

Public Interest Disclosure Policy and Procedure 2021

Policy and Procedure for Dealing with Public Interest Disclosures made under the *Public Interest Disclosure Act 2010*

1. Policy statement

The Office of the Queensland Ombudsman (the Office) is committed to fostering an ethical and transparent culture. In pursuit of this, the Office values the disclosure of information about suspected wrongdoing in the public sector so that it can be properly assessed and, if necessary, appropriately investigated. The Office will provide support to any **employee, public officer** or other person who makes a disclosure about matters in the public interest.

This Policy and Procedure demonstrates this commitment, and ensures that practical and effective procedures are implemented which comply with the requirements of the [Public Interest Disclosure Act 2010](#) (PID Act).

This Policy and Procedure applies to anyone, including Ombudsman officers, wishing to make a public interest disclosure.

2. Purpose

This Policy and Procedure has been prepared to comply with section 28 of the PID Act. This Policy and Procedure complies with and the Public Interest Disclosure Standards issued by the Queensland Ombudsman as the oversight agency under the PID Act.

3. PID Management Program

The Ombudsman has overall responsibility for ensuring that the Office develops, implements and maintains a PID management program. The Office's PID Management Program complies with 'Standard 1.3: Management program for PIDs', in Public Interest Disclosure Standard 1/2019 – Public Interest Disclosure Management Program.

The Queensland Ombudsman's Public Interest Disclosure Management Program is available at www.ombudsman.qld.gov.au.

4. Why make a PID?

People who are prepared to speak up about wrongdoing can be an important source of information to identify and address problems in public sector administration. The Office supports the disclosure of information about wrongdoing because:

- implementing systems for reporting and dealing with wrongdoing contributes to the integrity of the Office
- the outcomes of PIDs can include improvements to systems that prevent fraud and other economic loss
- the community's trust in public administration is strengthened by having strong processes in place for reporting wrongdoing.

When making a PID the discloser receives the protections provided under the PID Act, including:

- confidentiality – the discloser’s name and other identifying information will be protected to the extent possible
- protection against reprisal – the discloser is protected from unfair treatment by the Office and its employees as a result of making the PID
- immunity from liability – the discloser cannot be prosecuted for disclosing the information but is not exempt from action if they have engaged in wrongdoing
- protection from defamation – the discloser has a defence against an accusation of defamation by any **subject officer**.

5. What is a Public Interest Disclosure?

Under the PID Act, any person can make a disclosure about a:

- **substantial** and **specific** danger to the health or safety of a person with a **disability**
- the commission of an offence, or contravention of a condition imposed under a provision of legislation mentioned in Schedule 2 of the PID Act, if the offence or contravention would be a substantial and specific danger to the environment
- **reprisal** because of a belief that a person has made, or intends to make a disclosure.

In addition, public sector officers (including employees of the Office) can make a disclosure about the following public interest matters:

- **corrupt conduct**
- **maladministration** that adversely affects a person’s interests in a substantial and specific way
- a substantial misuse of public resources
- a substantial and specific danger to public health or safety
- substantial and specific danger to the environment.

A discloser can have either a ‘**reasonable belief**’ that wrongdoing has occurred, or provide evidence which tends to show the wrongdoing has occurred.

A disclosure amounts to a PID and is covered by the PID Act even if the:

- discloser reports the information as part of their duties – such as an auditor reporting a fraud or an occupational health and safety officer reporting a safety breach
- disclosure is made anonymously – the discloser is not required to give their name or any identifying information
- discloser has not identified the material as a PID – it is up to the Office to assess information received and decide if it is a PID
- disclosure is unsubstantiated following investigation – the discloser is protected when the information they provide is assessed as a PID, whether or not it is subsequently investigated or found to be substantiated.

6. Who can a PID be disclosed to?

A PID must be made to the ‘**proper authority**’ to receive disclosures of the type being made.

Ombudsman officers are encouraged to make a disclosure to an appropriate officer of the Office first. If the matter is not resolved, or the discloser is concerned about confidentiality, the disclosure may be made to another appropriate agency.

