

Public Interest Disclosure procedure

1. Purpose

The Department of State Development, Infrastructure, Local Government and Planning (DSDILGP) is committed to maintaining integrity and promoting the public interest through effective reporting, assessment and management of Public Interest Disclosures (PIDs). Accordingly, DSDILGP will provide support and protection to employees and others who disclose matters in the public interest. This procedure demonstrates this commitment, in accordance with the Public Interest Disclosure Act 2010 (the PID Act) and the Public Interest Disclosure Standard No. 1/2019.

This procedure is to be read in conjunction with DSDILGP's Complaints management policy.

2. Scope

This procedure applies to all:

- » all DSDILGP employees and non-employees including contractors, consultants, volunteers and any other person or entity who provides DSDILGP with services on a paid or voluntary basis
- » any member of the general public making a public interest disclosure as defined under the PID Act.

3. Associated policy

This procedure is to be read in conjunction with Public Interest Disclosure Program.

4. Delegations

Delegations are to be exercised in accordance with the department's Human Resource, Financial, Procurement, Contract Signing and Business Support Delegations. Delegation Schedules are reviewed on a regular basis to ensure they remain current and relevant to the operational needs of the department. It is recommended that delegate authority levels are confirmed prior to exercising any powers in relation to this policy and supporting procedures.

5. Responsibilities and accountabilities

| Role | Responsibilities |
|--------------------------|---|
| All employees | <ul style="list-style-type: none">» Have an ethical responsibility and duties under the Code of Conduct for the Queensland Public Service to report suspected wrongdoing including corrupt conduct, maladministration, substantial misuse of public resources, substantial and specific danger to public health, safety, the environment or a person with a disability, and reprisal action. |
| Managers and supervisors | <ul style="list-style-type: none">» Ensure employees under their supervision are aware of their reporting obligations as outlined above.» Notify Ethics if they receive a PID from an employee and maintain confidentiality about the matter.» Monitor and assess the workplace for signs of reprisal against a discloser or subject officer and, where appropriate, provide the needed support and protection.» Notify Ethics as soon as they become aware of any detrimental action taken against the disclosure and/or the subject officer and discuss concerns and available options for addressing the situation before it escalates. |
| Ethics | <ul style="list-style-type: none">» Receive, assess and manage all PIDs in a confidential manner. |



| Role | Responsibilities |
|--|--|
| | <ul style="list-style-type: none"> » Provide advice and information to discloser on PID procedure. » Protect and support the rights of all disclosers, witnesses and subject officers. » Maintain DSDILGP's PID reporting system, including collection, reporting and reviewing of PID data. » Provide statistical, de-identified information to the Queensland Ombudsman (QO) about PIDs. |
| Director, Ethics as PID coordinator | <ul style="list-style-type: none"> » Be the principal contact for PID issues within DSDILGP. » Document and manage implementation of the PID Management Program. » Refer all suspected PIDs to the appropriate authorities, including other entities if the matter relates to the conduct of another public sector entity or if the entity has the necessary jurisdiction, expertise and technical knowledge to investigate or take other action. » Undertake risk assessments in consultation with disclosers and other relevant officers or subject officers. » Allocate an Investigator and Support Officer to PID matter. » Report monthly to the Director-General on the status and progress of PIDs. |
| Executive Director, People and Performance | <ul style="list-style-type: none"> » Has delegation to receive, assess and refer suspected PIDs to the appropriate authorities. » Oversight of PID case management and support services to disclosers. » Other oversight responsibilities as delegated by the Director-General. |
| Deputy Director-General, Corporate | <ul style="list-style-type: none"> » Has delegation to receive, assess and refer suspected PIDs to the appropriate authorities » Oversight responsibilities as delegated by the Director-General. |
| Investigator (either internal or external) | <ul style="list-style-type: none"> » Investigate information in the PID in accordance with the terms of reference. » Prepare a report for the delegated decision-maker. |
| PID Support Officer (a nominated officer from People and Performance, independent of the PID investigation) | <ul style="list-style-type: none"> » Provide advice and information to a discloser in relation to the PID procedure. » Provide support and referral to other sources of advice or support as required. » Facilitate updates on the progress of an investigation. » Proactively contact discloser through the PID process. |
| Delegated decision-maker | <ul style="list-style-type: none"> » Review investigation report and determine whether the alleged wrongdoing is substantiated and if required take disciplinary action as appropriate. |
| Director-General (DG) (accountable officer) | <ul style="list-style-type: none"> » Ensure that DSDILGP develops, implements and maintains a PID Management Program which includes: <ul style="list-style-type: none"> ○ senior management endorsement of the value to DSDILGP of PIDs and the proper management of PIDs ○ a communication strategy to raise awareness of PIDs ○ a training strategy to give employees access to training on general information about PIDs ○ specialised training and awareness for senior management and other staff who may receive or manage PIDs. » regular review of the PIDs procedure and evaluation of the PID management program. |

