

Human Resources Policy

Public interest disclosure

Policy Number: I5 (QH-POL-202)

Publication date: August 2019

Purpose: To ensure the Department of Health complies with the *Public Interest Disclosure Act 2010*, the Public Interest Disclosure Standards and to explain the procedure for making a public interest disclosure, or for when a public interest disclosure has been made.

Application: This policy applies to all employees working for the Department of Health (including Queensland Ambulance Service).

Delegation: The 'delegate' is as listed in the relevant Department of Health Human Resource (HR) Delegations Manual, or Queensland Ambulance Service Human Resource (HR) Delegations Manual, as amended from time to time.

Legislative or other authority:

- *Anti-Discrimination Act 1991*
- *Crime and Corruption Act 2001*
- *Disability Services Act 2006*
- *Environmental Protection Act 1994*
- *Human Rights Act 2019*
- *Information Privacy Act 2009*
- *Industrial Relations Act 2016*
- *Judicial Review Act 1991*
- *Public Interest Disclosure Act 2010*
- *Public Records Act 2002*
- *Public Sector Ethics Act 1994*
- *Public Service Act 2008*

Related policy or documents:

- Queensland Ombudsman *Public Interest Disclosure Standard No. 1/2019*
- Queensland Ombudsman *PID Standard No. 2/2019*
- Queensland Ombudsman *PID Standard No. 3/2019*
- Code of Conduct for the Queensland Public Service
- Requirements for reporting corrupt conduct HR Policy E9 (QH-POL-218)
- Employee complaints HR Policy E12 (QH-POL-140)
- Corrupt conduct complaints involving the Director-General HR Policy E15 (HQ-POL-419)
- PSC Directive 03/17: Appeals
- Orientation, induction and mandatory training HR Policy G6 (QH-POL-183)

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1 The Department of Health's commitment to public interest disclosures

The Department of Health (the department) has a zero tolerance approach to wrongdoing or danger, including corruption and maladministration. These behaviours can erode public confidence in our health system, and undermine the good work carried out by the department.

The department encourages any employee who becomes aware of, or suspects wrongdoing, to report it. Every employee has a responsibility to disclose wrongdoing under the Code of Conduct for the Queensland Public Service (Code of Conduct).

To eliminate such conduct, the department is committed to creating and maintaining an environment that encourages disclosure of information about wrongdoing or danger. This is achieved by:

- facilitating disclosures of information, or complaints, about wrongdoing or danger that relate to the department

- ensuring disclosures, including those made anonymously, are properly assessed and when appropriate, properly investigated or otherwise dealt with
- ensuring public interest disclosure (PID) assessments, investigations and decision-making processes are completed within a reasonable timeframe
- affording appropriate and reasonable protection from reprisals, and support, for those who have made a PID
- ensuring appropriate consideration and natural justice is given to the interests of those who are the subject of a PID.

2 Knowledge of legislation

This policy does not replace the need to read or refer to the *Public Interest Disclosure Act 2010* (PIDA).

3 What is a public interest disclosure

A PID is a disclosure of information about certain types of wrongdoing or danger. Section 11 of the PIDA defines a PID as “... *disclosure under this chapter and includes all information and help given by the Discloser to a proper authority for disclosure...*” Sections 12 and 13 of the PIDA detail what information may be disclosed and who may disclose it.

For the information, or complaint, to be considered a PID and attract the protections afforded by the PIDA, the information must be disclosed to a proper authority.

The person disclosing the information must also have an honest belief, on reasonable grounds, that there is wrongdoing or danger (subjective test), or the information must tend to indicate the wrongdoing or danger, regardless of the belief of the person disclosing the information (objective test).

4 Types of information that can be disclosed under the PIDA

Anyone (whether or not the person is a public officer) can disclose information under section 12 of the PIDA about:

- a substantial and specific danger to the health and safety of a person with a disability
- the commission of an offence against a provision mentioned in Schedule 2 of the PIDA, or a contravention of a condition imposed under a provision, if the offence is or would be a substantial and specific danger to the environment
- the conduct of another person that could, if proved, be a reprisal.

A **public officer** can also disclose information under the PIDA about:

- corrupt conduct
- maladministration that adversely affects a person's interests in a substantial and specific way
- a substantial and specific danger to public health and safety

- a substantial misuse of public resources - other than an alleged misuse based on mere disagreement over policy that may properly be adopted about amounts, purposes or priorities of expenditure
- substantial and specific danger to the environment.

On occasion, information is disclosed by a person to a proper authority because of another process without the person who disclosed the information honestly believing (or knowing) the matter concerned was (alleged) wrongdoing or danger, e.g. suspected corrupt conduct. For example, when lodging a grievance or complaint at the local level, there may be information that raises a suspicion of corrupt conduct.

Often managers, through the course of managing their employees, may disclose information as part of performing their duties. Internal auditors may disclose information as a consequence of an internal audit.

In these circumstances, and applying the objective test, the reason for disclosing the information does not limit the PIDA from being applied where legislatively required.

A purported disclosure is when a person explicitly requests that their information is treated as a PID but the information does not meet the criteria of the PIDA.

5 Proper authorities

A disclosure of information must be made to a proper authority.

A proper authority is a person or organisation authorised to receive a PID.

Disclosing to a proper authority ensures the reputation of the person(s) about whom a disclosure is made is not unfairly damaged (defamed) and to encourage disclosures to appropriate proper authorities that have a responsibility or the power to take action. It also serves to maintain the integrity and confidentiality of the matter and to mitigate the risk of reprisal.

In general, a proper authority includes:

- a public sector entity if the disclosure is about the conduct of the entity or any of its officers, for example, the Department of Health
- an entity the discloser believes is a proper authority that has the power to deal with or investigate the matter – for example, the Crime and Corruption Commission (CCC) for matters of suspected corrupt conduct
- a Member of the Legislative Assembly.

Employees of the department can disclose information to:

- certain officer's in the department (see below)
- another public sector entity that has power to investigate or remedy the matter (external)
- a Member of the Legislative Assembly (external).

