

Public Interest Disclosure Policy

Statement of commitment

The reporting of suspected misconduct within the Queensland public sector is fundamental to its ongoing integrity and health. (Brown et al. 2004)

The most effective protection for a person making a public interest disclosure is the right organisational culture. The department, in line with its values, is committed to creating and sustaining a positive ethical climate with accountable behaviour. This comes from leadership that openly recognises the significant contribution staff make to our success and strongly encourages disclosure of unethical and fraudulent behaviour.

The department aims to provide clear guidance to staff on how to handle and deal with the complex issues associated with an ethical dilemma and when faced with potential wrongdoing.

Principles

- Every employee of the Queensland public service has an ethical responsibility to report suspected misconduct, maladministration, wasting of public funds, substantial and specific danger to public health and safety, the environment or a person with a disability, and reprisal action.
- The principle of natural justice (procedural fairness) will apply to all investigations of matters the subject of public interest disclosures (PID's). The department is committed to treating the PID appropriately and making the process fair for both the discloser and the person who is subject to the disclosure.
- The rights of any person who is subject to, or is in some way associated with, a disclosure will be safeguarded.
- Managers and supervisors are to ensure employees are aware of their responsibilities in making a PID and are able to advise other persons of the appropriate reporting process.

Legislation

- [Public Interest Disclosure Act 2010](#)
- [Public Sector Ethics Act 1994](#)
- [Crime and Misconduct Act 2001](#)
- [Disability Services Act 1992](#)

The *Public Sector Ethics Act 1994* and the *Public Interest Disclosure Act 2010* provide the ethical framework and spell out the protection principles. The *Crime and Misconduct Act 2001* provides an external reporting mechanism and an independent investigative and enforcement body.

What constitutes a public interest disclosure (PID)?

What constitutes a PID depends on who is making the disclosure, with the *Public Interest Disclosure Act 2010* distinguishing between disclosures made by a public officer and those made by anyone else.

PIDs made by public officers

- Official misconduct, as defined in the *Crime and Misconduct Act 2001*
- Maladministration that adversely affects anyone's interest in a substantial and specific way
- Negligent or improper management by a public officer, public sector entity or a government contractor resulting or likely to result in a substantial waste of public funds; or
- Conduct by another person causing a substantial and specific danger to public health or safety or to the environment.

PIDs made by any person

- A substantial and specific danger to the health or safety of a person with a 'disability' as defined in the *Disability Services Act 1992*
- A substantial and specific danger to the environment.
- A reprisal taken against anybody as a result of a PID.

The disclosure is still a PID and covered by the *Public Interest Disclosure Act 2010* even if it proves not to contain this type of information, provided the discloser honestly believed on reasonable grounds that the available information showed the conduct or danger concerned.

The *Public Interest Disclosure Act 2010* states "the disclosure threshold that must be satisfied is that the person honestly believes on reasonable grounds that the information tends to show the conduct or other matter (subjective test) or 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 (objective test)". In other words the discloser is protected if they honestly and reasonably believe 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 *Public Interest Disclosure Act 2010*, including disclosures made to the media (except in the circumstances listed below); those made frivolously or vexatiously; those which primarily question the relative merits of government or agency policy; and those that are made substantially to avoid disciplinary action. Disclosures that are wilfully false constitute an offence under the *Public Interest Disclosure Act 2010*.

Section 20 of the *Public Interest Disclosure Act 2010*, permits the reporting of a PID to the media if:

- a person has made a PID and the agency to which the disclosure was made:
 - decided not to investigate or deal with the disclosure;

- investigated the disclosure but did not recommend the taking of any action in relation to the disclosure;
- did not notify the discloser within 6 months from when the disclosure was made, whether or not the disclosure was to be investigated or dealt with.

The disclosure cannot be based on a mere disagreement over policy that may properly be adopted about amounts, purposes and priorities of expenditure.

Complaints concerning an expression of dissatisfaction about staff conduct, a service, procedure, practice or departmental policy that are not resolved at the point of service, should be pursued by following the [DJAG General Complaints Management Policy](#).

Who should I make the disclosure to?

If you wish to make a PID or anyone makes a PID to you, the department's preferred approach is that you contact the Executive Director, Ethical Standards Unit immediately. Alternately, you can make your disclosure to the Crime and Misconduct Commission if it concerns misconduct, the Ombudsman if it concerns maladministration or a waste of public funds or a Member of Parliament.

If the disclosure relates to conduct of the Executive Director, Ethical Standards Unit, staff from the Ethical Standards Unit or the Director-General, a discloser may elect to make the complaint to the Crime and Misconduct Commission, the Office of the Ombudsman or the Public Service Commission.

You should disclose anything you think may be a PID. You do not need proof, as long as you have reasonable grounds to believe that it has occurred. If in any doubt, ask the Executive Director, Ethical Standards Unit for advice.

Where possible, be prepared to give information on:

- the name, job title and workplace address of the person the subject of your disclosure
- details of relevant events, dates and places
- the names of people who may be able to back up what you say
- any other evidence that supports your view.

How do I make a disclosure?

Your disclosure can be made in writing or orally and anonymously if you desire.