6. Human rights compatibility

The department is committed to respecting, protecting and promoting human rights.

Under the *Human Rights Act 2019* (HR Act), the department has an obligation to act and make decisions in a way that is compatible with human rights and, when making a decision, to give proper consideration to human rights.

When making a decision about [subject matter of procedure], decision-makers must comply with this obligation.

For further information on the HR Act see <https://www.qhrc.qld.gov.au>.

7. Procedure

What is a PID?

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, a public sector officer 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
- » a 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 a workplace health and safety officer reporting a safety breach
- » disclosure is made anonymously
- » discloser has not identified the material as a PID, as it is up to DSDILGP to assess the information received and decide if it is a PID
- » disclosure is unsubstantiated following investigation. The discloser is protected when the information provided is assessed as a PID, whether it is subsequently investigated or found to be substantiated.

Why make a PID?

Employees, and members of the general public, who are prepared to speak up about wrongdoing in the public sector can be the most important sources of information to identify and address problems in public administration. DSDILGP values and supports the disclosure of information about wrongdoing because:

- » implementing systems for reporting and dealing with wrongdoing contributes to the integrity of DSDILGP
- » the outcomes of PIDs can include improvements to systems, policies or procedures 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, disclosers receive the protection provided under the PID Act, including:

- » confidentiality – the discloser's name and other identifying information will be protected and maintained in confidence to the extent possible
- » protection against reprisal – the discloser is protected from detrimental treatment by DSDILGP, DSDILGP employees or other persons following a 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 for making a PID.

Who can make a PID?

Any person can make a PID to the ‘proper authority’.

Disclosers are encouraged to make a disclosure to an appropriate DSDILGP officer 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 DSDILGP | Other agencies that can receive PIDs |
|--|--|
| <p>Disclosures can make a PID to:</p> <ul style="list-style-type: none"> » any person in a management or supervisory position » the Ethics unit » the Chief Executive Officer, Coordinator-General or Deputy Directors-General. | <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 » QO for disclosures about maladministration » Queensland Audit Office for disclosures about a substantial misuse of resources » Department of Child Safety, Youth and Women for disclosures about danger to the health and safety of a child or young person with a disability » Department of Communities, Disability Services and Seniors for disclosures about danger to the health and safety of a person with a disability » Department of Environment and Science for 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. |

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:
 - o decided not to investigate or deal with the disclosure, or
 - o investigated the disclosure but did not recommend taking any action, or
 - o failed to notify the discloser within six months of making the disclosure whether 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.

Making 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 if the matter was made anonymously)
- » provide as much information as possible about the suspected wrongdoing, including who was involved, whether there were any witnesses and any evidence that supports the PID
- » provide this information in writing via email to complaints@dsmip.qld.gov.au.

Deciding whether a matter is a PID

The disclosure will be assessed in accordance with the PID Act, the PID standards, DSDILGP's PID procedure and any other relevant policies and procedures.

If there is any doubt as to whether a matter is a PID, further information may be obtained to inform the decision. If doubt 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.

Where a discloser states they are making a PID, but it is assessed that the matter is not a PID, DSDILGP will advise the discloser:

- » 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 a review
- » any action DSDILGP proposes to take in relation to the matter
- » any other options the discloser has in relation to the matter.

