an offence of reprisal).

Industrial Relations Act 1999

Disclosers may challenge a dismissal as unfair under the *Industrial Relations Act 1999* when that action has been taken as a result of a belief that a PID has been or may be made [s. 73(2)(f)–(i)]. Also, if the discloser has been the subject of a reprisal within the meaning of the *Industrial Relations Act 1999*, an industrial union may make an application to the Queensland Industrial Relations Commission for an injunction about the reprisal (PID Act, s. 48). This action can be taken if the reprisal involves a breach of the *Industrial Relations Act 1999* or an industrial agreement or award.

Workplace Health and Safety Act 1995 (Qld)

Organisations must be mindful of their obligations under workplace health and safety legislation, which covers illness or injury. Managers are responsible for taking all reasonable steps to create a safe workplace. This includes ensuring staff have a working environment free from bullying and harassment.

Workers' Compensation and Rehabilitation Act 2003 (Qld)

Organisations may be liable if disclosers sustain an injury (including a psychological condition) which could have been prevented because, for example, their organisation failed to take reasonable steps to support them. Disclosers may be able to seek compensation under the *Workers' Compensation and Rehabilitation Act 2003*.

2.3 Organisational checklist: Elements of a good practice PID program

This checklist, adapted from Roberts et al. (2009, pp. 6–10), highlights the critical elements of a good practice PID management program. It can be used to evaluate existing policies and procedures and to identify areas for improvement.

1. Organisational commitment

Management commitment
<input type="checkbox"/> Clear statements by management of your organisation's commitment to the principle of making a PID and support for the reporting of wrongdoing through appropriate channels.
<input type="checkbox"/> Senior management commitment that appropriate action will follow the receipt of a PID, that any confirmed wrongdoing will be remedied, and that disclosers will be supported.
<input type="checkbox"/> Broad staff confidence in management responsiveness to making a PID.
Understanding the benefits
<input type="checkbox"/> Understanding of the benefits and importance of having PID mechanisms, particularly among managers.
Developing policy and procedures
<input type="checkbox"/> Easy to comprehend whistleblowing policy, including guidance on procedures, relationship to other procedures, and legal obligations.
Ensuring the necessary specialist skills are available
<input type="checkbox"/> Staffing and financial resources dedicated to the implementation and maintenance of the program, commensurate with organisational size and needs.
<input type="checkbox"/> Operational separation of investigation and support functions.
Maintaining an effective system
<input type="checkbox"/> Specialised training for key personnel, and inclusion of PID issues in general induction and management training.
<input type="checkbox"/> Broad staff awareness of your organisation's PID program and policy.
<input type="checkbox"/> Broad management awareness of your organisation's PID program and policy.
<input type="checkbox"/> Broad staff awareness and acceptance of their responsibility to report wrongdoing.
<input type="checkbox"/> Regular evaluation and continual improvement in the program.

2. Setting up a reporting system

Establishing a clear reporting system
<input type="checkbox"/> A coordinated system for tracking all significant reports of wrongdoing (including staff complaints) at all levels of the organisation.
Ensuring comprehensive coverage
<input type="checkbox"/> Clear identification of all key categories of organisation members (e.g. employees, contractors, employees of contractors, volunteers, at-risk clients) needing inclusion in the program.
<input type="checkbox"/> Clear advice on the types of wrongdoing that should be reported.
<input type="checkbox"/> Clear advice on the appropriate reporting points for different types of wrongdoing (including staff complaints as opposed to PIDs).
Clarifying reporting pathways
<input type="checkbox"/> Clear <i>internal</i> reporting paths and advice on to <i>whom</i> and <i>how</i> PIDs reports should be made, including alternatives to direct line reporting.
<input type="checkbox"/> Clear <i>external</i> reporting paths, including advice about external (contracted) hotlines and relevant integrity agencies.
Providing advice
<input type="checkbox"/> Clear guidance on when disclosers should consider disclosing outside the normal management chain or outside your organisation.
<input type="checkbox"/> Clear advice on the level of information required/desired to be provided by disclosers.
Anonymous PIDs
<input type="checkbox"/> Clear advice that your organisation will act on anonymous PIDs wherever possible, and about how anonymous PIDs can be made.
False or misleading information
<input type="checkbox"/> Clear advice that staff are not protected for deliberately providing false or misleading information by using the PID mechanism.
<input type="checkbox"/> Appropriate sanctions against false or misleading allegations.
Managing performance
<input type="checkbox"/> Clear advice that staff are not protected from the consequences of their own wrongdoing by using the PID mechanism.