Where an employee receives an oral PID they should request the discloser to put the details in writing. If they are unable or unwilling to do so the employee receiving the PID should document it and ask the discloser to confirm the contents before signing it. If circumstances (eg telephone caller who remains anonymous) prevent this occurring, the officer receiving the PID should record the date, time and circumstances of the PID. It should then be forwarded to the Executive Director, Ethical Standards Unit.

Where do I make a disclosure?

If you wish to make a disclosure to the **department** please use the following details:

- By email:** ethicalstandards@justice.qld.gov.au
- By letter:** Executive Director, Ethical Standards Unit
Department of Justice and Attorney - General
GPO Box 69
Brisbane Qld 4001
Australia
- By phone:** 07 3225 2045
- In person:** Ethical Standards Unit
Level 3, Brisbane Magistrates Court Building
363 George Street
Brisbane

If you wish to make a complaint in person, please phone first for an appointment

If you wish to make a disclosure to the **CMC direct**, please use the following details.

- By email:** mailbox@cmc.qld.gov.au
- By letter:** Director, Complaints Section
Crime and Misconduct Commission
GPO Box 3123
Brisbane Qld 4001
Australia
- By phone:** 07 3360 6060
1800 061 611 (toll free outside Brisbane)
- In person:** Level 2, North Tower Green Square
515 St Pauls Terrace
Fortitude Valley
Brisbane

If you wish to make a complaint in person, please phone first for an appointment

What support and protection is available to me if I make a public interest disclosure?

The department will treat all PID's appropriately. The Executive Director, Ethical Standards Unit will take your concerns seriously and ensure your privacy and confidentiality (as far as possible) throughout the appropriate process. You can also be confident of protection against reprisal and bullying.

You will be provided with assistance in contacting the [Employee Assistance Program](#), which provides professional counseling and wellbeing support to all employees and their immediate family members (including partner, child, and other family member residing with the employee). Their telephone number is 1800 604 640.

The Public Service Commission Advisory Service can provide information and advice for people who are considering making or have made a PID about official misconduct.

The Crime and Misconduct Commission is involved in the PID process, however its role is as an integrity agency to which PIDs are made.

The level of support afforded to those making disclosures, will depend on an assessment of their needs over the course of the matter.

If an employee suffers an injury (such as a psychological condition), for example, which could have been prevented by the department taking appropriate steps to provide support, the employee may be able to seek compensation under the *Workers' Compensation and Rehabilitation Act 2003* (Qld).

For those making a PID, Section 36 of the *Public Interest Disclosure Act 2010* states that a person is not liable civilly, criminally or under an administrative process for making a PID. Under Section 73 (2)(f) of the *Industrial Relations Act 1999*, it constitutes an unfair dismissal if an employee is dismissed on the basis of making a PID or because of a belief that an employee has made or may make a PID in accordance with the *Public Interest Disclosure Act 2010*.

If you make a disclosure, you are reminded that the matters surrounding the investigation will be confidential and you are requested to maintain the integrity of the process by not discussing it with your work colleagues or others unconnected with this matter. All statements and correspondence in regard to the matter should be regarded as strictly confidential. Please note that the confidentiality provision will not preclude you from sharing this information with your Union representative/support person.

Where required, interpreters or other assistance will be provided to employees or other persons wanting to report misconduct, official misconduct or make a PID.

For more information on how to make a public interest disclosure read [Thinking about blowing the whistle](#): a guide for individuals working in the public sector. Which is available on the Department's intranet as well as the CMC, QLD Ombudsman and Public Service Commission websites.

What support and protection is available to me if someone makes a public interest disclosure against me?

The department is determined to treat disclosures appropriately. The rights of any person who is the subject of, or is in some way associated with a disclosure are important, and as a person against whom a PID is made, you are entitled to confidentiality and the presumption of innocence.

Employees who are the subject of an allegation may seek assistance from their union and may wish to consider obtaining legal advice. Employees may utilise the services of the Employee Assistance Program for advice and counselling (phone 1800 604 640). This service provides confidential counselling and support to staff through stressful times.

Protection exists for those against whom an intentionally false PID is made. It is an offence under Section 66 of the *Public Interest Disclosure Act 2010*, punishable by up to two years imprisonment, to intentionally make a false or misleading statement intending it to be acted upon as a PID.

However, you are also reminded of your responsibilities under the Queensland Public Service Code of Conduct, 'we will support employees who report genuine concerns of wrongdoing and manage any reports of suspected wrongdoing in a fair, transparent and consistent manner.' You are requested to remember that staff will have performed their duty by participating in the investigation. They should not be treated adversely because of their involvement in this process and any substantiated allegations of adverse treatment on these grounds may result in disciplinary action being taken against you.

