



Public Interest Disclosure Policy and Procedures

The reporting of suspected misconduct within the Queensland public sector is fundamental to its ongoing integrity and health. The Queensland Sentencing Advisory Council is committed to creating and sustaining a positive ethical climate and accountable behaviour. Central to this is leadership that openly recognises the significant contribution staff make to our success and strongly encourages disclosure of unethical and fraudulent behaviour.

This policy establishes a system for managing public interest disclosures (PIDs) and provides guidance to those (whether a public officer or anyone else) who wish to make a PID, staff about whom a PID has been made, and officers responsible for the management of a PID investigation.

The *Public Sector Ethics Act 1994* and the *Public Interest Disclosure Act 2010* (PID Act) sets out the ethical framework for ensuring public sector misconduct can be identified and reported, and includes the protections in place for disclosers. The *Crime and Corruption Act 2001* provides an external reporting mechanism and an independent investigative and enforcement body.

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

This policy is based on the following central principles:

- Every employee of the Queensland public service has an ethical responsibility to report suspected corrupt conduct, maladministration, wasting of public funds, substantial and specific danger to public health and safety, the environment or a person with a disability, and reprisal action. This includes part-time members of government boards and committees.
- The principles of natural justice (procedural fairness) will apply to all investigations of matters which are the subject of public interest disclosures (PIDs). The Council is committed to treating PIDs appropriately and making the process fair for both the discloser and the person who is the subject of the disclosure.
- The rights of any person who is subject to, or is in some way associated with, a PID will be safeguarded.
- Managers and supervisors are to ensure employees are aware of their responsibilities in making a PID and are able to advise others of the appropriate reporting process.
- Individuals who make a PID will be appropriately supported and protected from any reprisal action.

Roles and responsibilities

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

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

Secretariat staff and Council members will be clear that staff have a responsibility to denounce unethical and inappropriate behaviour.

The Council Chair has responsibility under the PID Act to ensure that the Council has a procedure in place for managing PIDs and to keep a record of all PIDs made to it.

The Council Chair has appointed the Secretariat Director and the Manager, Research and Statistics, as the PID Coordinators for the Council. The role of the PID Coordinator is to:

- regularly review and update the PID policy
- inform and advise employees (including Council members) about their rights and responsibilities under the PID Act
- inform and advise others who may be able to make disclosures, such as members of the public
- educate Secretariat staff and Council members about the agency's responsibilities under the PID Act.

This policy refers to the 'responsible officer', who is the officer tasked with assessing and responding to any PID received by the Council. This may be the PID Coordinator, the Executive Director of DJAG's Ethical Standards unit, or a third party who has been asked to undertake the role of responsible officer.

What is a Public Interest Disclosure?

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

PIDs made by public officers

- Corrupt conduct, as defined in the *Crime and Corruption Act 2001*.
- Maladministration that adversely affects anyone's interest in a substantial and specific way.
- Substantial misuse of public resources.
- Conduct by another person causing a substantial and specific danger to public health or safety or to the environment.

PIDs made by any person

- A substantial and specific danger to the health or safety of a person with a disability (as defined in the *Disability Services Act 2006*).
- A substantial and specific danger to the environment.
- A reprisal taken against someone as a result of a PID.

Disclosures are still protected by the PID Act even if it is determined that they don't meet the threshold for a PID, provided the discloser honestly believed on reasonable grounds that the available information showed the conduct or danger concerned. This means you should disclose anything you think may be a PID. You do not need proof, as long as you have reasonable suspicion that it occurred. If in any doubt, seek advice from the PID Coordinator.

Where possible, be prepared to give information about:

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

Disclosures that are **not protected** by the PID Act, include:

- disclosures made to the media (except in the circumstances listed below)
- those made frivolously or vexatiously
- those which primarily question the relative merits of government or agency policy
- those that are made substantially to avoid disciplinary action.

It is an offence under the PID Act to intentionally give information that is false or misleading.

Section 20 of the PID Act permits the reporting of a PID to a journalist if a person has made a PID and the agency to which the disclosure was made:

- decided not to investigate or deal with the disclosure
- investigated the disclosure but did not recommend taking any action in relation to the disclosure, or

- did not notify the discloser within six months from when the disclosure was made, whether or not the disclosure was to be investigated or dealt with.

