

Public Interest Disclosure Standard No. 2/2019

1. Title

Public Interest Disclosure Standard No. 2/2019 – Assessing, Investigating and Dealing with Public Interest Disclosures

2. Purpose

This standard prescribes the organisational systems and procedures agencies must establish in order to give effect to the requirements under sections 28(1)(a), (b), (d) and (e) of the *Public Interest Disclosure Act 2010* (PID Act) to ensure that:

- public officers of the entity who make PIDs are given appropriate support
- PIDs made to the entity are properly assessed, and where appropriate, properly investigated and dealt with
- appropriate action is taken in relation to any wrongdoing that is the subject of a PID made to the entity, and
- public officers of the entity are offered protection from reprisal by the entity or other public officers of the entity.

3. Effective Date

1 March 2019

4. Authority

This standard is issued by the Queensland Ombudsman under section 60 of the PID Act.

5. Application

This standard applies to and is binding on all public sector entities within the meaning of section 6 of the PID Act. In addition, this standard applies to corporate entities and Government Owned Corporations (GOCs) to the extent that the PID Act expressly states that they are public sector entities to which the PID Act applies¹. The application of this standard to GOCs is also subject to sections 60(7) and 60(8) of the PID Act.

This standard operates in conjunction with Public Interest Disclosure Standard No. 1/2019 – Public Interest Disclosures Management Program and Public Interest Disclosure Standard No. 3/2019 – Public Interest Disclosure Data Recording and Reporting.

¹ Refer to s.6(2) of the *Public Interest Disclosure Act 2010*

6. Definitions

For the purposes of this standard the following definitions apply:

discloser	A person who makes a PID.
entity	A public sector entity as defined at section 6 of the PID Act, a corporate entity or a GOC.
GOC	Government Owned Corporation as defined at schedule 4 of the PID Act.
officer	A public officer of a public sector entity, including an employee, member or officer of the entity as defined at section 7 of the PID Act.
PID	Public interest disclosure.
PID Act	<i>Public Interest Disclosure Act 2010</i>
possible PID	Information submitted by a person who states it is a PID.
proper authority	A public sector entity or member of the Legislative Assembly as defined at section 5 of the PID Act.
referral entity	A public sector entity, that is a proper authority, to which a PID that has been received by another entity under section 15 or 34 may refer a PID to, because the disclosure is about: <ul style="list-style-type: none">• the conduct of the referral entity or a public officer of the referral entity, or• the conduct of an entity (including itself), or another matter, that the referral entity has the power to investigate or remedy.²
referral risk assessment	An assessment of the risk of reprisal to the discloser if a PID received by an entity under section 15 of the PID Act, or received by way of referral under section 34 of the PID Act, is referred to another proper authority.
subject officer	A person about whom a PID is made.
wrongdoing	Conduct or other matter as defined at section 12(1) and section 13(1) of the PID Act.

² Refer to s.31 of the *Public Interest Disclosure Act 2010*

7. Responsibilities

For the purposes of this standard the following responsibilities are relevant:

oversight agency	<p>The main functions of the Office of the Queensland Ombudsman as the oversight agency under the PID Act include³:</p> <ul style="list-style-type: none"> • monitoring the management of PIDs, including by monitoring compliance with the Act, collecting statistics about PIDs and monitoring trends in relation to PIDs • reviewing the way in which public sector entities deal with PIDs generally, or particular PIDs • performing an education and advisory role, including by promoting the objects of the Act, providing advice about PIDs and providing education and training programs about PIDs.
chief executive officer	<p>The chief executive officer of an entity has overall responsibility under the PID Act for the entity's compliance with the Act, including:</p> <ul style="list-style-type: none"> • receiving and assessing PIDs⁴ • establishing reasonable procedures to deal with PIDs⁵ • keeping a record of disclosures⁶ • reviewing the entity's decisions not to investigate or deal with PIDs on request⁷ • providing disclosure information to the oversight agency⁸ • delegating responsibilities under the PID Act as they consider appropriate, and • ensuring effective management and oversight of the entity's PID management program and procedures.
PID Coordinator	<p>A PID Coordinator is an officer of the entity, delegated by the chief executive officer with responsibility for the implementation of the entity's PID management program, including acting as a principal point of contact with the oversight agency.</p>
PID Support Officer	<p>A PID Support Officer is an officer of the entity, delegated by the chief executive officer or the PID Coordinator with responsibility for providing support to a discloser, subject officer or witness who is involved in the management of a PID.</p>