Who to contact within the Office	Other agencies that can receive PIDs:
<p>Employees can make their disclosure to:</p> <ul style="list-style-type: none"> • their manager or supervisor • if their supervisor is involved in the wrongdoing, the disclosure should be made to that person’s supervisor or the Deputy Ombudsman • If the Deputy Ombudsman is involved in the wrongdoing, the information should be referred to the Ombudsman for consideration • despite the above procedure, an employee may make their disclosure directly to the Ombudsman or to any member of the Senior Management Team. 	<p>Disclosures can be made to an agency that has a responsibility for investigating the information disclosed:</p> <ul style="list-style-type: none"> • Crime and Corruption Commission (CCC) for disclosures about corrupt conduct including reprisal • Queensland Ombudsman for disclosures about maladministration • Queensland Audit Office for disclosures about a substantial misuse of resources • Department of Children, Youth Justice and Multicultural Affairs for disclosures about danger to the health and safety of a child or young person with a disability • Department of Seniors, Disability Services, and Aboriginal and Torres Strait Islander Partnerships for disclosures about danger to the health and safety of a person with a disability • Office of the Public Guardian for disclosures about danger to the health and safety of a person with a disability • Department of Environment and Science disclosures about danger to the environment • A Member of the Legislative Assembly (MP) for any wrongdoing or danger • The Chief Judicial Officer of a court or tribunal in relation to a disclosure about wrongdoing by a judicial officer. <p>Also, a person may make a complaint under the Anti-Discrimination Act 1991 about a reprisal in accordance with section 44 of the PID Act. A complaint can be lodged with the Queensland Human Rights Commission.</p>

A disclosure can also be made to a **journalist** if the following conditions have been met:

- a valid PID was initially made to a proper authority, and
- the proper authority:
 - decided not to investigate or deal with the disclosure, or
 - investigated the disclosure but did not recommend taking any action, or
 - failed to notify the discloser within six months of making the disclosure whether or not the disclosure was to be investigated or otherwise dealt with.

A person who makes a disclosure to a journalist in these circumstances is protected under the PID Act. However, disclosers should be aware that journalists are not bound under the confidentiality provisions of section 65 of the PID Act.

7. How to make a PID

A discloser can make a PID in any way, including anonymously, either verbally or in writing. To assist in the assessment, and any subsequent investigation of a PID, disclosers are requested to:

- provide contact details (this could be an email address that is created for the purpose of making the disclosure or a telephone number)
- provide as much information as possible about the suspected wrongdoing, including:
 - who was involved
 - what happened
 - when it happened
 - where it happened
 - whether there were any witnesses, and if so who they are
 - any evidence that supports the PID, and where the evidence is located
 - any further information that could help investigate the PID
- provide this information in writing.

8. Deciding whether a matter is a PID

If there is any doubt as to whether a matter is a PID, further information may be obtained to inform the decision. If doubt still remains, the matter will be considered and managed as a PID.

Mere disagreements over policy do not meet the threshold for a PID under the PID Act.

It is an offence under the PID Act to intentionally give false or misleading information intending it be acted on as a PID. Employees may be subject to disciplinary action for intentionally giving false or misleading information in a PID, or during an investigation into a PID.

9. Assessing a PID

The disclosure will be assessed in accordance with the PID Act, the PID standards, this Policy and Procedure and any other relevant procedure(s).

Once the matter has been assessed as a PID, the Office will advise the discloser:

- that their information has been received and assessed as a PID
- the action to be taken by the Office in relation to the disclosure, which could include referring the matter to an external agency, or investigating
- the likely timeframe involved
- the name and contact details of the PID Support Officer assigned by the Office they can contact for updates or advice
- of the discloser's obligations regarding confidentiality
- the protections the discloser has under the PID Act

- the commitment of the Office to keep appropriate records and maintain confidentiality, except where permitted under the PID Act
- how updates regarding intended actions and outcomes will be provided to the discloser
- contact details for the Office's Employee Assistance Program, where the discloser is an employee.

If the PID has been made anonymously and the discloser has not provided any contact details, the Office will not be able to acknowledge the PID or provide any updates.

If the matter is not assessed as a PID, the Office will advise the discloser:

- that their information has been received but was not assessed as a PID
- the reasons for the decision
- the review rights available if the discloser is dissatisfied with the decision and how to request review
- any action the Office proposes to take in relation to the matter
- any other options the discloser has in relation to the matter.

