



The Public Trustee

Public Interest Disclosure Policy

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1. Purpose

To detail how the Public Trustee prepares for and responds to a Public Interest Disclosure (PID) in accordance with the *Public Interest Disclosure Act 2010* (PID Act) and Queensland Ombudsman *Public Interest Disclosure Standard No. 1*.

This policy and procedure details the process for making a PID or when a PID is made about suspected wrongdoing or danger in the public sector.

2. Application

This policy and procedure applies to all employees, whether full-time, part-time, temporary, casual or on contract of service. However, for the purpose of the PID Act, contractors, consultants and volunteers are not considered employees. It also applies to any external person who is making a PID to the Public Trustee.

3. Policy Principles

The Public Trustee is committed to creating and maintaining a work environment that encourages and facilitates the disclosure of wrongdoing by:

1. providing staff with training and awareness via the internal Learning Gateway on:
 - identifying wrong doing;
 - how to make a PID;
 - the support and protection afforded to disclosers; and
 - how PIDs are managed within the organisation.
2. identifying and eliminating unlawful, negligent or improper conduct from the workplace.
3. promoting the public interest by facilitating complaints and PID that relate to the Public Trustee.
4. encouraging employees and others to disclose information about suspected wrongdoing through employee awareness and appropriate governance measures including risk assessment.
5. ensuring that complaints and disclosures, including those made anonymously, are properly assessed and where appropriate, dealt with, reviewed or investigated thoroughly and impartially.
6. affording support and protection from reprisals to disclosers or those who are the subject of a PID.

4. Legislative basis and supporting documents

This policy is based on the following legislation:

- *Public Interest Disclosure Act 2010* (PID Act) – the purpose of the Act is to facilitate the disclosure, in the public interest, of information about wrongdoing in the public sector, to provide protection for those who make disclosures.
- *Crime and Corruption Act 2001* (CC Act) – provides an external reporting mechanism and an independent investigation and enforcement body – the Crime and Corruption Commission (CCC).

This policy should be read in conjunction with:

- Code of Conduct for the Queensland Public Service
- Queensland Ombudsman *Public Interest Disclosure Standard No. 1* (see appendix)
- The Public Trustee:
 - Public Interest Disclosure Procedure.
 - Complaints Management Policy and Procedure.
 - Fraud and Corruption Control Policy, Fraud and Corruption Procedures and Fraud and Corruption Control Plan.
 - Risk Management Policy and Procedure.

5. What is a Public Interest Disclosure (PID)?

A PID is the disclosure in the public interest of information specified under sections 12 and 13 of the PID Act and made to an appropriate public sector entity that has the responsibility to appropriately action the information. It is a disclosure about suspected wrongdoing or danger in the public sector.

What constitutes a PID depends on who is making the disclosure; whether the disclosure is made by a public officer or by anyone else. The PID Act provides unique protection from reprisal for public officers disclosing information in the public interest to an appropriate entity about:

- a) official misconduct, as defined in the CC Act; or
- b) maladministration that adversely affects anyone's interest in a substantial and specific way;
- c) negligent or improper management by a public officer, public sector entity or a government contractor resulting in a substantial waste of public funds; or
- d) conduct by another person causing a substantial and specific danger to public health or safety or to the environment.

The PID Act can also provide protection to members of the community who make a PID about a substantial and specific danger to:

- a) public health and safety including the health and safety of a person with a disability;
- b) the environment; or
- c) a reprisal against anybody as a result of a PID.

A public service officer can make a PID about all of the above matters.

The PID Act creates a number of 'proper authorities' to give disclosers choice about where to direct their PID:

- a) every public sector entity is a proper authority if the disclosure is about the conduct of that entity or its employees (every public sector entity should publish its procedures for managing PID on its website).
- b) any public sector entity with the power to investigate or remedy the PID matter is a proper authority (for example, the CCC is a proper authority for disclosures about official misconduct).
- c) any Member of Parliament is a proper authority.