³ Refer to s.59 of the *Public Interest Disclosure Act 2010*

⁴ Refer to s.17(3) of the *Public Interest Disclosure Act 2010*

⁵ Refer to s.28 of the *Public Interest Disclosure Act 2010*

⁶ Refer to s.29 of the *Public Interest Disclosure Act 2010*

⁷ Refer to s.30(3) of the *Public Interest Disclosure Act 2010*

⁸ Refer to s.33 of the *Public Interest Disclosure Act 2010*

8. Assessing, Investigating and Dealing with Public Interest Disclosures Standard

As provided at section 60(1) and (2) of the PID Act, the Assessing, Investigating and Dealing with Public Interest Disclosures Standard applies to the way in which public sector entities are to deal with public interest disclosures, and in particular the procedures relating to:

- the way in which public sector entities are to facilitate the making of public interest disclosures
- the way in which public sector entities are to perform their functions under the PID Act, and
- the protection of persons from reprisals taken by public sector entities or public officers.

Standard 2.1: Assessment of information

The chief executive officer of an entity must establish and maintain a process for assessing information received by the entity or referred to it by another entity or a Member of the Legislative Assembly to determine whether it is a PID (in accordance with section 28(1)(b) of the PID Act). The process must meet the following minimum requirements:

2.1.1 Comply with assessment obligations	<ul style="list-style-type: none"> • Assess information received to determine whether it meets the test of being a PID as provided in the PID Act. • Where there is doubt on the face of the information as to whether it should be assessed as a PID, treat the disclosure as a PID and apply the PID Act to the management of the disclosure. • Complete the assessment of the information to determine whether it is a PID as soon as practicable.
2.1.2 Apply assessment criteria	<ul style="list-style-type: none"> • Determine whether: <ul style="list-style-type: none"> – the information has been disclosed by any person in accordance with section 12 of the PID Act, a public officer⁹ in accordance with section 13 of the PID Act, or, for a GOC or rail government entity, is information about the conduct of another employee of the GOC or rail government entity disclosed by an employee in accordance with section 19 of the PID Act – the type of information disclosed meets one or more of the definitions in section 12¹⁰, section 13 or section 19 as appropriate – the information disclosed meets either the subjective or objective tests set out at section 12(3), section 13(3) or section 19(3) as appropriate – the entity is the proper authority to which the disclosure may be made in accordance with

⁹ As defined at section 7 of the *Public Interest Disclosure Act 2010*

¹⁰ Refer also to section 11 of the *Disability Services Act 2006* for the definition of 'a disability' to be applied in assessing whether information meets the definition at section 12(1)(a).

	<p>section 15 of the PID Act, or for a disclosure relating to a judicial officer in accordance with section 16 of the PID Act</p> <ul style="list-style-type: none"> - the information has been disclosed either in accordance with a procedure for making a PID to the entity as provided at section 17(2) of the PID Act or to a person listed at section 17(3) of the PID Act. • The assessment of the information does not take into account irrelevant considerations such as: <ul style="list-style-type: none"> - how it is received (for example, orally, by email, through an online complaint form or in writing)¹¹ - if it is made anonymously - if the information identifies the conduct of a particular person¹² - if the discloser identifies the information as a PID - whether the discloser wishes to proceed with the PID • Make and keep a written record¹³ of the assessment decision, including the factors considered in reaching a determination on each criteria.
2.1.3 Communicate assessment of possible PID	<ul style="list-style-type: none"> • If the assessment determines that a possible PID does not meet the test of being a PID as provided in the PID Act, make and keep a written record of the assessment decision, including the factors considered in reaching a determination. • Provide the discloser written reasons¹⁴ for decision explaining the assessment that the information is not a PID, the information relied upon in making that decision, the name of the delegated officer, the right of review of the decision and how to exercise that review right as soon as practicable.
2.1.4 Forward information to proper authority	<ul style="list-style-type: none"> • If the assessment determines that the information would amount to a PID but for failure to comply with section 15 or section 16 (as it has not been made to a proper authority), and contact details have been provided, either seek consent from the discloser to forward the information to the proper authority or invite the discloser to redirect the information to the proper authority. • If consent is given, if the disclosure is anonymous or if otherwise appropriate¹⁵, forward the information to the proper authority as soon as practicable. • If the information has been forwarded to the proper