Officers within the department who can receive a disclosure of information include:

- an employee's manager; or any other person in a management role within the department

- Deputy Director's-General, Chief Operating Officer or Chief Executives of each of the divisions or commercialised business units for the department and Deputy or Assistant Commissioners for the Queensland Ambulance Service (QAS)
- the Director-General
- the Commissioner, QAS
- Human Resources for the divisions, commercialised business units or QAS
- the department's Ethical Standards Unit (ESU).

It is preferable an employee who decides to report wrongdoing or danger reports the conduct to their manager.

If the discloser believes their manager is involved in the wrongdoing or danger, the disclosure should be made to an alternative manager, senior manager or other officer as listed above.

A **member of the public** can disclose information to:

- any department officer who may receive information or a complaint that relates to the department - noting the complaint or information of alleged wrongdoing or danger may be forwarded to other officers or units within the department
- another proper authority with the power to investigate or remedy the matter
- a Member of the Legislative Assembly.

External proper authorities include:

- CCC – for corrupt conduct, including reprisal
- Queensland Ombudsman – for maladministration
- Queensland Audit Office – for the substantial misuse of public resources
- Department of Communities, Disability Services and Seniors and the Office of the Public Guardian – for danger to the health and safety of a person with a disability
- Department of Child Safety, Youth and Women – for danger to the health and safety of a child or young person with a disability
- Department of Environment and Science – for danger to the environment
- a Member of the Legislative Assembly (MP) – for any wrongdoing or danger. MPs do not have any authority to investigate a PID. An MP will need to refer the disclosure to another appropriate proper authority. For example, the Minister for Health may refer the disclosure to the Department of Health.

If a disclosure is made to a person or an entity other than a proper authority, the person making the disclosure will not receive the protections of the PIDA.

While the department strongly encourages internal reporting, a person may report to an external proper authority as a first step.

A person disclosing information should be aware when disclosing externally, it is very likely the other proper authority will discuss the matter with the department, or refer the information, or complaint, to the department to deal with.

A person who decides to make a disclosure of information to a proper authority other than the department should contact the other entity to find out how to make the disclosure to that entity (e.g. what is that entity's procedure).

6 Procedure for making a disclosure - written or verbal

The PIDA states a disclosure of information to a proper authority can be made in any way, including anonymously. If the proper authority has a reasonable procedure for making a PID the person must use the procedure.

A disclosure of information can be made to the department in writing (preferable) or verbally. If information, or a complaint, is received verbally, the department may request the information in writing (refer to Attachment One for further information).

A disclosure of information, or complaint, must still be assessed, and may be a PID, regardless of how it is made - written, verbally or anonymously.

A person disclosing information does not need to state the information, or complaint, is a PID for the matter to be assessed under the PIDA. The department cannot decline to assess information, or a complaint, to determine if it is a PID under the PIDA.

For detailed information on how to lodge a PID, refer to Attachment One.

7 Anonymous disclosures

The PIDA allows for information, or a complaint, to be made anonymously. When information, or a complaint, is received anonymously about wrongdoing or danger, the information must still be assessed to determine if the information is a PID.

Disclosing anonymously can make it difficult to seek clarification or more information, to inform of progress or to provide feedback on the action to be taken, or which has been taken on the PID.

An anonymous discloser may also experience difficulties in relying upon the protections afforded by the PIDA.

8 Roles and responsibilities in disclosure management

An organisational culture that encourages, values and supports making PIDs requires shared responsibilities for disclosure management across the department.

All levels of management within the department are responsible for:

- reporting information, or complaints, to the ESU for PID assessment
- maintaining confidentiality about a potential PID and considering the risk of reprisal
- providing or facilitating support for a person who has made a PID
- providing or facilitating support for a person who is the subject of a PID and affording natural justice to them
- monitoring the workplace for signs of reprisal against a discloser, or any other person, where a PID has been made

- ensuring when allegations are substantiated and/or systemic recommendations are made, adopted recommendations are implemented
- as a result of a PID, determining whether any other change is needed to policy, procedure, other process or control measure, and escalating and monitoring through to implementation.

8.1 Overview of roles and responsibilities

Director-General, Queensland Health is responsible for ensuring the department develops, implements and maintains a PID management program in accordance with the PIDA. The Director-General has sub-delegated the authority to make a determination if a disclosure of information is a PID pursuant to the PIDA to the Executive Director, Office of the Director-General and Director, Ethical Standards Unit, Office of the Director-General.

Senior Management and Supervisors (including decision-makers and delegates) are responsible for:

- being aware that certain types of conduct reported by employees, or members of the public, may be a PID under the PIDA
- referring a potential PID, including information or complaint, to ESU for assessment
- immediately consider the risk of reprisal, and where required, implement reasonable procedures and a protection plan, review the procedures or protection plan (contact ESU for assistance if required)
- take action on, or deal with, information and alleged conduct disclosed in a PID, or take no action on a PID in accordance with the PIDA, after referral and advice from ESU
- ensure PIDs are dealt with in a timely manner, subject to the complexity of the matter, alleged conduct disclosed, procedural fairness for any subject officer or any external agency involvement (e.g. Queensland Police Service)
- provide or facilitate support, or develop a support plan, where required for the discloser (contact ESU for assistance if required)
- provide the discloser with regular updates about progress of dealing with the PID and/or nominate a suitable support or contact person for the discloser
- provide reasonable written outcome advice to a person who has made a PID on the action taken, including a description of the results of the action
- advising the relevant Senior Executive when concerns arise in relation to non-compliance with the department's PID policy
- ensuring employees in their area of responsibility are aware of their obligations in relation to the requirements of this policy, including obligations regarding confidentiality and reprisal under the PIDA
- ensuring employees in their area of responsibility are aware of, and have access to, mandatory PID training (see Orientation, induction and mandatory training HR Policy G6) and PID information, including this policy
- ensuring mandatory training records are maintained for their area of responsibility
- maintaining locally held confidential PID records and information securely, including information on risk assessments, reprisal protection plans or other information gathered when dealing with the disclosure, e.g. investigation reports, disciplinary files.

