

Public Interest Disclosure Standard No. 1

1 Title

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2 Effective Date

1 January 2013

3 Authority

Issued by the Queensland Ombudsman under section 60 of the *Public Interest Disclosure Act 2010* (PID Act).

4 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, the standard will apply to corporate entities and Government Owned Corporations (GOCs), to the extent that the PID Act expressly applies to those organisations¹.

5 Definitions and terms

For the purposes of this standard:

Discloser	The person who makes a PID
Entity	Public sector entities, corporate entities and government-owned corporations (GOCs)
PID	Public Interest Disclosure
Subject officer	The person about whom a PID is made

About this standard

From 1 January 2013, the Queensland Ombudsman is the oversight agency for the PID Act. Other than updating information about oversight arrangements, the content of this standard is the same as the Public Service Commission's Public Interest Disclosure Standard No. 1.

User's note

Links to the publication *Managing a Public Interest Disclosure Program – A guide for public sector organisations* (the guide), jointly published by the Public Service Commission, Crime and Misconduct Commission and the Queensland Ombudsman, are noted in brackets after a section heading (e.g. links to 1.2 of the guide).

¹ The application of this standard to GOCs is subject to section 60(7) of the PID Act.

6 Standards

6.1 Organisational commitment (links to 1.1 and 1.5 of the guide)

6.1.1 The Chief Executive must develop, implement and maintain a management program for PIDs under section 28 of the PID Act. This management program must, as a minimum, address the following:

- organisational commitment to encouraging the internal reporting of wrongdoing;
- senior management endorsement of the value to the entity of PIDs and the proper management of PIDs and disclosers;
- a communication strategy for raising staff awareness about PIDs and the entity's PID procedures;
- a training strategy to ensure:
 - staff are given access to training on the identification of wrongdoing, how to make a PID, the support and protection afforded to disclosers, and how PIDs will be managed (this training can be included in the entity's training on ethics);
 - the provision of specialist training and awareness about PIDs to senior managers and other staff who may receive or manage PIDs, disclosers or workplace issues relating to a PID;

- the appointment of a specialist ethics unit (or a nominated officer) to be responsible for issues related to the management of PIDs. The unit or officer should have the following characteristics:
 - direct access to the CEO in relation to PID matters;
 - delegated authority to appropriately manage PIDs;
 - access to resources to properly manage PIDs;
- ensuring effective systems and procedures are in place for issues arising from PIDs to inform improvements to service delivery, business processes and internal controls; and
- providing a mechanism for regular evaluation and monitoring of the effectiveness of PID policies and procedures.

6.1.2 The Chief Executive must develop and implement reasonable procedures for dealing with PIDs under section 28 of the PID Act. The procedures must, as a minimum, address the following:

- clear identification of who is covered by the procedure and the types of wrongdoing to be reported;
- encourage the reporting of wrongdoing;
- establish a clear reporting system, preferably with multiple pathways, for staff to make a PID internally, together with information on how to make an external PID;
- ensure the assessment of the risks of reprisal referred to in section 6.6 of the standard;
- means for complying with the confidentiality requirements of the PID Act;
- the rights of review, both internal and external;

- a description of the roles and responsibilities of key staff in the entity's management of PIDs and in the support and protection of disclosers; and
- the rights of subject officers.

6.1.3 The procedures for making PIDs should be referred to in policies and procedures for the handling of complaints to ensure that assessments can be made about which complaints must be treated as PIDs (see section 6.3 of this standard).

Commencement: The Chief Executive must ensure the PID management plan and procedures are reviewed after 12 months and on a regular basis thereafter.

6.2 Oversight within the entity

The Chief Executive must, so far as is appropriate (given the nature and size of the agency), establish a central point with expertise to be responsible for:

- applying consistent and appropriate assessment procedures to determine which complaints meet the requirements of the PID Act for treatment as a PID;
- monitoring the investigation and resolution of PIDs;
- managing or coordinating the support and protection offered to disclosers;
- collecting, reporting and reviewing data about PIDs received (see section 7 of the standard); and
- providing clear guidance to staff about how to make a PID.

6.3 Receiving and assessing PIDs (links to 1.3 of the guide)

The Chief Executive must ensure that all disclosures made to the entity or referred to it by another entity or Member of the Legislative Assembly, are assessed.

In assessing a disclosure, entities must determine if:

- the person making the disclosure is able to receive the protection of the PID Act;²
- the disclosure concerns a matter about which a PID can be made;³
- the disclosure meets either the subjective or objective test set out in the PID Act;⁴
- the disclosure has been made to an individual or entity who may receive a PID;⁵ and
- the disclosure has been made in accordance with the agency's procedure or to a person listed in the PID Act.⁶

If there is doubt whether a disclosure is a PID, entities should assume the disclosure is protected by the PID Act and manage the disclosure as if it is a PID.

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

² refer to sections 12, 13, 18 & 19 of the PID Act

³ *ibid*

⁴ refer to sections 12(3), 13(3), 18(4) & 19(3) of the PID Act

⁵ refer to sections 14, 15, 16, 18, 19 & 20 of the PID Act

⁶ refer to sections 17(2) & 17(3) of the PID Act

Example: An allegation that an employee acted negligently on a number of occasions might be recorded as a single PID provided the subject matter and circumstances are sufficiently linked. In contrast, an allegation that an employee acted corruptly and also assaulted a client, may warrant recording as separate PIDs.