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

Complaints that do not reach the threshold of a PID, such as dissatisfaction about staff conduct that does not constitute corrupt conduct or maladministration, should be pursued by following either the Department of Justice and Attorney-General [Employee Complaints Policy](#) or [Client Complaint Management Policy](#).

To whom should I make the disclosure?

If you wish to make a PID or anyone makes a PID to you, the Council's preferred approach is that you immediately contact the PID Coordinator, who is the Secretariat Director or the Manager, Research and Statistics. You can, however, make a disclosure to any individual member of the Council, who will consult with you in determining who the responsible officer for the PID will be.

If you think these officers are not appropriate, you can make a disclosure to the Executive Director, Ethical Standards Unit, Department of Justice and Attorney-General.

Alternately, you can make your disclosure to:

- the Queensland Police Service
- the Crime and Corruption Commission, if it concerns corrupt conduct or suspicions of corrupt conduct
- the Queensland Ombudsman, if it concerns maladministration or a waste of public funds
- a Member of Parliament.

If the disclosure relates to the alleged conduct of:

- the Secretariat Director — make the disclosure to the Executive Director, Ethical Standards Unit, the Crime and Corruption Commission, the Queensland Ombudsman or a Member of Parliament
- the Director-General — make the disclosure to the Executive Director, Ethical Standards Unit, the Crime and Corruption Commission, the Queensland Ombudsman or a Member of Parliament, or
- the Executive Director, Ethical Standards Unit or staff of the Unit — make the disclosure to the Director-General, the Crime and Corruption Commission, the Queensland Ombudsman or a Member of Parliament.

How do I make a disclosure?

Your disclosure can be made either orally (by telephone or in person) or in writing, and anonymously if you prefer.

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

Where do I make a disclosure?

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

Name	Email contact	Postal address	Street address	Telephone
Anne Edwards Director PID Coordinator	anne.edwards@sentencingcouncil.qld.gov.au	GPO Box 2360 BRISBANE QLD 4001	Level 7 50 Ann Street BRISBANE QLD	07 3239 6464

Marni Manning, Manager, Research and Statistics PID Coordinator	marni.manning@sentencingco.uncil.qld.gov.au	GPO Box 2360 BRISBANE QLD 4001	Level 7 50 Ann Street BRISBANE QLD	07 3227 6401
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If you wish to make a disclosure to the **Department of Justice and Attorney-General (DJAG)** please use the following details (please call for an appointment if you wish to report in person):

Name	Email contact	Postal address	Street address	Telephone
Executive Director, Ethical Standards Unit DJAG	ethicalstandards@justice.qld.gov.au	GPO Box 69 BRISBANE QLD 4001	Level 3 Brisbane Magistrates Court Building 363 George Street, Brisbane	07 3225 2045

If you wish to make a disclosure to the **Crime and Corruption Commission**, please use the following details (please call for an appointment if you wish to report in person).

Name	Email contact	Postal address	Street address	Telephone
Director, Complaints Section Crime and Corruption Commission	mailbox@ccc.qld.gov.au	GPO Box 3123 BRISBANE QLD 4001	Level 2, North Tower Green Square 515 St Pauls Terrace Fortitude Valley, Brisbane	07 3360 6060 1800 061 611 (toll free outside Brisbane)

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

The Council will ensure that anyone that makes a PID is provided with support and protection from any potential reprisal action. The responsible officer will take your concerns seriously and ensure your privacy and confidentiality (as far as possible) throughout the appropriate process.

If you are an employee (or Council member), you are free to access the Employee Assistance Program. The responsible officer can assist you to access this service. The Employee Assistance Program provides free, professional counselling and well-being support to all employees and their immediate family members (including partner, child, or other family member residing with the employee). The service provider's telephone number is 1800 604 640.

Any person who makes a PID, whether an employee or any other person, can contact the Queensland Ombudsman, which can provide information and advice for people who are considering making or have made a PID about corrupt conduct.

The level of support afforded to those making disclosures will depend on an assessment of their needs over the course of the matter (see section 7).

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

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

making a PID or because of a belief that an employee has made or may make a PID in accordance with the PID Act.

