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# Public Interest Disclosures: Obligations of managers and supervisors

The Office of the Queensland Ombudsman is an independent agency responsible for overseeing implementation of the *Public Interest Disclosure Act 2010*, or PID Act.

The PID Act is an important part of the integrity framework within the Queensland public sector. This office has been given a range of responsibilities to **provide advice and assistance to agencies** to ensure they have appropriate systems in place to support staff making public interest disclosures.


This video has been developed to assist managers and supervisors recognise whether concerns raised with them by employees may be a public interest disclosure (PID), and help them identify what action to take.

While there are common principles all agencies need to comply with when managing PIDs, how each agency implements the PID Act will vary depending on their nature, size, geographical spread and particular circumstances.

It is recommended that prior to viewing this video, managers and supervisors watch the *Public Interest Disclosures: Rights and Responsibilities* video available on the Queensland Ombudsman website.



Public Interest Disclosures:  
Rights and responsibilities  
of employees



# Roles of managers and supervisors in PID management

Disclosers are part of an agency's early warning system, assisting in the prevention and detection of wrongdoing.

Identifying corruption, maladministration and other wrongdoing at the earliest opportunity can lead to improved agency performance, increased staff morale and a greater level of public trust and confidence.



The success of the PID Act depends on **employee awareness of, and confidence in, the Act**, as well as on effective PID processes and systems within agencies.

The Ombudsman has made three standards which assist agencies in implementing the PID Act.



## **For employees to come forward, they must:**

- know how to make a disclosure
- feel confident that they will be protected
- feel that the agency will take appropriate action
- be supported through the PID management process.

**Managers and supervisors have an important role in ensuring that each of these elements are achieved.**



Prevention is better than cure - and actions speak louder than words.

Agencies that seek to prevent or reduce detriment in the first place through creating an ethical culture, proactively managing whistleblowing and providing support to those who identify wrongdoing are more likely to see positive impacts for whistleblowers as well as the agency itself.

Research suggests that managers and supervisors are often the first point of contact when employees raise concerns. The response by managers and supervisors plays a crucial role in influencing the effectiveness of an agency's response to a disclosure of wrongdoing.

However, many employees feel reluctant to raise concerns with their immediate manager or supervisor. It is important that agencies inform their employees about the options for raising concerns, and that all managers and supervisors are alert to reports of wrongdoing, whether from within or outside their team.

## Who is a proper authority?

If you are an officer who directly, or indirectly, manages or supervises other employees, then you are a person who may properly receive a PID.

You need to have an understanding of the different types of public interest information that can be disclosed under the PID Act.

You also need to have a good understanding of your agency's PID procedure.\*

\*The PID Act requires your agency to publish its PID procedure on its website.





## **It is important you know that:**

- PIDs may be made verbally or in writing
- PIDs may be made anonymously
- a discloser does not need to identify that they are making a PID
- PIDs cannot be withdrawn.

**If you are informed of, or discover, information which may meet the tests under the PID Act, you should refer to your agency PID procedure for information on what action to take.**



# Maintaining confidentiality

Research suggests that one of the main reasons people don't make PIDs is because they are afraid of what will happen to them or their careers if they do.

The PID Act provides a number of protections to people who make PIDs.

One important obligation of agencies is to protect confidentiality. This helps protect the rights of:

- the discloser
- the subject officer
- those participating in any investigation.

Ensuring that information is kept confidential, particularly any information which may identify the discloser, can support the integrity of investigations and protect your agency's reputation for fairness.

The information that might identify those involved in PID processes should be kept confidential, unless:

- it needs to be released for court proceedings
- it needs to be released for the purposes of administering the PID Act
- it is required by another act or regulation
- consent is gained in writing from the discloser
- its release is necessary to provide for the safety or welfare of a person.

**It is an offence to make a record, or intentionally or recklessly disclose confidential information.**

If wrongdoing is substantiated as a result of an investigation, managers and supervisors will need to consider the balance between maintaining confidentiality and affording natural justice to the subject officer.

The PID Act provides an exception that will enable natural justice to be afforded.

However, the name of the discloser may only be released where:

- it is essential to do so, and
- it is unlikely that reprisal will be taken against the discloser.

Maintaining confidentiality is not a guarantee that detriment will not occur to the discloser. This is why conducting a risk assessment, and if necessary developing a risk management plan, to minimise the risk of reprisal is important.





# Reprisal

A person must not cause, or attempt to cause, detriment to someone because, or in the belief, that they have made a PID.

If they do, they are taking **reprisal action**.

Examples of reprisal include:

- causing personal injury
- damaging property
- harming a person's reputation
- bullying or harassing someone, or
- causing financial loss.

**Agencies are vicariously liable if their employees take reprisal action against anyone. Agencies have a defence if they can demonstrate they have taken reasonable steps to prevent employees from taking reprisal.**

**Agencies are required to establish a process for assessing the risk of reprisal to disclosers, witnesses and others involved in the management of a PID.**

## In the event reprisal is alleged or suspected, managers and supervisors should take action to:

- **address the safety** and welfare of affected parties as a priority
- **assess the situation** to determine if referral to another entity is required
- **review a risk assessment**, and/or the risk management plan and amend as required
- **inform the person** reporting the reprisal of the process of making a PID of reprisal
- **provide any necessary support to affected parties.**





# Risk assessment and risk management

People who report wrongdoing may experience a range of negative impacts, including stress and isolation, as well as other consequences.

