

Making and managing a Public Interest Disclosure

Making a Public Interest Disclosure

In general terms, a public interest disclosure (PID) means a disclosure of information by a public officer (employee or board or committee member) to a proper authority about certain wrongdoing, i.e. suspected corrupt conduct, maladministration, a substantial misuse of public resources, or a substantial and specific danger to public health or safety or the environment. Any person may also disclose to a proper authority a substantial and specific danger to the health or safety of a person with a disability, certain substantial and specific dangers to the environment or a reprisal.

The *Public Interest Disclosure Act 2010 (Qld)* (the Act) protects both officers and others who make a PID to a proper authority.

There are a number of options for a person to make a report of wrongdoing. A potential PID (report of wrongdoing) may be made internally to:

- an employee's supervisor or manager
- the human resources manager
- the PID Management Officer
- any other person in a management position within the QCT
- the Director
- the Chair of the Board.

A disclosure may also be made to an external body such as the Crime and Corruption Commission if the information relates to conduct that if proved could amount to corrupt conduct or a reprisal relating to a previous disclosure under the *Public Interest Disclosure Act 2010*.

Public officers who may have witnessed some wrongdoing are encouraged to report the matter to the PID Management Officer who has the function to receive, assess and take action on the type of information being disclosed. The QCT will acknowledge and support public officers who make reports of wrongdoing to appropriate external agencies. The QCT will make every effort to assist an external agency dealing with a report of wrongdoing and bring the matter to a satisfactory conclusion.

Officers should be aware that intentionally giving false or misleading information in a PID or in the course of inquiries into

a PID is an offence and significant penalties apply (including imprisonment).

A PID is not limited to information disclosed by the original discloser and can be any information provided in support of an investigation, including evidence provided by witnesses. The threshold to make a report of a PID is low and is based on whether the discloser honestly believes on reasonable grounds that the information tends to show wrongdoing or the information tends to show wrongdoing regardless of whether or not the person honestly believes the information tends to show the wrongdoing. A disclosure is to be considered to be a PID despite an investigation outcome that found the allegation unsubstantiated, as long as the discloser believed on reasonable grounds the information tended to show specific conduct or danger.

A PID does not have to identify a particular person and may also be about a matter that occurred before the commencement of the PID Act, a matter that may be currently happening or an event that may happen in the future.

A PID may be made anonymously or in various forms including in writing, over the telephone, via email or in person. To assist in the conduct of an assessment of a disclosure of wrongdoing, disclosers are encouraged to outline their concerns in writing in a concise manner including the following information:

- their name and contact details
- the nature of the wrongdoing
- who did the wrongdoing
- when and where the wrongdoing occurred
- events surrounding the issue
- if anything was done in response to the wrongdoing
- the identity of others who know about the wrongdoing
- any evidence in support of the report of wrongdoing
- why the discloser believes the information may be a PID under the Act
- if the discloser is concerned about possible reprisal as a result of making the PID.

It is important in the management of a PID that confidentiality

is maintained. Confidentiality is important in protecting other people affected by the PID and the discloser (internal witness) against reprisal. In relation to a PID, the identity of the discloser, the nature of the disclosure, the subject matter of the disclosure and the identity of the subject officer are to be treated as confidential information and are not to be disclosed to any other person except in accordance with the Act.

Under the Act confidential information includes:

- information about the identity, occupation, residential or work address or whereabouts of a person who makes a PID or against whom a PID has been made
- information disclosed by a PID
- information about an individual's personal affairs
- information that, if disclosed, may cause detriment to a person.

Confidential information does not include information publicly disclosed in a PID made to a court, tribunal or other entity that may receive evidence under oath, unless further disclosure of the information is prohibited by law.

Upon receipt of a disclosure of information by a proper authority that potentially could be a PID, the proper authority is to notify the PID Management Officer as soon as practicable. All relevant material or evidence relating to the disclosure should be forwarded along with the complaint to enable a complete assessment. The material or evidence could be:

- the names of those people who may have witnessed some wrongdoing
- any correspondence or supporting documentation
- diary entries of events or conversations
- a record of dates and times when the wrongdoing occurred.