It is an offence under the PID Act to intentionally give false or misleading information intending it to 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.

Once DSDILGP determines that a matter is a PID, the discloser will be advised:

- » that their information has been received and assessed as a PID
- » the action to be taken by DSDILGP in relation to the disclosure, including the possibility of referring the matter to an external agency
- » the likely timeframe involved
- » the name and contact details of the PID support officer they can contact for updates or advice
- » the discloser's obligations regarding confidentiality
- » the protection they have under the PID Act
- » DSDILGP's commitment to keep appropriate records and maintain confidentiality, except where permitted under the PID Act
- » how updates about intended actions and outcomes will be provided to the discloser
- » contact details for DSDILGP's employee assistance program (EAP) (for employees only).

Referring a PID to another entity

If DSDILGP determines 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
- » DSDILGP is statutorily bound to refer the matter to an oversight agency e.g. suspected corrupt conduct to the CCC.

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

The confidentiality obligations of the PID Act allow appropriate DSDILGP officers (such as the PID Coordinator and the Human Resources and Ethics units) to communicate with another agency about the referral of a PID.

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

Risk assessment and protection from reprisal

Disclosers should not suffer any form of detriment as a result of making a PID. On receiving a PID, DSDILGP will conduct a risk assessment to assess the likelihood of the discloser, witnesses or affected third parties suffering reprisal action because of having made the disclosure. This assessment will consider the actual and reasonably perceived risks and will include consultation with the discloser.

A risk assessment will be undertaken if the discloser is anonymous based on information available in the PID. The risk assessment will also consider the risk to persons who may be suspected of making the PID.

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

DSDILGP 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, DSDILGP will:

- » attend to the safety of the discloser, 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 a reprisal as a PID in its own right.

Declining to act on a PID

Under the PID Act, DSDILGP 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 DSDILGP from the performance of its functions
- » another agency with jurisdiction to investigate the information has informed DSDILGP that an investigation is not warranted.

If a decision is made not to investigate or deal with a PID, DSDILGP will give the discloser written reasons for that decision.

If the discloser is dissatisfied with the decision, they can request a review by writing to DSDILGP's Chief Executive within 28 days of receiving the written reasons for the decision.

Communication with disclosers

Under the PID Act, DSDILGP must give reasonable information to a discloser.

DSDILGP 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 QO, including:

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

DSDILGP 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, DSDILGP will advise the discloser in writing of the action taken and the results of the action.

Confidentiality

- » While DSDILGP 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.

DSDILGP 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 DSDILGP will make every attempt to keep their details confidential, it cannot guarantee that others will not try to deduce their identity.

Support for disclosers

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 and protect officers from reprisal
- » interests of subject officers.

If as a result of investigation, the information about wrongdoing provided in the PID is substantiated, appropriate action will be taken.

Whether or not the investigation substantiates wrongdoing, DSDILGP will review systems, policies and procedure to identify whether there are improvements that can be made and consider if staff training is required.

Rights of subject officers

DSDILGP acknowledges that for officers who are the subject of a PID the experience may be stressful. DSDILGP will endeavour to 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 DSDILGP's EAP (for employees only) and/or other specialist assistance for support.

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

Record-keeping

In accordance with its obligations under the PID Act and the *Public Records Act 2002*, DSDILGP will ensure that:

- » accurate data is collected about the receipt and management of PIDs including, where appropriate, terms of reference for any investigation and stored securely in confidential files
- » anonymised data is reported in a timely manner to the Office of the QO in their role as oversight agency, 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.

8. Definitions

See **Appendix A** for definitions of key terms referred to in this guideline.