¹¹ Refer to s.17 of the *Public Interest Disclosure Act 2010*

¹² Refer to s.21 of the *Public Interest Disclosure Act 2010*

¹³ Refer to the requirements of the *Public Records Act 2002*

¹⁴ Where a standard requires written reasons or information to be provided, this may include email or other electronic communications.

¹⁵ Note that in accordance with sections 37-39 of the *Crime and Corruption Act 2001* if the Commissioner of Police or a public official reasonably suspects that a complaint, information or matter involves or may involve corrupt conduct then they must notify the Crime and Corruption Commission of the complaint.

	authority (and contact details have been provided), inform the discloser, in writing, as soon as practicable.
2.1.5 Conduct referral risk assessment	<ul style="list-style-type: none"> • Where a PID received under section 15 of the PID Act, or referred under section 34 of the PID Act, is assessed as appropriate for referral to another proper authority, conduct a referral risk assessment. • In conducting the referral risk assessment consult the discloser if practicable, as provided at section 31(4) of the PID Act. • If the discloser is anonymous, conduct the referral risk assessment taking into account the information disclosed in the PID and any other information reasonably available. • Seek consent from the discloser to consult the proper authority to which it is proposed to refer the PID about the referral risk assessment, if required. • Protect the confidentiality of the discloser, and other confidential information as defined at section 65(7) of the PID Act, in conducting the referral risk assessment, subject to the exceptions provided at section 65(3) of the PID Act.

Standard 2.2: Reasonable information provided

The chief executive officer of an entity to which a public interest disclosure is made under section 15, or referred under sections 31 or 34 must ensure that the person who made the disclosure, or the entity that referred the disclosure, is given reasonable information about the disclosure (in accordance with section 32(1) of the PID Act). The communication must meet the following minimum requirements:

2.2.1 Receipt of the PID acknowledged	<ul style="list-style-type: none"> • Where a PID has been received directly from a discloser, and contact details for the discloser have been provided, receipt of the PID is acknowledged in writing as soon as practicable. • Where a PID has been referred from another entity, and contact details for the discloser have been provided, receipt of the PID is acknowledged to the entity in writing as soon as practicable with advice that further communication in relation to the PID will be directed to the discloser. • Where a PID has been received from another entity, and the discloser is anonymous, receipt of the PID is acknowledged to the entity in writing as soon as practicable as well as advice about the action proposed to be taken and the results of the action.
2.2.2 Information provided to discloser	<ul style="list-style-type: none"> • Provide the following information to the discloser (unless there are grounds to vary the information)¹⁶: <ul style="list-style-type: none"> – acknowledgement that the disclosure has

¹⁶ Refer to s.32 of the *Public Interest Disclosure Act 2010*.

	<ul style="list-style-type: none"> been received - confirmation that the disclosure has been assessed as a PID - the protections under the PID Act that apply - that the discloser's identity and the information disclosed will be kept confidential, except as allowed under the PID Act - that the discloser has an obligation to maintain confidentiality, except as allowed under the PID Act - the action that the entity proposes to take - the discloser's likely involvement in any action the entity proposes to take (for example, if the discloser will be a witness in an investigation) - the likely timeframe for taking action - how the discloser will be advised of progress and the frequency of updates - the arrangements the entity has/will put in place to support the discloser - the name and contact details of the PID Support Officer assigned to support the discloser, and - after action has been taken in response to the PID, the results of the action. • Provide the following information to an entity that referred a disclosure in accordance with section 31 or section 34: <ul style="list-style-type: none"> - confirmation that the disclosure has been received - the action that the entity proposes to take, and - after action has been taken in response to the PID, the results of the action.
2.2.3 Information varied in appropriate circumstances	<ul style="list-style-type: none"> • If there are grounds to vary the information provided in compliance with section 32(1) of the PID Act on the basis that giving the information would be likely to adversely affect anyone's safety, the investigation of an offence or possible offence or necessary confidentiality about an informant's existence or identity, as provided at section 32(4) of the PID Act¹⁷, a risk assessment is conducted. • If, as a result of the risk assessment, a decision is made to vary the information provided in compliance with section 32(1) the reasons for varying the information are recorded.
2.2.4 Information provided when referring a PID	<ul style="list-style-type: none"> • Where it is proposed to refer a PID to another public sector entity in accordance with section 31(1) of the PID Act, and it is assessed that referral of a PID does not present an unacceptable risk of reprisal, refer the PID to the referral entity. • Inform the referral entity in writing that the disclosure has been assessed as a PID and the basis for that assessment.