Ethical Standards Unit is responsible for:

- providing advice on PIDs and the PIDA to the Director-General, Senior Executives, management, employees and members of the public who wish to make a disclosure
- assessment of information, or complaints, to determine whether the information is a PID pursuant to the PIDA
- advising a discloser when information is assessed as a PID
- undertake risk assessments in consultation with disclosers and other relevant officers
- ensuring PID Support Officers are assigned to PID matter
- providing information concerning a particular PID to the Director-General, Senior Executives or management as required and as authorised by the PIDA
- communicating with the Director-General, Senior Executives, management and external agencies about PID case management, including on matters of taking action or no action to deal with a PID and timelines
- advising management when a PID is subject to specific requirements of the CCC
- in certain circumstances, facilitate formal investigation of matters alleged in a PID
- in certain circumstances, correspond with a discloser after a PID has been dealt with
- being the central contact point for the department on PIDs, including for the oversight agency; and reporting PIDs to the oversight agency
- maintaining and updating internal records of PIDs received within the department
- reporting data on PIDs to the Queensland Ombudsman
- the department's HR policy and online information; and monitoring the effectiveness of the department's policy and processes
- advising the Director-General, or Senior Executive, when concerns arise in relation to non-compliance with the department's PID policy
- delivery of face-to-face PID training to work groups upon request.

Employees are responsible for:

- ensuring own awareness and compliance with this policy and relevant whole-of-Government and department policies and procedures, including the Code of Conduct and Requirements for reporting corrupt conduct HR Policy E9
- attending mandatory training for PIDs; Code of Conduct; and Fraud Control Awareness
- being aware of the possibility that corrupt conduct, maladministration, reprisal or a danger to public health and safety may exist in the workplace and reporting any concerns to their manager or supervisor
- maintaining confidentiality to help ensure the integrity of the process of dealing with the PID, and mitigate the risk of reprisal, when involved in a PID process, either as a discloser or witness.

PID Support Officer is responsible for:

- providing advice and information to the discloser on the department's PID procedure
- providing personal support and referral to other sources of advice or support as required
- proactively contact discloser throughout the PID management process.

9 False or misleading information

Section 66 of the PIDA states that a person who gives information to a proper authority, knowing it is false or misleading, and intending it be acted upon as a PID, commits a criminal offence.

The protections of the PIDA do not extend to those who intentionally make a disclosure of information known to be false or misleading.

Internal proper authorities who receive a disclosure of information and have concerns the information is false or misleading must refer the information to ESU for assessment.

In the event ESU obtains information raising a reasonable suspicion a disclosure of information is false or misleading, the matter will be referred to the Queensland Police Service (QPS) and the CCC.

An employee making a false or misleading disclosure may also face disciplinary action.

10 When a disclosure may be made to a journalist

The PIDA provides a disclosure of information may be made to a journalist in certain circumstances. However, a journalist is not considered a 'proper authority' under the PIDA.

A disclosure of information to a journalist **can only** occur after certain pre-conditions of the PIDA have been met, including:

- the disclosure was initially made to a proper authority and the information was determined to be a PID under the PIDA; and
- the proper authority:
 - decided not to investigate or deal with the PID; or
 - investigated the PID but did not recommend the taking of any action; or
 - did not notify the person, within 6 months after the date the PID was made, whether or not the PID was to be investigated or dealt with.

Any employee considering disclosing information to a journalist in accordance with section 20 of the PIDA, needs to ensure the information disclosed does not breach other legal or policy requirements. Disclosers are strongly encouraged to seek advice, including legal advice, before reporting information to the media.

A journalist is not bound by the preservation of confidentiality under section 65 of the PIDA.

11 Reasonable management action

The PIDA, at section 45, recognises taking reasonable management action is not prevented because a PID has been, or may be, made. The employment relationship between an employee who makes a PID and the department continues when a disclosure has been, or may be, made.

The PIDA confirms taking reasonable management action in relation to a person who has, or may make, a PID is not reprisal action.

Reasonable management action is defined in the PIDA. It includes actions such as:

- an appraisal of an employee's work performance
- suspension of an employee from the workplace
- disciplinary action
- management decisions regarding transfer, deployment, redundancy or retrenchment
- any reasonable action in relation to any of the above.

When it is confirmed for an employee they have made a PID under the PIDA, the employee remains responsible for:

- achieving the performance expectations of their position
- their own behaviour
- observing all workplace policy and procedures.

12 Conduct of a discloser and liability for own conduct

Under the PIDA a person is still liable for their own conduct even if the conduct forms part of, or is the basis, for the PID. The person who made the PID is not protected civilly, criminally or from any liability, including by way of an administrative process, including disciplinary action, for their own conduct.

An employee who has made a PID must ensure their conduct is at all times appropriate and in accordance with the Code of Conduct. In particular, a discloser must ensure their conduct towards a person who is the subject of a PID, or who has participated in the process of dealing with a disclosure, is proper and appropriate.

13 Protections under the PIDA

13.1 Reprisal and grounds for reprisal

A purpose of the PIDA is to provide protections for a person who makes a PID, including from reprisal, as far as reasonably practicable.

Under Section 40 of the PIDA, a person must not reprise against another person, by causing or attempt to cause *detriment*, because a PID has been made.

Schedule 4 of the PIDA defines 'detriment'. It includes such actions as intimidation or harassment; or adverse discrimination, disadvantage or treatment about a person's career (refer to Attachment One for further information).

13.2 Immunity from liability

A person who makes a PID under the PIDA is not subject to any civil or criminal liability or any liability arising by way of administrative process, including disciplinary action, for **making** the PID.

13.3 Confidentiality provisions do not apply

A person who makes a PID will have immunity from prosecution or other legal proceedings for a breach of any confidentiality requirements under another Act.

This means a person who makes a PID, does not breach an obligation by way of oath, or a rule of law (e.g. another Act), restricting or requiring the person to maintain confidentiality, provided the disclosure is *made to a proper authority*.

13.4 Protection from defamation action

A person who makes a PID will have absolute privilege in defamation proceedings from the making of the disclosure, provided the disclosure is *made to a proper authority*.

13.5 Confidentiality

The identity of a person who has made a PID will be protected, where possible. Refer to Attachment One for detailed information regarding management of confidentiality and obligations.