10. Referring a PID

If the Office decides there is another proper authority that is better able to deal with the PID, the PID may be referred to that agency. This may be because:

- the PID concerns wrongdoing by that agency or an employee of that agency
- that agency has the power to investigate or remedy the matter.

Before referring the PID to another agency, the Office will conduct a risk assessment, and will not proceed with the referral if there is an unacceptable risk of reprisal.

It may also be necessary to refer the PID to another agency because of a legislative obligation, for example, refer a matter to the Crime and Corruption Commission where there is a reasonable suspicion that the matter involves or may involve corrupt conduct (as required by section 38 of the [Crime and Corruption Act 2001](#)).

The confidentiality obligations of the PID Act permit appropriate officers of the Office to communicate with another agency about the referral of a PID. Officers will exercise discretion in their contacts with any other agency.

The discloser will be advised of the action taken by the Office.

11. Risk assessment and protection from reprisal

Disclosers should not suffer any form of **detriment** as a result of making a PID. Upon receiving a PID, the Office will conduct a risk assessment to assess the likelihood of the discloser (or witnesses or affected third parties) suffering reprisal action as a result of having made the disclosure. This assessment will take into account the actual and reasonably perceived risk to the discloser (or witnesses or affected third parties) suffering detriment, and will include consultation with the discloser.

A risk assessment will be undertaken if the discloser is anonymous on the basis of information available in the PID.

Consistent with the assessed level of risk, the Office will develop and implement a risk management plan and arrange any reasonably necessary support or protection for the discloser (or witnesses or affected third parties).

The Office will regularly reassess the risk of reprisal while the PID is being managed, in consultation with the discloser, and review the risk management plan if required.

In the event of reprisal action being alleged or suspected, the Office will:

- attend to the safety of the discloser (or witnesses or affected third parties) as a matter of priority
- review its risk assessment, risk management plan and any protective measures needed to mitigate any further risk of reprisal
- manage any allegation of reprisal as a PID in its own right.

12. Declining to take action on a PID

Under the PID Act, the Office may decide not to investigate or deal with a PID in various circumstances, including:

- the information disclosed has already been investigated or dealt with by another process
- the information disclosed should be dealt with by another process
- the age of the information makes it impractical to investigate
- the information disclosed is too trivial and dealing with it would substantially and unreasonably divert the Office from the performance of its functions
- another agency with jurisdiction to investigate the information has informed the Office that an investigation is not warranted.

If a decision is made not to investigate or deal with a PID, the Office will provide the discloser with written reasons for that decision (where contact details have been provided).

If the discloser is dissatisfied with the decision they can request a review by writing to the Office within 28 days of receiving the written reasons for decision.

13. Communication with disclosers

Under the PID Act, the Office must give reasonable information to a discloser. The Office will acknowledge receipt of the PID in writing as soon as practicable. The discloser will be provided with information that meets the requirements of the PID Act and the standards issued by the Queensland Ombudsman, including:

- the action that will be taken in response to the PID
- the protections under the PID Act
- confidentiality obligations of the discloser and the Office
- support arrangements.

The Office will maintain contact with the discloser and provide regular updates during the management of the PID.

In accordance with the PID Act, after finalising action in response to the PID, the Office will advise the discloser in writing of the action taken and the results of the action.

14. Confidentiality

While the Office will make every attempt to protect confidentiality, a discloser's identity may need to be disclosed to:

- provide natural justice to subject officers
- respond to a court order, legal directive or court proceedings.

The Office will ensure that communication with all parties involved will be arranged discreetly to avoid identifying the discloser wherever possible.

Disclosers should be aware that while the Office will make every attempt to keep their details confidential, it cannot guarantee that others will not try to deduce their identity.

All parties involved (including disclosers, subject officers, witnesses and affected third parties) also have obligations to maintain confidentiality under the PID Act, except in the limited circumstances provided in the Act.

15. Support for disclosers

The Office acknowledges that providing appropriate **support** to a discloser is an important feature of effective PID management.

