



Parliamentary Committees

PUBLIC INTEREST DISCLOSURES TO PARLIAMENTARY COMMITTEES POLICY

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Public interest disclosures

Table of Contents

1. Introduction	1
1.1 Authority	2
1.2 Purpose	2
1.3 Application	3
2. Making a PID	3
2.1 Making a disclosure	3
3. Assessment of PID.....	4
3.1 Referral to another entity	4
3.2 A decision not to investigate the disclosure	4
3.3 Taking action on a PID.....	5
4. Support to discloser and subject officer	5
4.1 Risk assessment	6
4.2 Confidentiality.....	7
4.3 Support to subject officer	7
4.4 Storage of information.....	7
5. Administration	7
5.1 Responsibilities	7
5.2 Policy review and evaluation	8
5.3 Provision of information to the Queensland Ombudsman	8
Attachment 1	9
Attachment 2 - Useful Contacts.....	10

1. Introduction

A public interest disclosure (PID) is a disclosure, in the public interest, of information about suspected wrongdoing in the public sector.

The *Public Interest Disclosure Act 2010 (Qld)* (PID Act) facilitates such disclosures and provides unique protection from reprisal for public officers disclosing information in the public interest to an appropriate entity.

For an allegation to be considered a PID it must meet three criteria:

1) *Public interest information about substantial and specific wrongdoings or danger*

Any person, including a public sector officer, may disclose information about:

- a substantial and specific danger to the health or safety of a person with a disability
- a substantial and specific danger to the environment, or
- reprisal action following a PID.

A public sector officer may also disclose information about:

- corrupt conduct by another person
- maladministration that adversely affects someone's interests in a substantial and specific way
- a substantial misuse of public resources
- a substantial and specific danger to public health or safety, or
- a substantial and specific danger to the environment.

2) *PID must be an appropriate disclosure*

An appropriate disclosure meets the subjective and objective tests set out in the PID Act. This means:

- the discloser honestly and reasonable believes the information provided tends to show the conduct or danger, or
- the information tends to show the conduct or danger regardless of the discloser's belief.

3) *PID must be made to a Proper Authority*

Proper authorities are persons and organisations authorised under the PID Act to receive public interest disclosures. Examples of proper authorities are:

- the public sector organisation that is the subject of the PID
- an agency that has authority to investigate the matter
- a member of the Legislative Assembly (an MP).

Some disclosures are not protected by the PID Act, including disclosures made to the media (except as provided in the PID Act), frivolous or vexatious disclosures, those which question the merits of government or agency policy and those that are made to avoid disciplinary action.

To intentionally make false disclosures is an offence under the PID Act (section 66).

1.1 Authority

The authority under which a PID can be made is the PID Act. The PID Act is supported by the 'Public Interest Disclosure Standard No. 1 (January 2011)' (the PID Standard). A guide, titled 'Managing a Public Interest Disclosure Program: A guide for public sector organisations' (the PID Guide), has been developed to assist public sector organisations manage their PID program.

The objects of the PID Act are to:

- a) *to promote the public interest by facilitating public interest disclosures of wrongdoing in the public sector; and*
- b) *to ensure that public interest disclosures are properly assessed and, when appropriate, properly investigated and dealt with; and*
- c) *to ensure that appropriate consideration is given to the interests of persons who are the subject of a public interest disclosure; and*
- d) *to afford protection from reprisals to persons making public interest disclosures.*¹

In order to facilitate the objects of the PID Act, part 2 section 28 of the PID Act provides for reasonable procedures to be established by the CEO of a proper authority to deal with public interest disclosures to ensure that:

- public officers of the entity who make public interest disclosures are given appropriate support; and
- public interest disclosures made to the entity are properly assessed and, when appropriate, properly investigated and dealt with; and
- appropriate action is taken in relation to any wrongdoing that is the subject of a public interest disclosure made to the entity; and
- a management program for public interest disclosures made to the entity, consistent with any standard made under section 60, is developed and implemented; and
- public officers of the entity are offered protection from reprisals by the entity or other public officers of the entity.

The chief executive officer of a public sector entity must ensure the procedures are published, as soon as practicable after the procedures are made, on a website that is maintained by the public sector entity and readily accessible to the public.