14 Employees who are the subject of a PID (subject officer)

The department is committed, and required, to taking action to address information about wrongdoing or danger to determine the substance.

A PID will be managed impartially and objectively. It is only an allegation until the information is dealt with, and a finding made.

Subject officers must be afforded natural justice. The right to natural justice includes being provided with an opportunity to respond to an allegation prior to any adverse decision being made. Affording natural justice does not mean a subject officer must be advised of the allegation as soon as the information, or complaint, has been received.

Subject officers are entitled to:

- a presumption of innocence and to be treated fairly
- have the matter handled confidentially
- have the matter dealt with, reviewed or investigated impartially (procedural fairness)
- be informed, where necessary, and at a time considered appropriate by the decision-maker or delegate, of the alleged wrongdoing or danger.

Management, or the delegate, should advise a subject officer who to contact with any questions, or support available such as Employee Assistance. Subject officers may also seek assistance from their union or other support person during the process of the PID being dealt with.

A subject officer must ensure their conduct or workplace behaviour is not improper or detrimental towards a person who has, or is believed to have, made a PID, or a person who has participated in a process of dealing with a disclosure (e.g. a witness). To do so may be a reprisal under the PIDA and constitute a criminal offence (refer to Attachment One for further information).

A subject officer may not be advised about an allegation if it is misleading or of no substance and the decision-maker intends to take no action, nor make an adverse finding, in relation to it.

15 Referral to other entities

The PIDA allows a receiving public sector entity to refer a disclosure of information to another public sector entity. This may be done, for example, when the disclosure relates to the conduct of the other entity, or its employees, or the other entity has the necessary jurisdiction, expertise and technical skills or knowledge to investigate. The department will consider the risk of reprisal before referring the disclosure to another entity to deal with, and where practical, consult with the discloser.

In some instances, public sector entities may need to work together and share confidential information to manage a PID.

16 Information and education

An online learning tool, 'Public Interest Disclosures', provides **all departmental employees** with information and awareness about PIDs, this policy and how to report wrongdoing or danger, including corruption and maladministration.

Completion of the online learning (or by face-to-face facilitation) is **mandatory** for all departmental employees and is to be completed within 30 days of commencement and a refresher must be completed every two years (minimum) thereafter. (Refer to Orientation, induction and mandatory training HR Policy G6).

The department's online learning can be accessed at <https://ilearn.health.qld.gov.au/d2i/login>.

It is strongly encouraged that departmental delegates raise PID awareness by providing information as part of team meetings and ensuring employees have completed mandatory training.

ESU can deliver face-to-face training for departmental work groups upon request. Please email PID@health.qld.gov.au.

17 Evaluation and monitoring

Through ESU, the department will conduct periodic reviews, including jointly with external agencies, to ensure its policies and procedures are consistent with best practice, current legislation and any Standard in force.

Reviews will be consultative in nature and will seek to improve internal procedures for overall PID management including reporting, record keeping, risk management, confidentiality and awareness. Reviews will consider the department's effectiveness for dealing with PIDs, the experience of officers involved in making or managing PIDs and actions taken to deal with PIDs.

Reviews will also aim to identify ongoing risks to the department and its officers by identifying any trends of information disclosed, and substantiated, and developing measures to prevent a reoccurrence of improper or inappropriate conduct, process or practice.

Definitions:

Administrative action	<p>Defined in Schedule 4 of the Public Interest Disclosure Act 2010 (PIDA) and means any action about a matter of administration, including, for example:</p> <ul style="list-style-type: none"> • a decision and an act; and • a failure to provide a written statement of reasons for a decision; and • the formulation of a proposal or intention; and • the making of a recommendation, including a recommendation made to a Minister; and • an action taken because of a recommendation made to a Minister; and <p>It does not include an operational action of a police officer or of an officer of the CCC.</p>
Anonymous	Where the person disclosing information does not identify themselves at any stage, to anyone.
Corrupt Conduct	Section 15 of the Crime and Corruption Act 2001 defines corrupt conduct for the purposes of the Act and this policy.
Danger	A threat or event that would cause harm or damage to both persons and/or property.
Detriment	<p>Defined in schedule 4 of the PIDA and “includes:</p> <ul style="list-style-type: none"> (a) personal injury or prejudice to safety; and (b) property damage or loss; and (c) intimidation or harassment; and (d) adverse discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business; and (e) financial loss; and (f) damage to reputation, including, for example, personal, professional or business reputation”.
Disability	As defined in the Disability Services Act 2006
Environment	As defined in the Environmental Protection Act 1994
Journalist	Pursuant to Section 20(4) of the PIDA – “a person engaged in the occupation of writing or editing material intended for publication in the print or electronic news media”.
Maladministration	<p>Schedule 4 of the PIDA defines maladministration as administrative action that:</p> <ul style="list-style-type: none"> a. was taken contrary to law; or

	<ul style="list-style-type: none"> b. was unreasonable, unjust, oppressive; or improperly discriminatory; or c. was in accordance with a rule 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	<p>Natural justice, also referred to as 'procedural fairness', applies to any decision that can affect the rights, interests or expectations of individuals in a direct or immediate way. Natural justice is at law a safeguard applying to an individual whose rights or interests are being affected.</p> <p>The rules of natural justice, which have been developed to ensure that decision-making is fair and reasonable, are:</p> <ul style="list-style-type: none"> • avoid bias; and • give a fair hearing • act only on the basis of logically probative evidence.
Public health or safety	<p>Includes the health or safety of persons:</p> <ul style="list-style-type: none"> a. under lawful care or control; or b. using community facilities or services provided by the public or private sector; or c. in employment workplaces. <p>For example, a patient under the care or control of a doctor, nurse or other health professional at a public health facility.</p>

History:

August 2019	<ul style="list-style-type: none"> • Policy formatted as part of the HR Policy review. • Policy amended to: <ul style="list-style-type: none"> – update references and naming conventions – reflect changes to the Queensland Ombudsman PID Standards.
March 2018	<ul style="list-style-type: none"> • Policy amended to update references and naming conventions.
October 2014	<ul style="list-style-type: none"> • Policy amended to reflect changes in legislation and Department of Health organisational changes. • Amended to reflect the Queensland Ombudsman's recommended policy inclusions.
May 2014	<ul style="list-style-type: none"> • Reviewed as part of the Queensland Ambulance Service (QAS) HR policy integration project. • Policy applicable to QAS employees.