Under the PID Act, special rules apply to disclosures about misconduct by judicial officers.

6. Subjective and objective test

For a disclosure to be considered as a PID, the disclosure of information must also satisfy the threshold tests in Section 12 (3) or Section 13 (3) of the PID Act (the subjective and objective tests) as outlined below:

Subjective test - the person honestly believes on reasonable grounds that the information tends to show the conduct or other matter;

Objective test - the information tends to show the conduct or other matter, regardless of whether the person honestly believes the information tends to show the conduct or other matter.

The discloser is protected if they honestly believe on reasonable grounds that what they are disclosing has occurred or if it is evident from the information disclosed that what they are disclosing has occurred. Some disclosures are not protected by the PID Act, including disclosures made to the media, false and misleading disclosures, those which question the merits of government or agency policy and those that are made to avoid disciplinary action.

7. Delegations

The Director Governance & Executive Directorate is the nominated delegate to deal with PID. The Director is also responsible for recording and reporting on corrupt conduct matters to CCC and maladministration to Queensland Ombudsman.

8. Procedures for managing a PID

When a PID is received the Public Trustee must respond to the disclosure. The PID Act sets out the requirements for managing a PID.

Please refer to Annex 1 in this document for details on how the Public Trustee manages PIDs. Additionally, the Public Trustee has developed a Public Interest Disclosure Procedure that details the procedure for making, receiving and managing a PID.

9. Recording and reporting

From 1 January 2013, the Queensland Ombudsman has had the responsibility for the oversight of PID across the Queensland Public Sector, including collating and reporting PID statistics in the Annual Report to Queensland Parliament.

Confidential PID information can be recorded or disclosed:

- to administer the PID Act or to discharge a function under the PID Act (for example, to investigate something disclosed by a PID).
- for proceedings in a court and tribunal.
- with consent of the person the information relates to (or without their consent, if the information is unlikely to harm the interests of the person).
- if it is essential under the principles of natural justice and reprisal is unlikely.

The Queensland Ombudsman will oversee compliance with PID statistical reporting requirements in accordance with the Queensland Ombudsman *Public Interest Disclosure Standard No. 1*.

10. Roles and responsibilities

Role	Responsibility
The Public Trustee of Queensland	is responsible for the organisation's compliance with the PID Act
Director, Governance and Executive Directorate	as a 'nominated delegate' for PID is responsible for: <ul style="list-style-type: none">• the implementation of all the above measures for both employees and members of the public;• recording and reporting on:<ul style="list-style-type: none">○ corrupt conduct matters to CCC and○ maladministration to Queensland Ombudsman;• ensuring employees are aware of appropriate support and protection provided to disclosers and employees who may be the subject of a PID;
Executive Management, managers and supervisors	are responsible for maintaining an ethical culture and leading by example through: <ul style="list-style-type: none">• providing clear guidelines to staff on how to handle complex issues which may involve misconduct, while maintaining confidentiality and natural justice;• ensuring that employees in their business area are aware of their obligations in relation to the requirements of this policy and procedure;• monitoring the workplace for signs of reprisals against a discloser or an employee who is the subject of a PID under the principles of natural justice;• ensuring that, if PID allegations are substantiated, investigation recommendations are implemented quickly to reduce the risk of re-occurrence.

Employees	<p>are responsible for:</p> <ul style="list-style-type: none"> • complying with this policy and procedure and the Code of Conduct for the Queensland Public Service; • reporting concerns about suspected misconduct or unethical behaviour in accordance with this policy and procedure; and • participating in departmental ethical decision-making, Code of Conduct and misconduct prevention awareness training.
Member of the Public	<p>May disclose information about the conduct of officers of the Public Trustee regarding a substantial and specific danger to the health or safety of a person with a disability; substantial and specific danger to the environment; or reprisal.</p>

11. Confidentiality

Strict confidentiality is to be maintained at all times in relation to reporting and investigation of PID. All documentation relating to a PID will be stored in a confidential file, secured in a locked area. No details will be placed on personnel files. If an employee is appointed to another Queensland government agency, the file remains the property of the Public Trustee.