An assessment will be undertaken to identify the support needs of the discloser. Where appropriate, a PID Support Officer will be assigned to the discloser. The PID Support Officer will assist the discloser to access information about PIDs, protections available under the PID Act and the PID management process. The PID Support Officer will proactively contact the discloser to offer support.

Information and support will be provided to the discloser until the matter is finalised.

Making a PID does not prevent **reasonable management action**. That means that an employee who is a discloser will continue to be managed in accordance with normal, fair and reasonable management practices during and after the handling of the PID.

16. Taking action on a PID

If a decision is made to investigate a PID, this will be done with consideration for the:

- principles of **natural justice**
- obligation under the PID Act to protect **confidential information**
- obligation under the PID Act to protect officers from reprisal
- interests of subject officers.

If the PID has been made about the Office, or Ombudsman officers, and as a result of the action taken:

- wrongdoing is substantiated, appropriate action will be taken
- wrongdoing is not substantiated, the Office will review systems, policies and procedures to identify whether there are improvements that can be made and consider if staff training is required.

If a complaint made to the Office about the administrative action/s of an agency, in accordance with the [Ombudsman Act 2001](#), also amounts to a PID and as a result of the action taken:

- where the wrongdoing is substantiated, appropriate action will be taken which may include informal negotiation of a resolution with the agency or formal recommendations
- where the wrongdoing is not substantiated, the Office will provide the discloser with outcome advice including reasons for the decision.

17. Rights of subject officers

The Office acknowledges employees who are the subject of a PID the experience may be stressful. The Office will protect their rights by:

- assuring them that the PID will be dealt with impartially, fairly and reasonably in accordance with the principles of natural justice
- confirming that the PID is an allegation only until information or evidence obtained through an investigation substantiates the allegation

- providing them with information about their rights and the progress and outcome of any investigation
- referring them to the Employee Assistance Program for support.

Information and support will be provided to a subject officer until the matter is finalised.

18. Record-keeping

In accordance with its obligations under the PID Act and the [Public Records Act 2002](#), the Office will ensure that:

- accurate data is collected about the receipt and management of PIDs
- anonymised data is reported to the Queensland Ombudsman's PID oversight function, through the PID reporting database.

Records about disclosures, investigations, and related decisions will be kept secure and accessible only to appropriately authorised people involved in the management of the PID.

19. Roles and Responsibilities

The Ombudsman has designated the following roles and responsibilities for managing PIDs within the Office, and made the appropriate delegations:

Role:	Responsibilities:	Officer:
PID Coordinator	<ul style="list-style-type: none"> ▪ principal contact for PID issues within the Office ▪ document and manage implementation of PID management program ▪ review and update PID procedure annually ▪ assess PIDs received about the Office ▪ oversight management of PIDs ▪ oversight internal records of PIDs received ▪ report data on PIDs to the oversight agency function ▪ review data to identify trends and systemic issues 	<p>Letter: Attn: PID Co-ordinator Deputy Ombudsman GPO Box 3314 Brisbane Qld 4001</p> <p>Phone: (07) 3005 7040</p> <p>Email: PIDCoordinator@ombudsman.qld.gov.au</p>
For PIDs about the Office:	<ul style="list-style-type: none"> ▪ provide acknowledgment of receipt of PID to discloser ▪ undertake risk assessments in consultation with disclosers and other relevant officers ▪ liaise with other agencies about referral of PIDs ▪ allocate Investigator and Support Officer to PID matter 	Deputy Ombudsman or Director, CSU
For PIDs about other agencies:	<ul style="list-style-type: none"> ▪ assess PIDs received 	Assistant Ombudsman

	<ul style="list-style-type: none"> ▪ provide acknowledgment of receipt of PID to discloser ▪ undertake risk assessments in consultation with disclosers and other relevant officers ▪ liaise with other agencies about referral of PIDs ▪ allocate Investigator and Support Officer to PID matter 	
PID Support Officer	<ul style="list-style-type: none"> ▪ provide advice and information to discloser on the Office's PID procedure ▪ provide personal support and referral to other sources of advice or support as required ▪ facilitate updates on progress of investigation ▪ proactively contact discloser throughout PID management process 	An appropriate officer will be assigned to support the discloser of each PID.
Investigator	<ul style="list-style-type: none"> ▪ conduct investigation of information in PID in accordance with terms of reference/delegation ▪ prepare report for delegated decision-maker 	An appropriate internal or external investigator will be appointed for each PID investigated depending upon the type of disclosure and other relevant considerations.
Delegated decision-maker	<ul style="list-style-type: none"> ▪ review investigation report and determine whether alleged wrongdoing is substantiated 	An appropriate decision-maker will be appointed for each PID investigated.