	<ul style="list-style-type: none"> For QAS employees, this policy replaces the DCS 'Public Interest Disclosure' Practice Statement.
December 2013	<ul style="list-style-type: none"> Updated as part of the HR policy simplification project. Department of Health revised public interest disclosure reporting and management processes; change to the Oversight Agency from 1 January 2013. Application limited to Department of Health.
December 2011	<ul style="list-style-type: none"> Amended to reflect the requirements of the <i>Public Interest Disclosure Act 2010</i> and the Public Service Commission Standard Public Interest Disclosures No.1.
December 2009	<ul style="list-style-type: none"> Amended attachment one to reflect updated contact details Amended sections 5 and 10 to reflect the new Right to Information Act 2009 and Information Privacy Act 2009.
December 2008	<ul style="list-style-type: none"> Amended attachment one to update email address for the Internal Witness Support Unit.
Previous	<ul style="list-style-type: none"> IRM3.1-4 Policy and Procedures or the Management of Public Interest Disclosures.

Attachment One – Application

The following information is provided as the minimum mandatory standard practice, procedure or process to enable satisfactory compliance with this Queensland Health HR policy.

Local guidelines/procedures may be developed to facilitate implementation of this policy. Any local guidelines/procedures must be consistent with this policy and standard practice and ensure employee entitlements continue to be met.

1 Guidelines

The Queensland Ombudsman, Crime and Corruption Commission (CCC) and the Public Service Commission have collaborated to develop guidelines about public interest disclosures (PIDs) for the Queensland public sector.

The guidelines may be used as an adjunct to the *Public Interest Disclosure Act 2010* (PIDA), the Queensland Ombudsman's Public Interest Disclosure Standards (the Standards), Public interest disclosure HR Policy I5 and this Attachment.

The purpose of the guidelines is to provide guidance only and do not bind or substitute delegate or management decision-making or discretion in line with the PIDA, Standard or HR policy in response to the unique set of facts and circumstances of each individual disclosure, or complaint.

The guidelines, 'fact sheets' and other PID information for managers and individuals are located on the Queensland Ombudsman website: <https://www.ombudsman.qld.gov.au/improve-public-administration/public-interest-disclosures/public-interest-disclosure-resources>.

2 Information – use of this Attachment

Some of the information in this Attachment is underpinned by the legislative requirements of the PIDA and the Standards. This Attachment is to be read and applied in conjunction with the PIDA and the Standards, and any other legislation as referenced or in force.

3 Making a disclosure

When reporting alleged wrongdoing or danger, it is preferable the information is in writing, especially if the matter is complex or involves a number of concerns.

Ideally, information should include:

- the name (and position) of the person who is the subject of the disclosure (who did the wrongdoing, if known)
- information about the wrongdoing or danger, relevant events, dates and places
- the names of people who may be able to provide additional information (e.g. any witnesses)
- your contact details (for communication about assessment, action and outcome).

Disclosures of information should remain clear and factual and avoid speculation, emotive language, embellishment or providing only 'vague' details.

The disclosure must be made to a proper authority.

4 Assessment

Upon receipt of information, the Department of Health's (the department) Ethical Standards Unit (ESU) will assess the information to determine if the information amounts to a PID under the PIDA. (Refer to the department's and QAS HR Delegations Manuals).

Where the matter relates to suspected corrupt conduct, ESU will report the matter to the CCC in accordance with the Director-General's reporting obligations under the *Crime and Corruption Act 2001*. (Refer to the department's and QAS HR Delegations Manuals).

If the matter involves a possible criminal offence and requires reporting to the Queensland Police Service (QPS), ESU will refer the matter to the QPS.

5 Taking action to deal with a PID

A disclosure of information may be dealt with through a variety of processes. It will not necessarily undergo formal investigation. ESU may refer the PID to the appropriate delegate to deal with, review or investigate or for any other action to be taken. On limited occasions, ESU may retain oversight for review or facilitate formal investigation of matters disclosed in a PID.

6 Providing reasonable information to a discloser

Where information is assessed by ESU as a PID, a discloser will be given reasonable information in writing including information about confidentiality, protections from reprisal and how to report an alleged reprisal, employee support and assistance information and who to contact for further information.

Under the PIDA, reasonable information includes:

- confirmation the disclosure has been received
- a description of the action proposed to be taken; or
- if action has been taken, a description of the results of the action
- the name and contact details of the nominated PID Support Officer they can contact for support
- details of control measures implemented to protect the discloser from potential reprisal
- contact details for the department's Employee Assistance Program.

The department may choose not to release information if it will impact upon anybody's safety; the investigation of an (alleged) offence or possible offence; or the confidentiality of the person(s) about whom a disclosure of information has been made.

7 Advice to the delegate

ESU will provide management, or delegate, with relevant information about the PID to enable action to be taken to deal with it.

A delegate must ensure relevant and appropriate management are advised of the PID and of the requirements for support and protection in the workplace. Management must consider the risk of reprisal against the discloser. If a more formal risk assessment is required, this must be undertaken to ensure an appropriate and reasonable level of protection, and support, is provided for the discloser in the workplace. ESU can provide assistance when requested.

8 When information (or a complaint) is not a PID

Often when information is reported, or a complaint is made, it may be intertwined with other employee related complaints, such as workplace conflict or grievance matters.

Some of these types of complaints, or other information, may not be considered a disclosure of information allowed for under the PIDA. In such cases, it is important to distinguish the PID matters from any other complaint issues.

These other matters do not form part of the PID and will be referred to management for addressing. Management can deal with the information, or complaint, as they determine or in accordance with an applicable process.

If there is any doubt as to whether a matter is a PID, further information may be obtained to inform the decision. If doubt still remains, the matter will be considered and managed as a PID.

Notwithstanding a disclosure of information, or complaint, is assessed as not being a PID, the Code of Conduct states employees who report genuine concerns of wrongdoing will be supported. All reports of suspected wrongdoing must be managed in a fair, transparent and consistent manner.