Under part 3, section 6 of the PID Act, the meaning of a public sector entity includes a committee of the Legislative Assembly, whether or not a statutory committee.

This document outlines the procedures for making a PID to a committee of the Legislative Assembly. This procedure should be read in conjunction with the Code of Conduct for the Parliamentary Service (see **Attachment 1**).

1.2 Purpose

The purpose of this policy is to:

- outline the legislative provisions and procedures of the committees of the Legislative Assembly in place to protect any person who makes a PID (discloser) or is the subject of a PID
- demonstrate the commitment of the committees of the Legislative Assembly to developing implementing and maintaining a management program for public interest disclosures (PIDs) and ensuring effective compliance with legislation and policy, and

¹ *Public Interest Disclosure Act 2010 (Qld), s 3.*

- assist employees and others to understand their rights and responsibilities in reporting fraudulent or corrupt behaviour or making a PID under the PID Act.

1.3 Application

This policy applies to all members of the committees of the Legislative Assembly, committee staff members and any external person making a PID to a committee of the Legislative Assembly.

2. Making a PID

A person may make a disclosure to a committee of the Legislative Assembly, if the information that is the subject of the disclosure relates to:

- the conduct of the committee or any of its public officers, or
- anything the committee has a power to investigate or remedy, or
- the conduct of another person that could, if proved, be a reprisal that relates to a previous disclosure made by the person to a proper authority, or
- the person honestly believes that the information that is the subject of the disclosure relates to one of these matters.

A PID may be made by a member of the committee, a committee staff member or any person. A person who makes a PID has immunity from liability for making the disclosure.

2.1 Making a disclosure

A person making a PID to a committee must follow the procedure outlined in this document in order for the PID to be considered.

To make a PID, contact the Chair of the relevant committee either in writing (preferable) or orally. The disclosure may be anonymous although it should disclose as much information as possible to enable the committee to respond appropriately.

A person making a disclosure should disclose anything they think may be a PID, and be prepared to provide evidence to support the PID to an investigating officer. The information in the PID should include:

- who was involved
- what happened
- where the conduct or incident took place
- when the conduct or incident took place
- why the conduct is inappropriate (having regard to specific policies, procedures, laws etc that are alleged to have been breached)
- if the discloser did anything in response to the wrongdoing
- others who knew about the wrongdoing and allowed it to continue, and
- whether the discloser is concerned about possible reprisal as a result of making the PID.

Evidence to support a PID may include:

- the names of witnesses who may be able to verify the allegations or events
- correspondence or other supporting documents, or
- file or diary notes.

Any person making a PID is reminded that the matters surrounding any investigation will be confidential and the person making the PID is requested to maintain the integrity of the process by not discussing it with colleagues, and by keeping all correspondence confidential.

Contact details for the secretariat of each committee are provided at **Attachment 2**.

3. Assessment of PID

The committee will assess the disclosure made to it, or referred to it by another entity or member of the Legislative Assembly, with reference to the PID Act and PID Standard, at the first available opportunity in order to determine whether it qualifies as a PID.

In assessing a disclosure, the PID Standard provides that a committee must determine if the:

- person making the disclosure is able to receive the protection of the PID Act
- disclosure concerns a matter about which a PID can be made
- disclosure meets either the subjective or objective test set out in the PID Act (as outlined in the Introduction)
- disclosure has been made to an individual or entity who may receive a PID, and
- disclosure has been made in accordance with the agency's procedure or to a person listed in the PID Act.

If there is doubt whether the disclosure is a PID, the committee should assume that the disclosure is protected by the PID Act and manage the disclosure as if it were a PID. It is not necessary for the discloser to identify a matter as a PID, it is a committee's responsibility to identify a PID as such and address it accordingly.

Each separate allegation will be reported as a separate PID, unless the matters are clearly linked and it would be reasonable to view them as a single disclosure. A committee will not decline to receive and/or assess any disclosure as a PID.

The discloser will be advised by the committee as to what action they have decided to take.

3.1 Referral to another entity

The PID Standard advises that when a committee receives a PID it must first determine whether it is to be referred to another entity.