¹⁷ A further ground to vary the information provided is compliance by the Queensland Audit Office with s.53 of the Auditor-General Act 2009.

	<ul style="list-style-type: none"> • Inform the discloser in writing that the PID has been referred to the referral entity as soon as practicable. • Where the PID had initially been received from another entity, inform that entity in writing as soon as practicable that the PID has been referred to the referral entity.
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Standard 2.3: Decision not to investigate or deal with a PID

The chief executive officer of an entity that decides not to investigate or deal with a PID under section 30(1) of the PID Act, must ensure that it gives written reasons for its decision to the discloser (in accordance with section 30(2) of the PID Act). The process must meet the following minimum requirements:

2.3.1 Document decision to take no action	<ul style="list-style-type: none"> • Record the information relied upon in making a decision not to investigate or deal with a PID. • Record the ground or grounds under section 30 on which it is decided not to investigate or deal with a PID, the reasons for the decision and the delegated officer who made the decision. • Provide the discloser written reasons for decision explaining the ground or grounds under section 30 for deciding not to investigate or deal with the PID, the information relied upon in making that decision, the name of the delegated officer, the right of review of the decision and how to exercise that review right in accordance with section 30(3) of the PID Act as soon as practicable.
2.3.2 Review decision to take no action	<ul style="list-style-type: none"> • Implement a process for managing requests to the chief executive officer for review of decisions not to investigate or deal with a PID. • Assess requests for review to determine if they are validly made (within 28 days after the discloser received the written reasons for decision given in accordance with section 30(2) of the PID Act). • The chief executive officer (or their delegate) conducts a review and determines whether to confirm or overturn the decision not to investigate or deal with the PID. • Record the review decision, the reasons for the decision and the officer who made the decision. • Provide the discloser written reasons for decision explaining the review decision, the information relied on in making the review decision, the name of the officer who made the decision and the right of external review¹⁸ as soon as practicable.

¹⁸ As a review decision by an entity under section 30(3) of the *Public Interest Disclosure Act 2010* falls within the meaning of 'administrative action' at section 7 of the *Ombudsman Act 2001*, a discloser may (subject to the jurisdictional limitations of the Office of the Queensland Ombudsman) seek an external review by making a complaint in accordance with section 20 of the Ombudsman Act.

Standard 2.4: Protect disclosers from reprisal

The chief executive officer of an entity must develop and implement reasonable procedures to ensure that officers of the entity are offered protection from reprisal by the entity or other officers of the entity (in accordance with section 28(1)(d) of the PID Act), and reasonable steps are taken to prevent officers taking a reprisal in contravention of section 40 of the PID Act (in accordance with section 43 of the PID Act). The procedures must meet the following minimum requirements:

<p>2.4.1 Provide support to internal disclosers</p>	<ul style="list-style-type: none">• Establish a process for assessing the support needs of disclosers who are employees of the entity¹⁹.• Assign a PID Support Officer who is independent of the investigation of the PID to support the discloser.• Provide information about the support available to the discloser including:<ul style="list-style-type: none">– acknowledgement of the value to the entity of receiving reports of wrongdoing– a clear statement that the entity will support the discloser– the name and contact details of the PID Support Officer assigned to support them– the protections under the PID Act that apply– that the discloser’s identity and the information disclosed will be kept confidential, except as permitted under the PID Act and any other legislation under which the subject matter of the disclosure is being dealt with– that the discloser has an obligation to maintain confidentiality, except as permitted under the PID Act– the arrangements the entity has/will put in place to support the discloser– the availability of the entity’s employee assistance scheme and how to access it (if applicable).• Subject to the needs and circumstances of the discloser, the PID Support Officer may:<ul style="list-style-type: none">– proactively contact the discloser to check on their welfare, on a regular basis as determined by the risk assessment, until management of the PID is finalised– provide updates to the discloser on the progress of the investigation or action taken by the entity, on a regular basis, until management of the PID is finalised– support the discloser in liaising with the PID Coordinator to arrange specific support services to meet the needs of the discloser (for example, information, counselling, legal advice or skills training).
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¹⁹ Factors relevant to assessing the support needs of the discloser may include the position held by the discloser in the entity, whether the disclosure was made as a ‘role reporter’, and what is reasonably practicable in relation to a duty to ensure health and safety as provided in the *Work Health and Safety Act 2011*.

	<ul style="list-style-type: none"> • Inform the discloser of ongoing support arrangements and the process for reporting reprisal as soon as practicable after management of the PID is finalised.
<p>2.4.2 Assess the risk of reprisal to discloser and others</p>	<ul style="list-style-type: none"> • Establish a process for assessing the risk of reprisal to disclosers, witnesses and others involved in the management of PIDs²⁰. • Conduct and record an assessment of the risk of reprisal to the discloser, witnesses, and/or others associated with the discloser (including those who may wrongly be suspected of being a discloser) as soon as practicable after assessing a PID. • In conducting the risk assessment, take into account the nature of the risks, the consequences if reprisals occur, the likelihood of reprisals occurring and the timeframe/s in which the risks of reprisal may arise. • Consult the discloser about the risk assessment to the extent practicable. • Seek consent from the discloser to consult with other entities or third parties external to the agency about the risk assessment, if required²¹. • If the discloser is anonymous, conduct the risk assessment taking into account the information disclosed in the PID and any other information reasonably available. • Protect the confidentiality of the discloser, and other confidential information, as defined at section 65(7) of the PID Act, in the conduct of the risk assessment, subject to the exceptions provided at section 65(3) of the PID Act. • Review the risk assessment on a regular basis, and amend as required, until management of the PID is finalised.
<p>2.4.3 Develop a risk management plan</p>	<ul style="list-style-type: none"> • If the risk assessment identifies a risk of reprisal, develop and record a risk management plan for the discloser, witnesses, and/or others associated with the discloser (including those who may wrongly be suspected of being a discloser) as soon as practicable after completing the risk assessment. • In developing the risk management plan consult the discloser, to the extent practicable. • Identify protective measures that are proportionate to the risk of reprisal and the potential consequences of reprisal²². • Protect the confidentiality of the discloser, and other

²⁰ Risk assessment tools can be found in AS/NZS ISO 31000:2009 Risk Management – Principles and guidelines, Queensland Treasury's 'A Guide to Risk Management' at <https://www.treasury.qld.gov.au/resource/guide-risk-management/> and similar resources.

²¹ Where consent of the discloser is not given or is not able to be obtained consider whether the entity has an overriding obligation, for example under the *Work Health and Safety Act 2011*, to consult with another entity or third party external to the agency.

²² The provision of appropriate discloser support is a protective measure which is required to be implemented in accordance with standard 2.4.

	<p>confidential information as defined at section 65(7) of the PID Act, in the development and implementation of the risk management plan, subject to the exceptions provided at section 65(3) of the PID Act.</p> <ul style="list-style-type: none"> • Review the risk management plan and implementation of the plan on a regular basis (for example, at key points in the PID management process), and amend as required, until management of the PID is finalised.
2.4.4 Manage reprisal	<ul style="list-style-type: none"> • Establish effective systems and procedures to monitor the discloser's workplace for any evidence of reprisal action. • In the event that reprisal is alleged or suspected, take action to: <ul style="list-style-type: none"> - address the safety and welfare of the discloser, witnesses, and/or others associated with the discloser (including those who may wrongly be suspected of being a discloser) as a priority - assess the alleged or suspected reprisal to determine if it comprises conduct that must or may be referred to another entity with jurisdiction to deal with the conduct (for example, the Crime and Corruption Commission, Queensland Police Service, Public Service Commission or Office of the Independent Assessor). - review the risk assessment and amend it as required, in consultation with the discloser if appropriate - review the risk management plan and amend it as required, in consultation with the discloser if appropriate - inform the person reporting the alleged or suspected reprisal of the process for making a PID of reprisal in accordance with section 12(1)(d) of the PID Act - provide any necessary support to the person reporting the alleged or suspected reprisal to make a PID of reprisal. • Manage information about alleged or suspected reprisal in accordance with the PID Act, the entity's PID procedure and other relevant policies or procedures.