9 Rights of review – when information disclosed is not a PID

When a purported disclosure is made and all requirements have been met regarding the making of the disclosure, but the information is assessed as **not** being a PID under the PIDA, the person who made the disclosure may request a review of the assessment decision.

A review of the assessment decision can be made by **writing** to the Director, ESU stating the reasons why a review is being sought. A request for review must be lodged within 14 days after receiving written notice the information disclosed was assessed as **not** being a PID.

Any review of the assessment will be based upon the *same information* that was initially made available to the assessor. In reviewing the original assessment, the Director, ESU may seek secondary assessment of the information, obtain legal advice or seek input from the Queensland Ombudsman.

Whether a disclosure of information falls under the PIDA, and constitutes a PID, is ultimately a matter of law. A complainant may wish to seek independent legal advice regarding options for review, including under the *Judicial Review Act 1991*.

Alternatively, the person making the disclosure may contact the Queensland Ombudsman as the oversight agency for PIDs for further advice and information.

10 No action taken on a PID

The PIDA provides the department may decide not to take action on a disclosure of information in defined circumstances, even when the information, or complaint, has been assessed as a PID under the PIDA.

If it has been determined by the department not to take action on a PID, the person who has made the PID must be provided with written reasons for the decision.

A discloser who receives a written reason for a decision to take no action, may choose to seek a review of the decision by **writing** to the Director-General of the department within 28 days after receiving the decision (Section 30 of the PIDA).

When no action is taken, all obligations under the PIDA still apply, including confidentiality and protections from reprisal.

11 Confidentiality

Confidentiality not only protects the rights of those who are involved in a PID, it also maintains the integrity of the department's reporting system, any investigation or review and is also a strategy in mitigating the risk of reprisal.

Confidentiality also protects the reputation of an employee whose (alleged) conduct is the subject of a disclosure.

The confidentiality provisions under the PIDA apply to persons who have gained the information because of their involvement in the administration (implementing or carrying out) of the PIDA.

Those who lawfully receive information in the administration of the PIDA must not disclose confidential information, intentionally or recklessly.

Confidential information may be disclosed to another person, or entity, in accordance with the allowable reasons under the PIDA.

11.1 What is confidential information under the PIDA?

Confidential information under the PIDA is:

- the identity, occupation, residential or work address or whereabouts of a person who has made or is the subject of a PID
- information disclosed by a PID – the nature, subject matter and content
- information about a person's individual affairs
- information that may cause detriment to a person.

11.2 When can confidential information be disclosed to another person or entity?

Confidential information can be disclosed to another person or entity if:

- for the purposes of the PIDA
- to discharge a function under another Act, including for the purposes of investigation
- for a proceeding in a court or tribunal
- if the person to whom the confidential information relates consents
- if the person reasonably believes making the record or disclosing the information is necessary to provide for the safety and welfare of a person
- if it is essential under the principles of natural justice.

11.3 Managing confidentiality

Proper authorities, including managers, receiving a disclosure of information, or complaint, must maintain confidentiality of information that *may be* a PID. This however does not limit appropriately,

and confidentially, referring the information for assessment, or to another person to seek advice or assistance to deal with the information (e.g. ESU).

The PIDA provides the preservation of confidentiality does not affect an obligation a person may have under the principle of natural justice to disclose information to a person whose rights would otherwise be detrimentally affected (e.g. a subject officer).

If it is **essential** the *identity* of a person who has made a PID needs to be revealed for the purpose of natural justice, the delegate must consider that it is *unlikely* that a reprisal will be taken against the person.

If it is possible for a subject officer to answer allegations without the source of the allegations being identified, the release of identifying information **cannot be said to be essential**.

However, a person who has made a PID **must never** be promised anonymity or that their identity will not be disclosed at any time.

While the department is prepared to take required steps to protect confidential information, a discloser also has a responsibility to maintain confidentiality about making, and the information in, a PID.

A person who has made a PID should not communicate about the disclosure with work colleagues or any other unauthorised person. The fewer people who know about the disclosure, both before and after it has been made, the more likely it is the department will be able to keep a discloser's identity confidential.

When a discloser has spoken to colleagues or others about possibly making or having made a PID, this may unnecessarily increase the risk of reprisal. Any reasonable steps taken by the department to protect against reprisal may be obstructed or undermined where a discloser has openly communicated about having made the disclosure.

12 Confidential record keeping and access to records

Delegates dealing with PID information **must** keep the information secure and restrict access only to those dealing with the disclosure in accordance with obligations under the PIDA and *Public Records Act 2002*.

PID records and information held by the department are confidential records and will not be released or referred to anyone unless required to do so, or because of, an allowance under an Act, including the PIDA.

Those who have made, or who are the subject of, a PID may apply for access to information held by the department under Right to Information legislation.

The department's Privacy and Right to Information Unit is responsible for processing these applications. Access to the relevant information is subject to the consideration of exception provisions contained within relevant legislation.

The Right to Information and Information Privacy website can be accessed at:
<http://www.health.qld.gov.au/system-governance/contact-us/access-info/default.asp>

13 Reprisal

The department aims to ensure employees will be reasonably protected from **detriment**, such as harassment or discrimination, because a PID has been made.

13.1 Detriment

Schedule 4 of the PIDA lists types of detriment, which may include such things as:

- personal injury or prejudice to safety
- intimidation or harassment
- adverse discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business.

In order to be considered a reprisal, there must be a *causal link* between the detriment and a PID. The reprisal must be in retaliation *for the PID*. Additionally, the reprisal is done with the intention of causing harm.

13.2 Reasonable procedures

The department is required to have reasonable procedures to protect a person from reprisal. The procedures may include such actions as providing conciliation or advice, counselling or training to employees or organising a temporary or permanent transfer for a discloser where the risk of reprisal is sufficiently high.