Research suggests the best way for agencies to reduce the chances of this happening is to conduct a **risk assessment** when the PID is made.

Rather than relying on legislation and policies to provide a remedy to those who experience detriment when making a PID, a better approach is to **prevent or reduce detriment by providing support** and proactively managing the risk of reprisal.



## Conducting a risk assessment has the following benefits:

- research suggests that when management takes steps to address risks faced by disclosers, disclosers fare better
- disclosers place value in efforts by agencies to stop them experiencing detriment, even if the detriment still occurs
- if an agency conducts a risk assessment when a PID is made, the discloser is less likely to face repercussions.

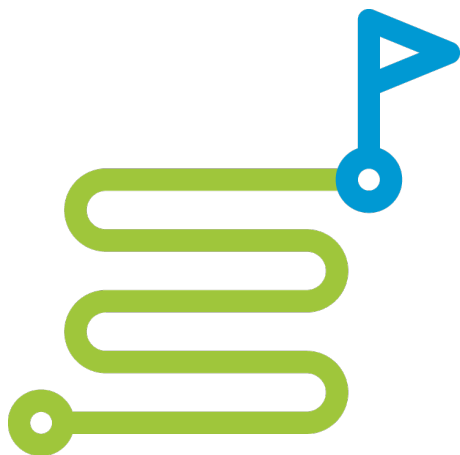
## Conducting a risk assessment provides a crucial opportunity to consult with disclosers, in order to:

- gather information about the problems and sources of conflict they are most concerned about
- demonstrate to them that their protection is taken seriously.

Each agency will have different processes establishing who should conduct the risk assessment.

Managers and supervisors will often be involved in either conducting the risk assessment, or monitoring the work environment for evidence of conflict. You should look at your agency's PID procedure and speak to your PID Coordinator if you have any questions about your internal processes.





## When conducting a risk assessment, the following factors should be taken into account:

- the nature of any risks
- the consequences if reprisal occurs
- the likelihood of reprisal occurring
- the timeframe which the risk of reprisal may occur within.

Disclosers should be consulted to the extent practicable when a risk assessment is conducted. Risk assessments should be reviewed on a regular basis, and amended until the management of a PID has been completed.



If a risk assessment identifies a risk of reprisal to any person, a **risk management plan** should be developed.

It is important to identify protective measures that are proportionate to the risk of reprisal and potential consequences.

A risk management plan should be reviewed regularly, and amended as required until the management of a PID is finalised. Managers and supervisors may be asked to monitor the work environment for signs of reprisal, and take steps to reduce the risk of reprisal. You should consult with your PID Coordinator for further information.



# Reasonable management action

**Making a PID does not shield disclosers from the reasonable consequences of unsatisfactory performance or wrongdoing.**

**It is not considered reprisal if a manager takes reasonable management action for reasons not related to someone making a PID.**

**This could include:**

- reasonable appraisal of an employee's work
- reasonable disciplinary action
- reasonable action to transfer or deploy the employee
- reasonable action to end employment by way of redundancy or retrenchment.

Managers need to ensure their reasons for taking reasonable management action are not linked to an employee making a PID.

## When you are contemplating taking management action against a discloser, you need to be able to demonstrate that:

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

It is important that managers and supervisors keep good records of the reasons for decisions made about disciplinary processes so they can respond to any questions that may arise in the future.



# Support

Agencies are required to establish a process for assessing the support needs of disclosers who are employees.

Disclosers should be assigned a support officer who is independent of the investigation.

Where a **subject officer** has been advised that a PID about their conduct is being investigated, they also need to be provided with support.

If a **witness** is at risk of reprisal, they may also need to be supported through the PID management process.

Managers and supervisors may be called upon to provide support to one of their employees.



## Support officers may need to:

- **proactively contact the employee** to check on their welfare, until the management of the PID is finalised
- **provide updates to the employee** on the progress of any investigation or action taken, until the management of a PID is finalised
- **support the employee in liaising with the PID Coordinator** to arrange specific support services to meet the needs of the employee (for example information, counselling, legal advice or skills training).

How long support is required for the employee will depend on their role in the PID, risk of reprisal and the agency's policies.

# Should

## Managers and supervisors should:

- have an understanding of relevant policies and procedures, and raise awareness of them with their employees
- respond appropriately when a disclosure of wrongdoing is made
- model expected behaviour
- monitor the work environment for evidence of wrongdoing or reprisal activity, and know what action to take if it is detected
- regularly communicate with employees needing support
- record the information that was relied upon in making decisions relating to PIDs or managing disclosers.

# Should not

## Managers and supervisors should not:

- ignore concerns raised by employees that could amount to a PID
- allow a history of previous grievances to influence the assessment of information provided by an employee
- assume that someone else will take action about wrongdoing they have observed
- wait until reprisal occurs before conducting a risk assessment
- assume that all employees involved in a PID will have the same support needs
- ignore their obligations under the PID Act, and their agency's PID procedure.



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## For more information about making a PID, please refer to:

- the relevant agency's PID procedure and nominated PID contact, published on the agency's website
- Queensland Ombudsman [www.ombudsman.qld.gov.au](http://www.ombudsman.qld.gov.au)
- Crime and Corruption Commission [www.ccc.qld.gov.au](http://www.ccc.qld.gov.au)