The committee may refer the PID to another public sector entity if the disclosure is about:

- a) the conduct of the referral entity or a public officer of the referral entity; or
- b) the conduct of an entity (including itself), or another matter, that the referral entity has the power to investigate or remedy.

The committee will not refer a PID 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 committee will, if practicable, consult with the person who made the PID.

3.2 A decision not to investigate the disclosure

Under section 30 of the PID Act, a committee can decide not to investigate or deal with a PID if:

- the substance of the disclosure has already been investigated or dealt with by another appropriate process, or
- the committee reasonably considers that the disclosure should be dealt with by another appropriate process, or
- the age of the information the subject of the disclosure makes it impracticable to investigate, or
- the committee reasonably considers that the disclosure is too trivial to warrant investigation and that dealing with the disclosure would substantially and unreasonably divert the resources of the committee from their use by the committee in the performance of its functions, or
- another entity that has jurisdiction to investigate the disclosure has notified the committee that investigation of the disclosure is not warranted.

If the committee decides not to investigate or deal with a PID, it must give written reasons for its decision to the person making the disclosure. The person has 28 days after receiving the written reasons to apply to the Speaker for a review of the decision. Alternatively, the discloser may contact another proper authority in relation to the PID.

3.3 Taking action on a PID

A committee may decide to take action in relation to any wrongdoing that is the subject of the PID. The PID Guide outlines the actions a committee may take, including:

- providing the discloser with an explanation (e.g. if the discloser were not aware of all the circumstances surrounding an action which appeared to be improper)
- counselling or training the wrongdoer
- mediation or conciliation
- an internal audit
- implementing or changing policies, procedures or practices
- a formal investigation into the allegations.

If a discloser is unhappy with a decision made by the committee regarding the PID, they may wish to make an appeal for an internal or external review. An appeal for an internal review is made to the Speaker. External review avenues include the Public Service Commission, Queensland Ombudsman and the Crime and Corruption Commission (see **Attachment 2**).

4. Support to discloser and subject officer

For those making a PID, section 36 of the PID Act states that a person is not liable civilly, criminally or under an administrative process for making a public disclosure. An employee cannot be dismissed on the basis of making a PID or intending to make a PID in accordance with the PID Act.

It is the responsibility of the committee to provide feedback to the PID discloser about the progress and the outcome of PIDs. Section 32 of the PID Act provides that the discloser (except in certain circumstances) will be notified in writing of 'reasonable information' by the committee of the following matters:

- confirmation that the disclosure was received by the committee
- a description of the action proposed to be taken, or taken, by the committee in relation to the disclosure, and

- if action has been taken by the committee in relation to the disclosure – a description of the results of the action.

The PID Standard also requires the committee to advise the discloser of the following:

- the likely timeframes
- their involvement in the investigation process
- the importance of maintaining confidentiality
- the protections under the PID Act that will apply
- that the entity will keep the information disclosed, including the discloser's identity confidential, except as allowed under the PID Act
- how they will be advised of progress and outcomes, and
- who to contact if they want further information or are concerned about reprisals.

Any apparent conflict between disclosure and confidentiality will be risk-managed by the committee through a clear focus on the prevention of fraud, wrongdoing and unethical behaviour as outlined in this policy.

4.1 Risk assessment

The committee is responsible for developing a "Management Plan" that deals with mitigating the risk of reprisals occurring.

The committee is responsible under the PID Act for preventing any disclosers from reprisal and bullying. Under section 40 of the PID Act it is also an offence for a person to make a reprisal because of a belief that another person has made, or intends to make, a PID.

If a discloser feels as though they have been disadvantaged or subjected to a reprisal for making a disclosure, they should raise the issue immediately with the committee.

As soon as possible after receiving a PID, a risk assessment will be conducted by the committee to determine the level of risk of a reprisal to the discloser and to any other persons associated with the disclosure. The ISO 31000:2009 Risk Management Standard may be used to guide the committee's assessment

Appropriate protections, proportionate to the level of risk and the potential consequences of a reprisal, will be put in place where a risk has been identified. This may include developing specific strategies to reduce the level of risk to the discloser in the workplace and may include consideration of the suspension or secondment of the person about who the disclosure is made (the subject officer).