12. Policy review and evaluation

This policy will be reviewed by the Director, Governance and Executive Directorate on a regular basis, with legislative changes or as directed by the Public Trustee of Queensland.

13. Definitions

Term	Definition
Corrupt Conduct	Defined Section 15 CC Act.
Discloser	A person who makes a PID.
Employee	As per section 7 of the PID Act; a public officer of a public sector entity is an employee, member or officer of the entity. An employee includes a person on a contract of service (temporary and casual officers where there is direct employment arrangement). However, for the purpose of the PID Act, contractors, consultants and volunteers are not considered employees.
Maladministration	Defined in schedule 4 of the PID Act, maladministration is widely defined to cover an act or failure to do an act that was unlawful, unreasonable, unfair, improper, unjust, and improperly discriminatory or based on a mistake or fact or otherwise wrong. It must adversely affect someone's interest in a substantial and specific way.
Reprisal	Refers to a situation where a person causes, attempts or conspires to cause detriment to another person because of a belief that the person or another person has made or may make a PID.
The Public Trustee	Refers to the organisation.
The Public Trustee of Queensland	Refers to the appointed statutory individual. Used when referring to the person, their role or statutory functions.
Wrongdoing	Are any dealings or behaviour including, but not limited to, instances of unlawful, negligent, corrupt or improper conduct.

More information

- *Public Interest Disclosure Act 2010* and Queensland Ombudsman *Public Interest Disclosure Standard No. 1*
- *Thinking about blowing the whistle? Guides available for making, handling and managing public sector Public Interest Disclosures*
- *Other Queensland Ombudsman Public Interest Disclosure Facts available at www.ombudsman.qld.gov.au*

Annex 1. Managing Public Interest Disclosures (PID)

When a PID is received the Public Trustee must respond to the disclosure. The PID Act sets out the requirements for managing a PID. Responding to a PID has the following four components.

1. Assess

Upon receipt of a PID the Director, Governance & Executive Directorate will:

- determine whether or not the matter is a PID; and
- determine appropriate action. For example,
 - referral to another agency that has the power to investigate;
 - investigate the matter;
 - if it is decided it is not a PID, deal with the matter under an alternative mechanism such as the Complaints Management Process, Workplace Bullying & Harassment or Workplace Health & Safety; or
 - ensuring awareness of appropriate support and protection provided to disclosers and employees who may be the subject of a PID.



2. Confidentiality, Recording and Reporting

Strict confidentiality requirements apply to PID. Confidential PID can be recorded or disclosed:

- to administer the PID Act or to discharge a function under another act;
- for a proceeding in a court or tribunal;
- with the consent of the person the information relates to (or without their consent if the information is unlikely to harm the interest of the person); or
- if it is essential under the principles of natural justice and reprisal is unlikely.

Recording - The Public Trustee must record:

- details of the PID, including the name of the person making the disclosure (if known)
- the information disclosed
- any action taken on the disclosure
- any other information required under the PID standard

Reporting - The Public Trustee must report certain information about PID to the Queensland Ombudsman for inclusion in their annual report to parliament.



3. Action to support discloser

The Director, Governance & Executive Directorate will:

- provide the discloser with written confirmation of receipt of the PID:
- provide a description of the action taken or proposed to be taken in respect of the PID:
 - If no action is to be taken – reasons for the decision
 - If action is taken inform the discloser of the result.
- Make the discloser aware of appropriate support and protection to disclosers and employees who may be the subject of a PID.

PID can take some time to resolve and so regular contact with the discloser will reassure the discloser their matter is taken seriously.

If the discloser is known (not anonymous) it is appropriate to determine the level of support and protection appropriate for the discloser.



4. Act on findings

The Public Trustee is obliged to deal with the findings of a PID appropriately. For example,

- disciplinary action against an employee for wrong doing; or
- improvement of internal procedures and systems; or
- reporting to CCC.