3. Assessing and resolving PIDs

Receiving a PID
<input type="checkbox"/> Advice to supervisors on when, how and whom to notify about staff complaints and possible PID reports.
Assessing a PID
<input type="checkbox"/> Skills and procedures for differentiating, as appropriate, between different types of wrongdoing (including staff complaints), and initiating appropriate action.
Deciding on what action to take
<input type="checkbox"/> Flexibility in the type, level and formality of investigation to be conducted, including clear criteria for when no further action is required.
<input type="checkbox"/> Procedures for referring PIDs to appropriate organisations following an assessment of the risks of reprisal in consultation with the discloser.
Managing investigations
<input type="checkbox"/> Skills and procedures for initiating and conducting appropriate investigations.
Preserving natural justice and confidentiality
<input type="checkbox"/> Clear procedures for the protection of the rights of persons against whom allegations have been made.
<input type="checkbox"/> Clear procedures about to whom, when and by whom information about allegations needs to be given, for reasons such as natural justice.
Keeping records
<input type="checkbox"/> Procedures for recording PIDs and meeting reporting obligations.
Finalising the matter
<input type="checkbox"/> Exit strategies for concluding organised support to disclosers.

4. *Discloser support and protection*

Assessing risks

- Early and continuing assessment of the risks of reprisal, workplace conflict or other adverse outcomes involving disclosers or other witnesses.
- Organisational procedure for early notification of external integrity agencies about significant or higher-risk reports.
- Positive workplace decisions regarding prevention or containment of the risks of conflict and reprisal.
- Support arrangements tailored to identified risks of reprisal, workplace conflict or other adverse outcomes.
- Involvement of discloser in risk assessment and support decisions.

Providing support

- One or more designated officers with responsibility for establishing and coordinating a support strategy appropriate to each discloser case.
- Proactive (and reactive) operation of the support strategy (i.e. management-initiated as well as complaint/concern-driven).
- Mechanisms for monitoring the welfare of disclosers, from the point of receipt.
- Direct engagement of supervisors or alternative managers in support strategy and related workplace decisions, to the maximum extent possible.
- Clear authority for support personnel to involve higher authorities (e.g. CEO, audit committee, external agencies) in discloser management decisions.
- Involvement of identified support person(s) (e.g. confidante, mentor, peer support officer, interview friend) and negotiation of their role.
- Access to appropriate professional support services (e.g. stress management, counselling, legal, independent career counselling).
- Follow-up monitoring of discloser welfare, as part of regular evaluation of program and of identifying ongoing, unreported support needs.

Sharing information

- Provision of information, advice and feedback to disclosers on actions being taken in response to disclosure and right of review avenues available to them.
- Provision of information about how to manage their role in the investigation process, including who to approach regarding issues or concerns.
- Information and advice regarding external integrity agencies that can be accessed for support.

Maintaining confidentiality

- Commitment to, and procedures for, maintaining the confidentiality of PIDs, disclosers, subject officer(s) and other witnesses to the maximum extent possible, with clear advice about possible limits of confidentiality.
- Procedures for consulting and, where possible, gaining consent of disclosers prior to action that could identify them.
- Strategies for supporting employees and managing the workplace when confidentiality is not possible or cannot be maintained.

Providing protection

- Clear commitment that the organisation will not undertake disciplinary or adverse action, or tolerate reprisals by anyone in the organisation including managers, against a discloser.
- Specialist expertise (internal or external) for investigating alleged detriment or failures in support, with automatic notification to external agencies.
- Provision of information about mechanisms for compensation or restitution where there is failure to provide adequate support, or prevent or contain adverse outcomes.

5. An integrated organisational approach

Roles and responsibilities of key players

- Clear understanding of PID-related roles and responsibilities of key players, internal and external to the organisation.
- Clear and direct lines of reporting from support personnel to higher authorities.
- Clear lines of communication to ensure managers retain responsibility for their workplace and staff, to the maximum extent possible.
- Clear lines of communication with external agencies regarding the incidence, nature and status of active cases.
- Positive engagement on PID and other integrity issues with external integrity agencies, staff associations and client groups.

Embedding policies and procedures

- Integrated and coordinated procedures (not 'layered' or 'alternative').
- Discloser support integrated into human resources, career development, and workplace health and safety policies.

2.4 Outline of a sample PID policy

- 1. Statement of organisational commitment signed by the CEO**

Describe the commitment of management to encouraging and supporting PIDs.
- 2. Purpose**

Outline the purpose of the policy.
- 3. Legislative and policy basis**

Refer to:

 - the *Public Interest Disclosure Act 2010*.
- 4. Application/scope**

Specify the circumstances in which the policy applies and to whom in your organisation the policy applies, ensuring comprehensive coverage and the relationship between PIDs and other matters is discussed.
- 5. Definitions**

Define key terms (e.g. public interest disclosure, public officer, public sector entity).
- 6. Roles and responsibilities**

Identify the officers involved in your PID program and clearly describe their individual roles and responsibilities.
- 7. How PIDs can be made**

Identify the mechanisms, both internal and external to your organisation, by which PIDs can be made. Refer to procedures or other resources, if relevant.
- 8. Commitment to act on false or misleading information**

State that any person providing false or misleading information may face disciplinary action, and that your organisation will continue to manage the performance of disclosers.
- 9. Commitment to take action**