20. Definitions (meanings of words and acronyms used in this Policy and Procedure)

Term	Definition
Administrative action	As defined in schedule 4 of the PID Act
Confidential information	As defined in section 65 of the PID Act
Corrupt conduct	As defined in section 15 of the Crime and Corruption Act 2001
Detriment	As defined in schedule 4 of the PID Act
Disability	As defined in section 11 of the Disability Services Act 2006
Discloser	A person who makes a disclosure in accordance with the PID Act
Investigation	Any enquiry undertaken to establish whether the information provided in a PID can be substantiated, including a review or audit.

Journalist	As defined in section 20(4) of the PID Act
Maladministration	As defined in schedule 4 of the PID Act
Natural justice	<p>Natural justice, also referred to as 'procedural fairness' applies to any decision that can affect the rights, interests or expectations of individuals in a direct or immediate way. Natural justice is at law a safeguard applying to an individual whose rights or interests are being affected.</p> <p>The rules of natural justice, which have been developed to ensure that decision-making is fair and reasonable, are:</p> <ul style="list-style-type: none"> • avoid bias; and • give a fair hearing. • act only on the basis of logically probative evidence.
Ombudsman Officer	A person employed by the Office of the Queensland Ombudsman whether on a permanent, temporary or casual basis, and includes a person engaged under a contract of service.
Oversight agency	As defined in section 58 of the PID Act
Proper authority	As defined in section 5 of the PID Act
Public officer	As defined in section 7 of the PID Act
Public sector entity	As defined in section 6 of the PID Act
Reasonable belief	A view which is objectively fair or sensible.
Reasonable management action	As defined in section 45(3) of the PID Act
Reprisal	As defined in schedule 4 of the PID Act
Senior Management Team	<p>The senior leadership team of the Office of the Queensland Ombudsman, comprising those holding or acting in the following positions:</p> <ul style="list-style-type: none"> • Ombudsman • Deputy Ombudsman • Director – Corporate Services • Assistant Ombudsman • Manager – RAPA • Principal Advisor, PIDs • Principal Officer – Information Services
Subject officer	An officer who is the subject of allegations of wrongdoing made in a disclosure.
Substantial and specific	Substantial means 'of a significant or considerable degree'. It must be more than trivial or minimal and have some weight or importance.

	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.
Support	<p>For the purposes of this procedure, support means actions such as, but not limited to:</p> <ul style="list-style-type: none"> • providing moral and emotional support • advising disclosers about agency resources available to handle any concerns they have as a result of making their disclosure • appointing a PID Support Officer to assist the discloser through the process • referring the discloser to the Office's Employee Assistance Program or arranging for other professional counselling • generating support for the discloser in their work unit where appropriate • ensuring that any suspicions of victimisation or harassment are dealt with • maintaining contact with the discloser • negotiating with the discloser and their support officer a formal end to their involvement with the support program when it is agreed that they no longer need assistance.

21. Relevant Legislation

[Anti-Discrimination Act 1991](#)
[Crime and Corruption Act 2001](#)
[Human Rights Act 2019](#)
[Ombudsman Act 2001](#)
[Public Interest Disclosure Act 2010](#)
[Public Records Act 2002](#)
[Public Sector Ethics Act 1994](#)

22. Related Policies and Procedures

Queensland Ombudsman Public Interest Disclosure Management Program 2021
 Code of Conduct
 Applying the Queensland Ombudsman Code of Conduct and values

23. Supporting information

- [Public Interest Disclosure Standard No. 1/2019](#)
- [Public Interest Disclosure Standard No. 2/2019](#)
- [Public Interest Disclosure Standard No. 3/2019](#)
- [What is a public interest disclosure](#)
- [A checklist for making a public interest disclosure](#)
- [Discloser information and support](#)