If you make a disclosure, you are reminded that the matter must remain confidential and you are directed to maintain the integrity of the process by not discussing it with your work colleagues or others unconnected with it. Section 65 of the PID Act creates a penalty if a person recklessly discloses information provided under the PID Act. Please note that the confidentiality provision will not preclude you from sharing this information with a union representative/support person.

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

For more information on how to make a PID read *Thinking about blowing the whistle*, a guide for individuals working in the public sector. This is available on the website of the Crime and Corruption Commission (www.ccc.qld.gov.au).

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

The Council will uphold the rights of any person who is the subject of, or is in some way associated with a disclosure. As a person against whom a PID is made, you are entitled to confidentiality and the presumption of innocence.

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

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

If you are a person against whom a PID has been made, you are reminded that by participating in an investigation of a PID, staff are performing their duty in accordance with the Code of Conduct, and should not be treated adversely as a result. Any substantiated allegations of adverse treatment of staff on these grounds may result in disciplinary action being taken against you.

The PID management process

The following steps outline the assessment and investigation process that will be undertaken by the Council following the receipt of a PID.

1. The responsible officer receiving the PID (Secretariat Director; Manager, Research and Statistics, or Executive Director, Ethical Standards Unit), will make an assessment to determine if:
 - the disclosure is a matter about which a PID can be made
 - the disclosure meets either the subjective or objective test set out in the PID Act
 - the disclosure has been made to an individual or entity who may receive a PID
 - whether the disclosure is to be referred to another agency for review and investigation, such as the Crime and Corruption Commission.
2. The responsible officer (Secretariat Director; Manager, Research and Statistics, or Executive Director, Ethical Standards Unit) will conduct a risk assessment to determine the support needs of the discloser, the risk of reprisal to the discloser, and any risk that the confidentiality of the disclosure or person making the PID may be compromised. A plan will be established by the responsible officer to respond to the level and nature of the risks identified, which will ensure risks can be mitigated as far as possible over the course of the investigation and following the resolution of the PID. If the risk of reprisal is determined to be high, a specific protection plan will be put in place, in consultation with the discloser and any other relevant stakeholders.

3. Where it has been determined that a discloser requires support, the responsible officer will:
 - Acknowledge that making the PID was the right thing to do
 - Make it clear that the Council will support the discloser
 - Appoint an appropriate person, separate to the investigative function, to oversee and ensure the discloser has access to adequate support and protection from reprisal
 - Regularly check on the discloser's wellbeing
 - Liaise with DJAG's Human Resources unit if the health and wellbeing of the discloser becomes a concern.
4. If the matter requires investigation, the PID Coordinator (Secretariat Director), will be responsible, unless the PID relates to the conduct of the PID Coordinator, in which case the responsible officer will be the Executive Director, Ethical Standards Unit. An investigation may be conducted internally within the Council, or an external investigator may be engaged.
5. Once the investigation is completed and relevant agencies and other decision makers consulted, corrective or disciplinary action will be taken by the Council or by DJAG, where appropriate.
6. The responsible officer will determine the likely timeframe for resolution of the PID, and will inform the discloser about:
 - the estimated timeframes involved in resolving the PID, and how and when the discloser will be advised of progress and any outcomes of the investigation (by agreement with the discloser)
 - the likely involvement of the discloser in the investigation process
 - the importance of maintaining confidentiality during the investigation and after the PID has been resolved
 - the steps that the Council will take to ensure the information disclosed, and the identity of the discloser, will remain confidential as much as possible
 - the protections that are afforded to disclosers under the PID Act
 - who to contact if the discloser requires further information, or if they are concerned about reprisals.

Assistance and guidance from DJAG's Human Resources or Ethical Standards units will be sought by the Council as necessary.

Complaints made to other agencies (e.g. to the Crime and Corruption Commission) regarding the conduct of Secretariat staff and Council members, staff from the DJAG Ethical Standards Unit or by the Director-General will follow that agency's assessment and investigation process.

How will any potential reprisal be managed?

A reprisal is defined by the PID Act as any attempt to cause detriment to another person in the belief that:

- the other person or someone else has made a PID
- the other person or someone else is, has been, or intends to be involved in a proceeding under the PID Act against any person.

It is an offence under the PID Act to take reprisal action against someone who has made a PID.