If the risk is determined to be sufficiently high, the committee will, in consultation with the discloser and any other relevant stakeholder, develop a protection plan for the discloser and provide ongoing support including:

- acknowledging that the making of the PID was the right thing to do and is valued
- making a clear statement that the committee will support the discloser through this process
- ensuring that the discloser has appropriate support and protection from reprisal
- regularly checking the discloser's well-being where warranted
- providing information to the discloser about the Parliament's employee assistance mechanisms (if the discloser is an employee), and
- liaising with the officers responsible for occupational health and safety if the discloser's health becomes a concern.

Where a reprisal is alleged or suspected of occurring, the committee will:

- attend to the discloser's safety and/or that of any other affected parties as a matter of priority
- take all practical steps to minimise the possibility of reprisal by reviewing the risk assessment and protective measures provided to the discloser
- manage any allegation of reprisal as a PID in its own right.

The committee will advise the discloser when all organised support arrangements have been completed, although the obligation to provide protection from reprisal and maintain confidentiality about PID matters continues after the investigation is closed. The committee may continue to monitor the discloser's welfare (in association with the relevant manager) for an additional period after the PID has been finalised so that any unreported support needs can be identified and resolved.

4.2 Confidentiality

The Chair of the committee will treat all disclosures in the strictest confidence, including disclosures which do not finally qualify as PIDs. A discloser's concerns will be taken seriously and their privacy and confidentiality protected as far as possible throughout any investigation process. The PID Act makes it an offence for a person to make a record or intentionally or recklessly disclose the information contained in a PID to anyone except as authorised by the PID Act.

4.3 Support to subject officer

The committee will ensure that all people involved in PIDs (as discloser or subject) are offered an appropriate level of support and case management. Action will be taken to ensure where possible that people's identities and the details of the disclosure remain confidential.

Employees who have had a PID made against them (subject officers) are assumed to be innocent of any adverse allegation until there is evidence to the required standard of proof to show otherwise. The rules of natural justice apply to any subject officer under investigation in respect of an allegation made against them.

4.4 Storage of information

All documentation relating to a PID will be stored in a confidential file, secured in a locked area. No details will be placed on personal files. If an employee is appointed to another service area/department/agency the file remains the property of the committee.

5. Administration

5.1 Responsibilities

The Clerk is responsible for:

- reporting on PID issues to the Ombudsman.

The Deputy Clerk is responsible for:

- establishing and publishing reasonable procedures to ensure that:
 - PIDs made to committees are properly assessed and, when appropriate, properly investigated and dealt with
 - appropriate action is taken in relation to any wrongdoing that is the subject of the PID made to a committee
 - a management program for PIDs made to the committee, consistent with the PID Standard, is developed and implemented

- disclosers who make a PID are given appropriate support and are offered protection from reprisals.

The Chair of the committee to which a PID is made is responsible for:

- keeping a proper record of the disclosure including:
 - the name of the person making the disclosure, if known
 - the information disclosed
 - any action taken on the disclosure, and
 - any other information required under *Public Interest Disclosure Standard No. 1*.
- if the PID or purported PID was referred from another entity, the Chair of the committee must also keep a proper record of the name of the public sector entity, or member of the Legislative Assembly, that referred the disclosure
- give the person who made the disclosure, or the entity that referred the disclosure, reasonable information about the disclosure (see section 4 of this document)
- provide feedback to the PID discloser about the progress and the outcome of PIDs
- determine the level of protection and support appropriate for a discloser by conducting a risk assessment of a reprisal to the discloser and others associated with the discloser and implementing a management program.

5.2 Policy review and evaluation

This policy will be reviewed and evaluated by the Deputy Clerk on a regular basis and at least annually.

5.3 Provision of information to the Queensland Ombudsman

The committee must provide the Clerk, who will provide the Queensland Ombudsman, with the following information about PIDs in electronic form:

- the date the disclosure was received, and where it was received from
- the status of the discloser (eg committee staff, staff from another entity, member of the public, anonymous)
- the gender and status of the subject officer (staff member, non-staff member)
- the relationship between the discloser and the subject officer
- the location of the subject officer (geographical region)
- a summary of the allegations/information received
- the involvement of an external agency/party
- the action taken to minimise any risk of reprisal
- date inquiry/investigation commenced and completed
- the outcome of the assessment, inquiry/investigation
- the date the PID was resolved or closed
- when the outcome was advised to the discloser
- if no action was taken, the reason for the decision, and
- other legal processes associated with the disclosure.