An entity cannot decline to receive and/or assess a disclosure as a PID.

6.4 Taking action on a PID (links to 1.3 of the guide)

An entity receiving a PID must first determine whether it is to be referred to another entity. If it is, the referral must be done in accordance with legislative and administrative requirements.

Action must be taken in respect of the matters raised in a PID unless no action is to be taken under section 30 of the PID Act.

Anonymous disclosures should be received and managed in the same way as identified disclosures, and should not be rejected because they are anonymous.

Example 1: An entity receives a single anonymous statement which simply says 'The Director of the XYZ Branch is corrupt'. In the absence of any further information, or contact details for the discloser, the entity may decide to record the disclosure but not take any further action.

Example 2: An entity receives an anonymous statement which says, "Contracts have been awarded by the XYZ Branch without any proper tendering process". In this case, the entity may respond by conducting a small sample audit of recent contracts awarded by the branch to determine whether there is any substance to the disclosure. When assessing (and where necessary, investigating and taking action on) a PID, entities must be aware of their obligations to subject officers. The fact an entity is relying on information obtained through a PID for any subsequent disciplinary process does not exempt the entity from such obligations to subject officers.⁷

Example 3: A PID reveals that an employee has been failing to provide proper care to vulnerable clients. The matter is investigated and the employee is subject to a disciplinary process. While the entity will need to ensure the identity of the discloser is protected in accordance with the PID Act, it will also need to ensure the respondent employee is given sufficient details of the allegations to allow him or her natural justice in the disciplinary process. Any disciplinary process could fail at an appeal or on judicial review if it is determined the employee was not given sufficient details of the allegations, even if some or all of those details were withheld because they came from a PID.

⁷ See section 65(4) of the Act

6.5 Informing the discloser (links to 1.4 of the guide)

The Chief Executive must provide the discloser or the entity that referred the disclosure, reasonable information under section 32 of the PID Act. The Chief Executive must also advise the discloser:

- the likely timeframes;
- their involvement in the investigation process;
- the importance of maintaining confidentiality;
- the protections under the PID Act that will apply;
- that the entity will keep the information disclosed, including the discloser's identity confidential, except as allowed under the PID Act;
- how they will be advised of progress and outcomes; and
- who to contact if they want further information or are concerned about reprisals.

Regular follow up with the discloser should be arranged by agreement to advise on the progress of resolving the PID (where this is desired by the discloser, and it is safe to do so).

6.6 Discloser support and protection (links to 1.4 of the guide)

As soon as possible after receiving a PID, the Chief Executive must determine the level of protection and support appropriate for a discloser by conducting a risk assessment of a reprisal to the discloser and others associated with the discloser (including those who may wrongly be suspected of being a discloser). The entity must also take into account any consequences if reprisals do occur.

When assessing the risk, an assessment of the discloser's need for support must also be conducted.

ISO 31000:2009 Risk Management Standard is one recommended risk assessment tool, although it is open to an entity to use any reasonable risk assessment strategy

The Chief Executive must ensure protective measures are in place which are proportionate to the risk of reprisal, and the potential consequences of a reprisal. If the risk is assessed as sufficiently high, an entity must prepare a protection plan to protect the discloser. Where feasible, this should be developed in consultation with the discloser and other relevant stakeholders.

If it has been determined that a discloser will require support; this may include:

- acknowledging that making the PID was the right thing to do and is valued;
- making a clear statement that the entity will support the discloser;
- appointing an appropriate person (separate from the investigation function) with sufficient authority to ensure the discloser has appropriate support and protection from reprisals;
- regularly checking on the discloser's well-being, where this is warranted;
- advising the discloser of the availability of the employee assistance scheme; and
- where the health of the discloser becomes a concern, liaising with officers responsible for occupational workplace health and safety.

6.7 Managing reprisals *(links to 1.4 of the guide)*

The Chief Executive must ensure effective systems and procedures are in place to monitor a discloser's workplace for any signs of reprisal action.

In the event of a reprisal being alleged or suspected, an entity must act in the interest of the discloser by:

- attending to the safety of the discloser(s) or affected third parties as a matter of priority;
- reviewing the risk assessment of reprisal and any protective measures needed; and
- managing any allegation of a reprisal as a PID in its own right.

7 Reporting *(links to 1.2 of the guide)*

7.1 As part of a PID management framework, the Chief Executive must ensure the entity has a secure and confidential reporting system to record the receipt and management of PIDs as required by the PID Act.

7.2 Entities must provide the Queensland Ombudsman with the following information about PIDs, in electronic form as agreed by the Queensland Ombudsman:

- the date the disclosure was received, and where it was received from;
- the status of the discloser (e.g. entity staff, staff from another entity, member of the public, anonymous);
- the gender and status of the subject officer (staff member, non-staff member);
- the relationship between the discloser and the subject officer;
- the location of the subject officer (geographical region);
- a summary of the allegation/information received;

- the involvement of an external agency/party;
- the action taken to minimise any risk of reprisal;
- date inquiry/investigation commenced and completed;
- the outcome of the assessment, inquiry/investigation;
- the date the PID was resolved or closed;
- when the outcome was advised to the discloser;
- if no action was taken, the reason for the decision; and
- other legal processes associated with the disclosure.