9. Related documents, forms and templates

- » [Human Rights Act 2019 Queensland Public Service Manager's Toolkit](#) (internal link)
- » [Complaints management policy](#)

- » [Complaints about the Director-General or Coordinator-General procedure](#)
- » [Customer complaints procedure](#)
- » Managing employee complaints procedure
- » PID Management Program

10. References

- » [Public Interest Disclosure Act 2010](#)
- » [Public Sector Ethics Act 1994](#)
- » [Crime and Corruption Act 2001](#)
- » [Public Records Act 2002](#)
- » [Queensland Ombudsman's Public Interest Disclosure Standards](#)
- » [Queensland Ombudsman's Public Interest Disclosure Guides](#)

11. Storage of information

All information should be managed in accordance with the Queensland Government Information Management Framework, which includes the *Public Records Act 2002*, Information Standard 31: Retention and disposal of public records (IS31) and Information Standard 40: Recordkeeping (IS40). In addition, personal information should be managed in accordance with the *Information Privacy Act 2009*.

12. Document control


| Document owner | A/Director, Governance, Performance and Risk | | | |
|-------------------------------|--|--|--|--|
| Contact details | complaints@dsdilgp.qld.gov.au | | | |
| Next review (annually) | August 2021 | | | |
| Supersedes | D17/152571 V3.0 | | | |
| Version | Issue Date | Reason | Author | Approver |
| 1.0 | 7/09/2017 | New procedure | Senior Complaints Officer | Deputy Director-General, Business Solutions and Partnerships |
| 2.1 | 18/05/2018 | Incorporate MoG changes | Senior Project officer, Corporate Services | Executive Director, Corporate Services |
| 3.0 | 20/10/2020 | Major update following new standard requirements | Senior Ethics Advisor | Deputy Director-General, Corporate |
| 3.1 | 21 July 2021 | Rebranding and minor changes post MoG | Senior Project Officer, Ethics | Director, Ethics |

Appendix A: Definitions

The key terms referred to in this procedure are as follows:

| Term | Definition |
|-----------------------------------|---|
| Chief Executive Officer | Defined in schedule 1 of the <i>Public Interest Disclosure Act 2010</i> as the chief executive of a department. The Director-General is the chief executive of the Department of State Development, Tourism and Innovation. |
| Corrupt conduct | Corrupt conduct is conduct of any person, regardless of whether the person holds or held an appointment, which meets the three elements outlined in section 15(1) or 15(2) of the <i>Crime and Corruption Act 2001</i> . |
| Discloser | An individual (public service officer or member of the public) who provides public interest information to DSDTI that may constitute a PID. |
| Maladministration | Defined in schedule 4 of the <i>Public Interest Disclosure Act 2010</i> as administrative action that— <ul style="list-style-type: none"> (a) was taken contrary to law; or (b) was unreasonable, unjust, oppressive, or improperly discriminatory; or (c) was in accordance with a rule of law or a provision of an Act or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory in the particular circumstances; or (d) was taken— <ul style="list-style-type: none"> (i) for an improper purpose; or (ii) on irrelevant grounds; or (iii) having regard to irrelevant considerations; or (e) was an action for which reasons should have been given, but were not given; or (f) was based wholly or partly on a mistake of law or fact; or (g) was wrong. |
| Natural justice | Natural justice or procedural fairness applies to any decision that can affect the rights, interests or expectations of individuals in a direct or immediate way. The rules of natural justice are: <ul style="list-style-type: none"> • avoid bias • give a fair hearing act only on the basis of logically probative evidence. |
| Public Interest | Consideration affecting the good order and functioning of the community and government affairs. |
| Public Interest Disclosure | An appropriate disclosure of public interest information (such as a report of corrupt conduct, reprisal, maladministration that affects a person's interests in a substantial and specific way, substantial misuse of public resources, substantial and specific danger to public health and safety to the environment) made to a proper authority. Refer to Chapter 2 of the <i>Public Interest Disclosure Act 2010</i> for the full legal definition of a public interest disclosure. |
| Reprisal | Reprisal involves causing, attempting to cause, or conspiring to cause detriment to another person in the belief that they or someone else: has made or intends to |

make a disclosure; or has been or intends to be involved in a proceeding under the *Public Interest Disclosure Act 2010* against any person.



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Any references to legislation are not an interpretation of the law. They are to be used as a guide only. The information in this publication is general and does not take into account individual circumstances or situations. Where appropriate, independent legal advice should be obtained.

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Owner: Corporate

Public Interest Disclosure procedure | D17/152571

Version: 3.1

Effective Date: 21 July 2021

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