The assessment and investigation process

1. The PID is made to the Executive Director, Ethical Standards Unit who will make an assessment as to whether it is to be referred to the CMC or another agency for review or investigation or whether the department is able to investigate the matter.
2. The Executive Director, Ethical Standards Unit will conduct a risk assessment of the PID to determine the likelihood of confidentiality and risk of reprisal. If required, a plan will be established to monitor and address any problems that may arise.
3. If the matter is required to be investigated by the department, the Executive Director, Ethical Standards Unit will be responsible for the investigation which will usually be completed by an independent investigator.
4. Once the investigation is completed and relevant agencies consulted, corrective or disciplinary action will be taken by the department where necessary.
5. The person making the PID will be informed of progress and the outcome by the Executive Director, Ethical Standards Unit. Once the matter is finalised the person making the PID, where necessary, will be advised on any follow up requirements that may be necessary to ensure their well being. Assistance and guidance may be required from DJAG Human Resources unit.

Complaints made to other agencies (e.g. to the CMC) regarding the conduct of staff from the Ethical Standards Unit or the Director-General will follow that agency's assessment and investigation process.

To best manage your role as a discloser in the investigation process, it is recommended that you:

- maintain confidentiality;
- advise the Ethical Standards Unit of all relevant information;
- ask questions to gain an understanding of the process;
- utilise available departmental support, Employee Assistance Program, support person or a representative from your union.

The Ethical Standards Unit will keep you advised of the progress of the matter. However, as a discloser, if you have any issues, concerns or questions, it is recommended that you contact the Executive Director, Ethical Standards Unit who will be able to assist you.

Referring the PID to another agency

In certain circumstances, the Executive Director, Ethical Standards Unit is obliged to refer matters to another agency. This includes:

- matters of suspected official misconduct, which must be referred to the Crime and Misconduct Commission under section 38 of the *Crime and Misconduct Act 2001*; and
- if the conduct reported amounts to a criminal offence, the matter may be referred to the Queensland Police Service for possible charges to be laid.

Section 31 of the *Public Interest Disclosure Act 2010* allows the department to refer a disclosure to another public sector entity (the referral entity) for investigation, if the disclosure is about:

- the conduct of the referral entity or an employee of the referral entity; or
- the conduct of an entity, or another matter, that the referral entity has the power to investigate or remedy the matter.

Prior to referring the matter to another agency, the Executive Director, Ethical Standards Unit will contact the discloser to advise of the referral. If the Executive Director, Ethical Standards Unit considers there to be an unacceptable risk that a reprisal would occur due to the referral, the matter will not be referred.

Right to Review

There are several circumstances in which the department may not deal with or investigate a PID. Upon being advised of the reasons for such a decision you may within 28 days request a review.

If you are not happy with the outcome of the department's dealing with the PID you can request further information from the department or contact the Crime and Misconduct Commission or the Office of the Queensland Ombudsman to request a review of the matter.

You may also wish to seek independent legal advice or you can apply to the Supreme Court for a review of the decision under the *Judicial Review Act 1991 (Qld)*.

Staff and management responsibilities

All staff, especially managers and supervisors should make themselves familiar with this policy and their obligations under the Code of Conduct. They must provide clear guidance to staff on how to handle the complex issues and how to deal with an ethical dilemma when faced with potential wrongdoing.

Managers must ensure staff are provided with information about making a disclosure and are familiar with the process of making a public interest disclosure. All staff should also be able to identify potential situations where behaviour may be unethical or fraudulent and know how to report it.

Agencies must resolve the apparently conflicting demands of disclosure and confidentiality through management and supervisors being forthright in stating that they want people to denounce unethical and fraudulent behaviour.

Confidentiality

Section 65 of the *Public Interest Disclosure Act 2010* makes it an offence for a person to make a record of, or intentionally or recklessly disclose confidential information received in the administration of the Act to anyone, except where authorised to do so by the Act.

The circumstances where the department may need to disclose information are:

- for full investigation of the PID;
- under a legal requirement (e.g. during criminal prosecution processes);
- to provide safety or welfare;
- natural justice / procedural fairness (after considering the risk of reprisal);
- under Right to Information legislation.

The department will consult with the discloser, should confidentiality be compromised. In order to best manage the situation, the Executive Director, Ethical Standards Unit will work out an appropriate plan, which involves:

- advising the discloser before information is released;
- ensuring open communication to keep the discloser informed of the status of the matter;
- offering support from the department and other services (Employment Assistance Program);
- monitoring the situation.

Strict confidentiality is to be maintained at all times in relation to reporting and investigation of PIDs. All departmental records of PIDs will be held and securely filed by the Ethical Standards Unit.

Reprisal

If a person making a PID has concerns about reprisal being taken against them because of the disclosure, under the *Public Interest Disclosure Act 2010*, the person can be given special protection to prevent this occurring.

If you feel as though you have been disadvantaged or subjected to a reprisal for making a disclosure, you should raise the issue with the Executive Director, Ethical Standards Unit.

Section 40 of the *Public Interest Disclosure Act 2010* makes it an offence for an employee to take a reprisal because of a belief that another person has made, or intends to make a Public Interest Disclosure.

Responsibilities for this policy

The Executive Director, Ethical Standards Unit is responsible for the preparation, review and maintenance of the policy.

This policy will be reviewed 3 years from date of approval.

Version History

Version	Notes	Change Officer(s)	Date of Change
1.0	Approved	Director-General	01 January 2011
2.0	Approved	Director-General	30 March 2012