Having regard to the culture of the workplace, reasonable procedures may include early and/or ongoing intervention by managers or another delegate by:

- monitoring the workplace for any signs of detriment for making the PID
- reinforcing values in the workplace about wrongdoing or corruption, reporting and reminding employees we all must report wrongdoing
- increasing supervision of the workplace
- conducting training about PIDs, the Code of Conduct or appropriate workplace behaviours
- proactively confronting general workplace prejudices, and misconceptions, about making a PID
- informing employees that committing a reprisal is a criminal offence and the department may take administrative action against those who are found to have committed a reprisal
- reinforcing it is management's role to resolve the situation, including what action to take to deal with the disclosure and how to deal with subject officers
- exercising independent judgment and setting an example for employees.

Other procedures may include reasonable management decisions, including:

- approving leave entitlements for a discloser, when requested, during the review or investigation of a PID
- temporary adjustment in the workplace to change seating, work location or supervisory arrangements for a person who has made a disclosure or a subject officer
- facilitating a voluntary transfer or relocation of the discloser or the subject of the PID to another position

- where appropriate, provide reasonable lawful directions to the subject of a PID (e.g. maintaining confidentiality, attendance at certain work locations only) or written information about reprisal and detriment
- where there are grounds, suspension of a subject officer from the workplace (in accordance with departmental policy).

14 Risk assessment

Whenever a disclosure of information, or a complaint, is received by the department, the receiving manager or delegate is obligated to consider the likelihood of the person disclosing the information suffering a reprisal for having made the disclosure. It is the responsibility of the manager to assess the *actual and reasonably perceived risk* of detriment, including intimidation or harassment.

While a discloser may express an apprehension or fear of reprisal, the risk assessment must consider the *likelihood*, and *consequence*, of a reprisal occurring based upon identified contributory factors and known control measures. Protection for a discloser need only be proportionate to the degree of risk, and where it is within the department's jurisdiction to manage.

Where the risk of reprisal is determined to be sufficiently high¹, the manager, or delegate, must develop a plan, or other record, of reasonable procedures (or control measures), in conjunction with, where feasible and required, the person who has made the PID and other relevant stakeholders (e.g. Work Health and Safety).

Any plan and control measures must be implemented and actively monitored. A review of the plan should occur if the risk of reprisal changes, or throughout dealing with the disclosure.

It is to be remembered that a reprisal can occur not only against the person who made the PID, but also those associated with the discloser or those who are wrongly suspected of being the discloser. A causal link must however be established.

Comprehensive record keeping in relation to risk assessments and management plans, completed and reviewed, is required.

Management **must** keep secure and confidential records to demonstrate the risk of reprisal was considered and any steps taken to prevent reprisal (where identified). Records are to be contemporaneous, document support provided or offered to the discloser, other actions taken and any advice sought in relation to managing risk or reprisal concerns.

ESU may be contacted for discloser risk assessment assistance.

15 Reporting and dealing with reprisal

Where it is reasonably established an alleged reprisal may have occurred, or is occurring, management must take reasonable steps to stop the activity, or to attend to the safety and welfare of the affected person. The nature of the action will be dependent upon the circumstances and seriousness of the reprisal.

¹ AS/NZS ISO 31000:2009 Risk Management or other reasonable risk assessment process or strategy

If a discloser considers detriment is occurring for having made a PID, they must report it immediately to their manager, providing the particulars of the alleged detriment.

Allegations of reprisal **must be referred** to ESU for assessment. If assessed as an alleged reprisal, ESU will report the matter to the CCC. An alleged reprisal is considered a PID in its own right, and suspected corrupt conduct, and will be, where appropriate, properly investigated and dealt with by the department.

As the department is not a prosecuting authority, the department can only deal with an alleged reprisal administratively.

The committing of a reprisal is an indictable offence, with a maximum penalty of 167 penalty units or two (2) years imprisonment. Therefore, a discloser may choose to report an alleged reprisal direct to the QPS.

A reprisal is also a tort. A person who commits a reprisal may be liable for damages where a civil claim is made. A court may grant an appropriate remedy, including exemplary damages, for a reprisal. A discloser should seek legal advice when wanting to bring proceedings for damages through a civil claim.

A person who is alleged to have committed a reprisal is innocent of the alleged conduct until proven otherwise through an administrative process by the department or by the courts.

Actions by officers who are not employees of the department, or where the conduct is committed privately, is not within the jurisdiction of the department. A discloser may wish to seek independent legal advice about options in this regard.

16 Vicarious liability

Vicarious liability means the department can be held liable for any detriment or suffering caused by reprisal action taken by one of its employees. The department can be held jointly liable with the person who took the reprisal action (i.e. they are both held responsible); or held singularly liable (i.e. the entity is held responsible instead of the person who took the reprisal action).

17 Appeals and injunctions

Where a public officer may, under an Act, appeal against or apply for a review of:

- disciplinary action taken against the officer
- the appointment or transfer of the officer or another public officer to a position as a public officer
- unfair treatment of the officer.

The public officer may appeal the action, or have the action set aside (whether or not the Act specifies grounds for the appeal or review) because it was the taking of a reprisal against the public officer.

There may also be a right to apply to the Queensland Industrial Relations Commission or the Supreme Court for an injunction about a reprisal in certain circumstances.

However, an application for an injunction cannot be made if a complaint has been made under the *Anti-Discrimination Act 1991* (Qld) about a reprisal. Individuals should seek independent legal advice regarding these options.

18 Relocation (transfer)

Section 47 of the PIDA allows for a public service employee to apply for relocation. The application must be made on the ground it is *likely* a reprisal will be taken against the employee if the employee continues in the employee's existing work location **and** the only practical way to substantially remove the danger of reprisal is to relocate the employee.

The application is taken to be an appeal against a decision by the department not to relocate the employee.

19 Support

The department will make available an appropriate and reasonable level of support to any person who has made a PID, including nominating a PID support officer for the discloser.

For public officers, a discloser's direct manager is usually well placed to act as a PID support officer and support the discloser, unless the manager is excluded from this role because of involvement in the PID disclosure or investigation. Alternatively, it may be more appropriate to appoint a PID support officer who is a manager in another area but able to be easily reached by the discloser.

The relevant appointment will be dependent upon about whom a PID has been made and working relationships in the workplace.