<p>2.4.5 Protect non-employees from reprisal</p>	<ul style="list-style-type: none"> • Take reasonable steps to prevent reprisal of disclosers who are public officers of other entities by public officers of the entity, including: <ul style="list-style-type: none"> - assign a PID Support Officer to the discloser who is independent of the investigation - provide appropriate support information to the discloser and maintain contact with the discloser until management of the PID is finalised - conduct and record an assessment of the risk of reprisal to the discloser - seek consent from the discloser to consult with their employer, other entities or third parties about the risk assessment, if required - if necessary, develop, record and implement a risk management plan for the discloser • liaise with the discloser’s employer about the development and implementation of the risk management plan, if required. • Take reasonable steps to prevent reprisal of disclosers who are members of the public by officers of the entity, including: <ul style="list-style-type: none"> - assign a PID Support Officer to the discloser who is independent of the investigation - provide appropriate support information to the discloser and maintain contact with the discloser until management of the PID is finalised - conduct and record an assessment of the risk of reprisal to the discloser - if necessary, develop, record and implement a risk management plan for the discloser.
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Standard 2.5: Investigation of PIDs

The chief executive officer of an entity must develop and implement reasonable procedures to ensure that PIDs are properly investigated and dealt with (in accordance with section 28(1)(b) of the PID Act), and appropriate action is taken in relation to any wrongdoing that is the subject of a PID (in accordance with section 28(1)(c) of the PID Act). The procedures must meet the following minimum requirements:

<p>2.5.1 Ensure PID Act protections during investigation</p>	<ul style="list-style-type: none"> • Incorporate in the terms of reference for investigation of a PID that the investigation be conducted in accordance with the PID Act, including: <ul style="list-style-type: none"> - take reasonable steps to protect the discloser and others from reprisal - comply with the confidentiality obligations at section 65 of the PID Act - note the standards issued by the oversight agency under section 60 of the PID Act. • Incorporate in the terms of reference for investigation of a PID the investigator’s obligation to continually monitor the matter for information indicating a breach of legislation that must or may be referred to another entity with jurisdiction to deal
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	<p>with the matter.</p> <ul style="list-style-type: none"> • Appoint an investigator for an investigation of a PID, whether internal or external, who has appropriate knowledge of the PID Act, the protections provided under the PID Act and the entity's PID procedure.
2.5.2 Afford natural justice	<ul style="list-style-type: none"> • Take reasonable steps to ensure that the investigation of a PID is conducted in accordance with the principles of natural justice (procedural fairness). • In complying with section 65(5), where contemplating disclosing information that does, or is likely to, identify a discloser: <ul style="list-style-type: none"> – assess whether it is essential to do so under the principles of natural justice – conduct and record a risk assessment to assess the likelihood of reprisal against the discloser if the information is disclosed – make a decision whether and what information identifying the discloser should be disclosed – document the decision and the reasons for the decision.
2.5.3 Consider systemic outcomes	<ul style="list-style-type: none"> • Irrespective of whether the matters investigated as a result of the PID are substantiated, partly substantiated, not substantiated or the investigation is discontinued, consider: <ul style="list-style-type: none"> – any systemic issues that gave rise to the PID or were identified during the investigation – any action that should be taken (apart from disciplinary action) to address any such systemic issues (for example, changes to policy, procedure, controls or governance arrangements). • At the conclusion of the investigation evaluate whether there is any evidence of a breach of an offence provision under the PID Act²³, and, if so, take appropriate action.

²³ Refer to s.41 'Offence of taking reprisal', s.65(1) 'Preservation of confidentiality', s.66 'False or misleading information' and s.67 'Misconduct by breach of Act' of the *Public Interest Disclosure Act 2010*