There is relevant information on the website of the oversight agency, the Queensland Ombudsman, accessible

at:
<http://www.ombudsman.qld.gov.au/Makeacomplaint/MakeaPublicInterestDisclosure/PIDResources/tabid/443/Default.aspx>.

Attachment 1

Public Disclosure Act 2001

<https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PubIntDisA10.pdf>

Public Interest Disclosure Standard No. 1

http://www.ombudsman.qld.gov.au/Portals/0/docs/Publications/pid_factsheets/PIDs_standard_No_1.pdf

Managing a public interest disclosure program: A guide for public sector organisations

http://www.ombudsman.qld.gov.au/Portals/0/docs/Publications/Agency_Resources/WWTW%20Agency%20Guide_25.02.14.pdf

Code of Conduct for the Parliamentary Service

<http://www.parliament.qld.gov.au/documents/ParliamentaryService/codeOfConduct.pdf>

Attachment 2 - Useful Contacts

Parliamentary service

Clerk of the Parliament

Level 1, Parliament House, corner George and Alice Streets, Brisbane

Phone: (07) 3553 6450

Deputy Clerk of the Parliament

Level 2, Parliament House, corner George and Alice Streets, Brisbane

Phone: (07) 3553 6460

Committee Office Manager

Level 6, Parliamentary Annexe, Alice St, Brisbane

Phone: (07) 3553 6600

Research Director – Agriculture and Environment Committee

Level 6, Parliamentary Annexe, Alice St, Brisbane

Phone: (07) 3553 6660

Research Director – Committee of the Legislative Assembly

Level 1, Parliament House, corner George and Alice Streets, Brisbane

Phone: (07) 3553 6450

Research Director – Education, Tourism, Innovation and Small Business Committee

Level 6, Parliamentary Annexe, Alice St, Brisbane

Phone: (07) 3553 6628

Research Director – Ethics Committee

Level 2, Parliament House, corner George and Alice Streets, Brisbane

Phone: (07) 3553 6460

Research Director – Finance and Administration Committee

Level 6, Parliamentary Annexe, Alice St, Brisbane

Phone: (07) 3553 6627

Research Director – Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee

Level 6, Parliamentary Annexe, Alice St, Brisbane

Parliamentary Committees PID Policy

Phone: (07) 3553 6632

Research Director – Infrastructure, Planning and Natural Resources Committee

Level 6, Parliamentary Annexe, Alice St, Brisbane

Phone: (07) 3553 6697

Research Director – Legal Affairs and Community Safety Committee

Level 6, Parliamentary Annexe, Alice St, Brisbane

Phone: (07) 3553 6655

Research Director – Parliamentary Crime and Corruption Committee

Level 6, Parliamentary Annexe, Alice St, Brisbane

Phone: (07) 3553 6605

Research Director – Transportation and Utilities Committee

Level 6, Parliamentary Annexe, Alice St, Brisbane

Phone: (07) 3553 6622

External to the parliamentary service

Ethics Advisory Service

Public Service Commission (for advice on rights and obligations under relevant legislation including the *Public Interest Disclosure Act 2010*)

Level 15, 53 Albert St, Brisbane

PO Box 15190, City East, Qld 4002

Phone: (07) 3227 6379

<http://www.ethics.qld.gov.au/>

Crime and Corruption Commission (for official misconduct complaints and witness protection)

Level 2, North Tower Green Square, 515 St Paul's Terrace, Fortitude Valley

GPO Box 3123, Brisbane Qld 4001

Phone: (07) 3360 6060

Toll free: 100 061 611

www.ccc.qld.gov.au

Queensland Ombudsman (for complaints regarding serious maladministration)

Level 18, 53 Albert St, Brisbane

GPO Box 3314 Brisbane Qld 4001

Phone: (07) 3005 7000

Toll free: 1800 068 908

www.ombudsman.qld.gov.au