Action following the receipt of a Public Interest Disclosure

The action taken on the making of a PID will vary depending upon the circumstances including the nature of the disclosure; however, all disclosures made or referred to the QCT are to be assessed as to whether they should be considered as a PID. The QCT will not decline to receive and/or assess a matter as a PID.

Normally matters should be confidentially forwarded to the PID Management Officer for assessment. The PID Management Officer will assess the disclosure and determine if it should be treated as a PID taking into consideration the provisions of the Act and the Queensland Ombudsman Standard and:

- receive the PID if the QCT is considered to be the proper authority to do so
- decide the most appropriate action to deal with the disclosure
- refer any PIDs to other proper authorities if the disclosure is about that proper authority
- if information received does not fall within the definition of a PID, the information will still be received, assessed and action taken as appropriate.

If there is any doubt as to whether a disclosure is a PID, further information can be obtained to inform the decision; however, if doubt still remains, the matter is to be considered and managed as a PID.

The QCT may decide not to investigate or otherwise deal with a PID if:

- the matter has already been investigated or dealt with through another appropriate process
- the QCT reasonably considers that the disclosure should be dealt with by another appropriate process
- the age of the information disclosed makes it impracticable to investigate
- the QCT reasonably considers the disclosure is minor enough not to warrant an investigation and treating the matter as a PID would not be using resources appropriately
- another entity, such as the CCC, who has jurisdiction to investigate the disclosure, has notified the QCT that investigation of the disclosure is not warranted

If the QCT decides not to investigate or deal with a PID in the above circumstances, the QCT will provide written reasons for its decision to the discloser.

In certain circumstances PIDs can be referred to another agency. This is where the disclosure is about the conduct of the referral entity or a public officer of the referral entity or is about the conduct of an entity (including itself), or another matter, that the referral entity has the power to investigate or remedy. The public sector entity must not refer a public interest disclosure to another public sector entity if it considers there is an unacceptable risk that a reprisal would happen because of the referral. In considering whether there would be an unacceptable risk, the public sector entity must, if practicable, consult with the person who made the public interest disclosure.

If the QCT determines that information received by a discloser is not to be considered a PID, unless the discloser has specifically nominated they believe their disclosure is a PID or requested reasons as to why the QCT did not treat the information as a PID, the QCT will not routinely advise disclosers of the reasons why the information is not to be considered as a PID. However, if a discloser does request the reason why the information provided has not been assessed to be a PID, the PID Management Officer will provide the discloser with those reasons in writing.

A discloser may apply to the Director for a review of a decision not to consider information as a PID or not to investigate or deal with a PID disclosure within 28 days of receiving such reasons.

Risk Assessment

As soon as practicable after receiving a PID, a risk assessment is to be conducted to determine the level of protection and support appropriate with regard to the risk of a reprisal to the discloser and others associated with the discloser. Appropriate protective measures will be put in place which will be proportionate to the risk of reprisal and the potential consequences of reprisal. These actions may include developing strategies to reduce the level of risk to the discloser in the

workplace or consideration of suspension or secondment of the subject officer.

If the risk is determined to be sufficiently high, the PID Management Officer will consult with the discloser and other relevant stakeholders to develop a protection plan to protect the discloser and offer an appropriate level of support which may include:

- acknowledging that the making of the PID was the right thing to do and is valued
- making a clear statement that the QCT will support the discloser
- ensuring that the discloser has appropriate support and protection from reprisal
- regularly checking the discloser's well-being where warranted
- advising the disclosure of the QCT's public officer assistance mechanisms
- liaising with the officers responsible for occupational health and safety if the health of the discloser becomes a concern.

Discloser support and protection

Upon information being determined to be a PID, the PID Management Officer will contact the discloser and provide them with reasonable information in writing including:

- advising the discloser that their information has been received by the QCT and has been considered to be a PID
- a description of the proposed action to be taken by the QCT in relation to the PID
- the likely timeframes for dealing with the PID
- the discloser's responsibilities in the process
- the protections available under the PID Act
- the importance of maintaining confidentiality
- the commitment of the QCT to maintain confidentiality except where disclosure is permitted under the PID Act
- how the discloser will be updated on the progress of the intended action and the outcomes
- who to contact if they require any further information or are concerned about reprisal.