When selecting a PID support officer for a discloser, considerations include:

- Does the officer have appropriate authority and knowledge about the PID process (or can they acquire knowledge about the PID process)?
- Is the officer sufficiently removed from the current PID process?
- Does the officer have an established relationship with the discloser or do they have the ability to build necessary rapport? (Ideally, the support officer will be someone known and trusted by the discloser)
- What assistance will the discloser need (or are they likely to need) and is the proposed officer available and able to provide that assistance?

A PID support officer must not be involved in a process to deal with the PID, including investigation, or be a discloser or witness for the same PID process.

Taking into consideration any expressed reasonable requests by the discloser about the need for or type of support, appropriate and reasonable support may include:

- acknowledgement the making of the PID was the right thing to do
- referring the discloser to the department's Employee Assistance Program or arranging for other professional counselling for emotional or psychological support
- ensuring any acts or suspicions of detriment are reported and/or dealt with when known or raised by the discloser
- provide the discloser with regular updates about progress
- check on the discloser's wellbeing, where this is warranted, has been agreed to and is safe to do so
- offer a flexible working arrangement to allow performance to be maintained while managing mental wellbeing
- advising the discloser about PID resources or the contacts available to raise questions or concerns they may have

- where the health of the person who has made the disclosure becomes a concern, including mental wellbeing, liaising with the appropriate delegate responsible for employee wellbeing or workplace health and safety, or affirming the availability of psychological support through Employee Assistance.

Employees may also wish to seek support from their union or professional association or advisor, general practitioner or other health professional.

In the interest of confidentiality, a discloser must remember that the disclosure of information is protected under the PIDA and balance this appropriately when seeking support.

Support does not extend to sharing, exchanging or divulging PID information between co-workers and colleagues. A discloser who talks about a PID in the workplace may expose persons to an unnecessary risk of reprisal.

If the PID support officer cannot continue to fulfil the role, an alternate contact is to be identified if continued support and contact with a discloser is required.

19.1 Employee Assistance Program

The department's Employee Assistance Program provides free, confidential and professional counselling for a wide variety of personal and work-related issues that may adversely affect an employee. Accessing the service is voluntary through a self-referral system.

Disclosers who require counselling and/or emotional or psychological support, or a need to debrief in a confidential setting, are strongly encouraged to access Employee Assistance.

Further information, including contact details, can be accessed on QHEPS at:
<https://qheps.health.qld.gov.au/hr/staff-health-wellbeing/counselling-support>.

19.2 Manager assistance

Managers will provide assistance to employees in the workplace if they have made a PID and require some level of workplace support. On occasion, the capacity and capability of a manager to do so may be limited due to the nature of the support required or expected.

Departmental managers can access help and advice through the Manager Assist Program through Benestar to deal with the sometimes complex and varied support expectations associated with managing other people and teams.

Further information on the Manager Assist program can be accessed on QHEPS at:
<https://qheps.health.qld.gov.au/hr/staff-health-wellbeing/counselling-support/departments-of-health>.

19.3 Support for members of the public who are disclosers

Unlike employees, the department does not have the legislative authority to provide a member of the public with the same level of support it can provide to its employees, e.g. direct access to Employee Assistance. However, through the appropriate delegate, the department may be able to organise appropriate supportive counselling upon request for a discloser who is a member of the public.

This does not mitigate the requirement of the department to consider the risk of reprisal and other legislative provisions available to a member of the public who has made a PID.

Members of the public are encouraged to use their own support network including immediate family, professional associations, general practitioner or legal advisor.

20 Action taken – outcome advice

The PIDA requires a person who has made a PID to be given reasonable information when action has been taken to deal with the disclosure.

Reasonable information under the PIDA includes a description of the results of the action. The information must be given to the person **in writing** (e.g. letter, secure email etc.).

At the conclusion of taking action on the disclosure, the decision-maker or delegate must provide ESU a copy of the written outcome advice that has been provided to a discloser, along with other information on dealing with the PID as requested by ESU, for reporting and record keeping purposes.

A PID matter is considered 'closed' when the decision-maker determines an outcome, including no action. However, obligations regarding confidentiality and protection from reprisal continue beyond a PID matter having been dealt with and closed.

21 Outcome Reviews

The PIDA does not provide a mechanism for appeal, or review, against the **outcome** of a PID after action has been taken and the disclosure dealt with.

21.1 Internal review

If a person who has made a PID is dissatisfied with the outcome, the person may be able to request an internal review to the decision-maker, in the first instance.

The request must be made in writing within 14 days after the written outcome is received. The request must clearly state the reasons for dissatisfaction with the outcome, and not merely state a belief the decision made was unfair or unreasonable.

As a PID is a type of complaint, a complaints management process can be adopted for any internal review in accordance with the Employee complaints HR Policy E12.

21.2 External review

Where a discloser remains dissatisfied after internal review, the person may make a complaint to the Queensland Ombudsman about the administrative decisions made by the department. Usually the Queensland Ombudsman will only consider a complaint if it has already been considered by the department first. The Queensland Ombudsman's Office should be contacted direct for further information.

22 Reporting requirements

As part of the department's PID management and reporting obligations, the department must ensure a secure and confidential reporting system is in place to receive, assess and manage disclosures of information.

In accordance with the Standards, ESU will report particular (de-identified) details of PID information to the Queensland Ombudsman upon receiving a PID, when the level of risk changes, and upon closure of dealing with the PID.

To assist in meeting the department's mandatory reporting obligation, ESU will request particular information in relation to a disclosure of information from a decision-maker or delegate, or another departmental unit, if required. The information, when requested, must be provided.

23 Contact details

To report information, or make a complaint, about the conduct of the **Department of Health**, including the **Queensland Ambulance Service**, or any of its employees, please contact the department's Ethical Standards Unit:

Mail:	Email:	Telephone:
<i>Private and Confidential</i> Director Ethical Standards Unit Department of Health GPO Box 48 BRISBANE QLD 4001	CO_Complaints@health.qld.gov.au	(07) 3708 5414

Queensland Ombudsman

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

Telephone: 1800 068 908

Email: ombudsman@ombudsman.qld.gov.au

Crime and Corruption Commission

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

Telephone: (07) 3360 6060

Email: mailbox@ccc.qld.gov.au