State that your organisation will take appropriate action to deal with the PID, and that while disclosers are encouraged to provide their name, your organisation will act on all anonymous PIDs.
- 10. Commitment to support and feedback**

State that all disclosers will receive feedback and describe how they will be otherwise supported by your organisation.
- 11. Commitment to confidentiality**

State that all PIDs will be kept confidential and that it is a criminal offence to breach confidentiality.
- 12. Commitment to protect disclosers**

State that the risk of reprisal to the discloser will be assessed and describe what action will be taken to protect disclosers.
- 13. Commitment to respond to reprisals**

Describe how your organisation will respond to any allegations of reprisal.
- 14. Commitment to the rights of subject officer(s)**

Outline the rights of subject officer(s).
- 15. Commitment to record-keeping and reporting**

Describe how procedures will ensure confidentiality and that annual reporting obligations are met.
- 16. Commitment to regular review**

Undertake to regularly review the policy.

2.5 About the research

The research in this guide is based on findings drawn from the *Whistling while they work: towards best practice* (Roberts et al. 2009), as well as its first report, *Whistleblowing in the Australian public sector: enhancing the theory and practice of internal witness management in public sector organisations* (Brown 2008). Both of these reports are available free online at www.griffith.edu.au/law/whistleblowing.

This national research project aims to enhance the theory and practice of internal witness management in public sector organisations. Under the leadership of Griffith University, researchers from five leading universities and 14 partner organisations from across Australia are involved.

The research comprised:

- a survey of public sector agencies ($n = 304$, response rate = 40 per cent)
- a survey of a random sample of public sector employees ($n = 7663$, response rate = 33 per cent)
- a survey of internal witnesses ($n = 240$, response rate = 53 per cent)
- interviews with internal witnesses ($n = 50$)
- a survey of public sector casehandlers ($n = 315$, response rate = 19 per cent) and managers ($n = 513$, response rate = 17 per cent)
- interviews with casehandlers ($n = 11$) and managers ($n = 21$)
- a survey of integrity agencies ($n = 16$, response rate = 67 per cent) and their employees ($n = 82$, response rate = 27 per cent).

The recommendations on best practice whistleblowing procedures (Roberts et al. 2009) are based primarily upon the analysis of ‘comprehensiveness’ from 175 sets of procedures that were submitted by public sector agencies. The suggested procedures are based upon exemplary procedural items and interpreted in the light of the analysis of the data from the various surveys.

The majority of research presented in this guide uses data collected in the jurisdictions of Queensland, New South Wales, Western Australia and the Commonwealth. Where findings in this guide are specific to Queensland, this is noted.

The research defined a ‘whistleblower’ as:

- a discloser of *public interest* information (as opposed to personnel or workplace grievances)
- a *discretionary* discloser (as opposed to reporting being part of their normal professional responsibility).

All research has limitations.

- While a large number of agencies participated in this research, many elected not to. Agencies with poorer systems in place may have been less likely to participate. Therefore the results presented *may* provide a ‘best case scenario’ of the way whistleblowing is managed.
- The extent to which the respondents are representative of any individual agency is also unknown. This is particularly relevant given the low response rates to the surveys.
- Former employees were not included in the sample of the Employee Survey.
- The surveys rely on the self-reported perceptions of respondents.

For more information on the project, visit www.griffith.edu.au/law/whistleblowing.



2.6 Contact details

For advice for individuals:

If you are thinking about making a PID, see your own organisation's policy or *Making a public interest disclosure: a guide for individuals working in the public sector*.

For advice for managers and supervisors:

If you have received a PID, see your own organisation's policy or *Handling a public interest disclosure: a guide for public sector managers and supervisors*.

For the most up-to-date version of the PID Act:

See the Queensland Government legislation website: www.legislation.qld.gov.au

For advice on official misconduct:

Crime and Misconduct Commission

Phone:	(07) 3360 6060	Address:	Level 2, North Tower, Green Square
Toll free:	1800 061 611 (outside Brisbane)		515 St Pauls Terrace
Fax:	(07) 3360 6333		Fortitude Valley QLD
Email:	mailbox@cmc.qld.gov.au	Postal:	GPO Box 3123
Web:	www.cmc.qld.gov.au		Brisbane QLD 4001

For advice on matters of state and local government administration:

Queensland Ombudsman

Phone:	(07) 3005 7000	Address:	Level 17, 53 Albert Street
Toll free:	1800 068 908 (outside Brisbane)		Brisbane QLD
Fax:	(07) 3005 7067	Postal:	GPO Box 3314
Email:	ombudsman@ombudsman.qld.gov.au		Brisbane QLD 4001
Web:	www.ombudsman.qld.gov.au		

For advice about your rights and obligations under the PID Act or standards issued under the PID Act:

Public Service Commission

Phone:	1300 038 472	Address:	Level 13, 53 Albert Street
Fax:	(07) 3224 2635		Brisbane QLD
Email:	pscenquiries@psc.qld.gov.au	Postal:	PO Box 15190
Web:	www.ethics.qld.gov.au		City East QLD 4002

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