Regular follow-up contact should be made by the PID Management Officer as arranged by agreement with the discloser where it is desired by the discloser and safe to do so.

The PID Management Officer will maintain a record of all PIDs including:

- the name and contact details of the person making the PID (if known)
- the information disclosed
- all contact had with the discloser during the management of the PID
- any action taken on the PID
- any other information required under the Queensland Ombudsman Standard or required for entry onto the Queensland Ombudsman database.

The PID Management Officer will offer support to an officer after a disclosure has been made. Support will be available throughout the process from a variety of networks which may include:

- a manager or supervisor
- a union representative
- employee assistance service
- a nominated internal support person assigned to provide support during the investigation of the PID
- a family member or friend

Confidentiality

A public officer who acquires confidential information because he or she receives or is involved with the management of a PID must not make a record of the information or recklessly disclose the information to anyone other than:

- for the purposes of the Act
- to discharge a function under another Act including, for example, to investigate something disclosed by a PID
- for a proceeding in a court or tribunal
- if the person to whom the confidential information relates consents in writing to the making of the record or disclosure of the information
- if the officer cannot reasonably obtain the consent of the person to whom the confidential information relates and making the record or disclosing the information is unlikely to harm the interest of the person to whom the confidential information relates and is reasonable in all the circumstances
- if the person reasonably believes that making the record or disclosing the information is necessary to provide for the safety or welfare of a person
- if authorised under a regulation or other Act.

Investigation

In the case of a PID where the assessment decision has been to investigate the matter, it will be referred to an external investigation agency for investigation and report to the QCT. Before being engaged by the QCT, an agency will be required to confirm in writing that it has no actual or perceived conflict of interest regarding the matter.

The investigator who has been assigned the case will be informed that the matter has been determined to be a PID and that they should communicate with the discloser as required depending on the circumstances. Investigators are to ensure any reports by disclosers of actual or potential reprisal are immediately reported to the PID Management Officer for assessment and appropriate action.

An officer about whom a PID has been made is entitled to the presumption of innocence, the right to advice and support and the application of the principles of natural justice in the way in which the disclosure is managed.

Investigators are to be made aware of the confidentiality provisions of the Act, particularly relating to the requirement

under certain circumstances for the identity and subject of the disclosure to be disclosed to a person whose rights would otherwise be detrimentally affected. In cases where it is essential to disclose the information under the principles of natural justice, the investigator will firstly discuss this requirement with the discloser outlining the reasons why, discuss any concerns they may have regarding potential for reprisal and take appropriate action as necessary. Advice can be obtained from the PID Management Officer in instances where concern has been raised about the need to disclose this information.

Reprisals

Under the Act, anyone can make a PID if they believe that a person has caused, or attempted to conspire to cause, detriment to another person because, or in the belief that the other person or someone else has made, or intends to make a public interest disclosure.

If anyone considers that reprisal action has been taken against them the matter is to be immediately reported to the PID Management Officer who will obtain as much information as possible from the discloser about the reprisal and refer the matter to the CCC for assessment, who will then provide advice to the QCT on what action should be taken. The PID Management Officer will then, as a matter of priority, contact the discloser to review the risk of reprisal and implement any necessary protective measures required. Any allegation of reprisal will be managed by the PID Management Officer as a matter in its own right.

Nothing in the Act is intended to prevent a manager from taking reasonable management action in relation to an officer who has made a PID. However, a manager may take reasonable management action in relation to an officer who has made a PID only if the manager's reasons for taking the action do not include the fact that the officer has made a PID.

Public Interest Disclosure Contact Officer

The PID Management Officer is responsible for the management of PIDs for the QCT, the provision of advice and support to disclosers as well as the inclusion of training in PIDs as part of the Ethics Awareness Strategy.

The PID Management Officer is responsible for ensuring the collection of accurate data in relation to the receipt, management and outcomes of information declared to be a PID and its entry into the Queensland Ombudsman database.

The role of PID Management Officer at the QCT will be undertaken by the General Counsel, or another officer appointed by the Director or Chair of the Board.

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