If you believe you have been disadvantaged or subjected to a reprisal for making a disclosure, you should raise the issue with the responsible officer.

The Council will take all action to minimise reprisals, and will monitor the workplace to ensure all officers are safe at work. The safety of a discloser or affected third party will be prioritised, and any risk strategy in place will be reviewed and strengthened if required.

Under section 47 of the PID Act, a public service employee has a right to apply for relocation if:

- it is likely a reprisal will be taken against the officer if they continue in the existing work location
- the only practical way to remove or substantially remove the danger of a reprisal is to relocate the employee.

A decision not to relocate an employee who has made an application under section 47 of the PID Act is a reviewable decision.

Referring the PID to another agency

In certain circumstances, the responsible officer is obliged to refer matters to another agency. This includes:

- matters of suspected corrupt conduct, which must be referred to the Crime and Corruption Commission under the *Crime and Corruption Act 2001*
- if the conduct reported amounts to a criminal offence, which should be referred to the Queensland Police Service or the Crime and Corruption Commission.

Section 31 of the PID Act enables the Council to refer a disclosure to another public sector entity (the referral entity) for investigation, if the disclosure is about:

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

However, the responsible officer must not refer a disclosure if there is an unacceptable risk of a reprisal being taken. To determine whether such a risk exists, the responsible officer must consult with the discloser, unless it is not possible to do so.

These procedures do not override an obligation under another law to report a matter, such as the duty of the responsible officer to report corrupt conduct.

What action may be taken as a result of a disclosure?

The PID Act provides that an agency may 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
- the agency reasonably considers the disclosure should be dealt with by another appropriate process
- the age of the information that is the subject of the disclosure makes it impracticable to investigate
- the entity reasonably considers that the disclosure is trivial or vexatious and does not warrant investigation, and that dealing with the disclosure would substantially and unreasonably divert agency resources away from the performance of its functions
- another entity that has jurisdiction to investigate the disclosure has notified the agency that investigation of the disclosure is not warranted.

Other action that may be taken will depend on the seriousness of the alleged conduct, however in the first instance, the Council will refer the disclosure to the Ethical Standards Unit or the Crime and Corruption Commission for their investigation.

Right of review

If the Council decides to take no further action following receipt of the PID, written reasons will be provided to the discloser within 14 days of receipt of a written disclosure. A discloser may appeal to the Council Chair within 28 days of receiving the written decision to take no further action.

If a discloser is not satisfied with the outcome of the management of the PID, the discloser can request further information from the Council or may contact the Ethical Standards Unit, or the Queensland Ombudsman to request a review of the matter (natural justice).

The discloser may also wish to seek independent legal advice or apply to the Supreme Court for a review of the decision under the *Judicial Review Act 1991*.

Confidentiality

Under section 65 of the PID Act it is an offence for a person to make a record of, or intentionally or recklessly disclose confidential information received in the administration of the Act to anyone, except where authorised to do so by the Act.

Circumstances in which the Council may justifiably disclose information are:

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

The Council will consult with the discloser if confidentiality has been, or may reasonably be expected to be, compromised. To ensure effective management of individual situations, the appropriate officer (Secretariat Director; Manager, Research and Statistics or Executive Director, Ethical Standards Unit), will work out an appropriate plan, which involves:

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

Strict confidentiality will be maintained at all times in relation to reporting and investigating PIDs. All Council records of PIDs will be securely stored in a manner which protects the personal details of all officers involved.

Record-keeping and reporting of public interest disclosures

The Council Chair will maintain records of any public interest disclosure made to the Council, which will include:

- the name of the person making the disclosure (if this is known), as well as the status of the discloser (e.g. Secretariat staff, Council member, member of the public)
- the information disclosed, particularly the name, status (Secretariat staff or Council member) and location of the subject officer
- the relationship, if any, between the discloser and the subject officer
- the involvement of any external individual or agency
- the action taken to minimise any risk of reprisal
- the date any investigation commenced, completed and closed
- the outcome of the assessment and/or investigation
- when the outcome was advised to the discloser
- if no action was taken, the reason for the decision
- details about any other legal processes associated with the disclosure.

The PID Coordinator will provide anonymous information about any PID received by the Council to the office of the Queensland Ombudsman, which performs an oversight role for PIDs across the Queensland Government.