

# Public Interest Disclosure Procedure 2021

## Policy Statement

The Prostitution Licensing Authority (the Authority) is committed to fostering an ethical, transparent culture. In pursuit of this, the Authority values the disclosure of information about suspected wrongdoing in the public sector so that it can be properly assessed and, if necessary, appropriately investigated.

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. The Authority will provide support to an employee or others who make disclosures about matters in the public interest. This Procedure demonstrates this commitment and ensures that practical and effective procedures are implemented which comply with the requirements of the *Public Interest Disclosure Act 2010* (PID Act).

## Objective

By complying with the PID Act, the Authority will:

- promote the public interest by facilitating public interest disclosures (PIDs) of wrongdoing
- ensure that PIDs are properly assessed and, where appropriate, properly investigated and dealt with
- ensure appropriate consideration is given to the interests of persons who are the subject of a PID
- ensure protection from reprisal is afforded to persons making PIDs.

As required under the PID Act, the Executive Director of the Office of the Prostitution Licensing Authority will implement procedures to ensure that:

- any public officer who makes a PID is given appropriate support
- PIDs made to the Authority are properly assessed and, where appropriate, properly investigated and dealt with
- appropriate action is taken in relation to any wrongdoing which is the subject of a PID
- a management program for PIDs made to the standard issued by the Queensland Ombudsman is developed and implemented
- public officers who make PIDs are offered protection from reprisal by the Authority.

The Authority Public Interest Disclosure Procedure is available for public viewing at the Prostitution Licensing Authority website.

The Public Interest Disclosure Procedure will be reviewed annually and updated as required to ensure it meets the requirements of the PID Act and the standard issued by the Queensland Ombudsman.

## PID Management Program

The Executive Director has overall responsibility for ensuring that the Authority develop, implement and maintain a PID management program. The Authority PID management program encompasses:

- commitment to encouraging the internal reporting of wrongdoing
- training and awareness about PIDs for senior management and other staff who may receive or manage PIDs, disclosers or workplace issues relating to PIDs
- the appointment of an officer to be responsible for issues related to the management of PIDs
- ensuring effective systems and procedures are in place so that issues and outcomes from PIDs inform improvements to service delivery, business processes and internal controls
- regular review of the Public Interest Disclosure Procedure and evaluation of the effectiveness of the PID management program.

The Executive Director has designated the following roles and responsibilities for managing PIDs within the Authority:

Role	Responsibility	Officer
<b>PID Coordinator</b>	<ul style="list-style-type: none"> <li>• principal contact for PID issues within the Authority</li> <li>• document and manage implementation of PID management program</li> <li>• review and update PID procedure annually</li> <li>• maintain and update internal records of PIDs received</li> <li>• report data on PIDs to Queensland Ombudsman</li> <li>• assess PIDs received</li> <li>• provide acknowledgment of receipt of PID to discloser</li> <li>• undertake risk assessments in consultation with disclosers and other relevant officers</li> <li>• conduct investigation of information in PID and determine the outcome of the matter, in consultation with the Executive Director</li> <li>• liaise with other agencies about referral of PIDs</li> <li>• allocate PID Support Officer</li> </ul>	Principal Policy Officer Email: plaadmin@justice.qld.gov.au Phone: 3858 9500
<b>PID Support Officer</b>	<p>The responsibilities may include:</p> <ul style="list-style-type: none"> <li>• provision of advice and information to the discloser on the PID procedure</li> <li>• provide referrals to other sources of advice or support as required</li> </ul>	The Principal Advisor Compliance, or an appropriate person, as determined by the PID Coordinator.

	<ul style="list-style-type: none"> <li>• facilitate updates on progress of investigation</li> <li>• proactively contact discloser to check on their welfare throughout PID management process.</li> </ul> <p>Similar support may be provided to other participants involved in an investigation. If you are involved in an investigation and need support, please contact the PID Coordinator.</p>	
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## What is a Public Interest Disclosure?

Under the PID Act, any person can make a disclosure about a:

- substantial and specific danger to the health or safety of a person with a disability
- substantial and specific danger to the environment
- reprisal because of a belief that a person has made or intends to make a disclosure.

In addition, public officers can make a disclosure about the following public interest matters:

- corrupt conduct, including fraud and corruption
- maladministration that adversely affects a person’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 to the environment.

A discloser can have either a ‘reasonable belief’ that wrongdoing has occurred or provide evidence which tends to show the wrongdoing has occurred.

A disclosure amounts to a PID and is covered by the PID Act even if the:

- discloser reports the information as part of their duties – such as an auditor reporting a fraud or an occupational health and safety officer reporting a safety breach
- disclosure is made anonymously – the discloser is not required to give their name or any identifying information
- discloser has not identified the material as a PID – it is up to the agency to assess information received and decide if it is a PID
- disclosure is unsubstantiated following investigation – the discloser is protected when the information they provide is assessed as a PID, whether or not it is subsequently investigated or found to be substantiated.

## Why make a PID?

Employees who are prepared to speak up about public sector misconduct, wastage of public funds, suspected unlawful activity or danger to health, safety or the environment can be the most important sources of information to identify and address problems in public sector administration.

The Authority supports the disclosure of information about wrongdoing because:

- implementing systems for reporting and dealing with wrongdoing contributes to the integrity of the Authority
- the outcomes of PIDs can include improvements to systems that prevent fraud and other economic loss to the Authority
- the community's trust in public administration is strengthened by having strong processes in place for reporting wrongdoing.

When making a PID, the discloser receives the protections provided under the PID Act, including:

- confidentiality – the discloser's name and other identifying information will be protected to the extent possible
- protection against reprisal – the discloser is protected from unfair treatment by the Authority and the Office of the Prostitution Licensing Authority as a result of making the PID
- immunity from liability – the discloser cannot be prosecuted for disclosing the information but is not exempt from action if they have engaged in wrongdoing
- protection from defamation – the discloser has a defence against an accusation of defamation by any subject officer.

## Who can a PID be disclosed to?

A PID must be made to the 'proper authority' to receive disclosures of the type being made.

Disclosers are encouraged to make a disclosure to an appropriate officer of the Authority first. If the matter is not resolved, or the discloser is concerned about confidentiality, the disclosure may be made to another appropriate agency.

Who to contact **within the Authority**:

- any person (including employees) can make a disclosure to the PID Coordinator
- staff of the Office of the Prostitution Licensing Authority may also make a disclosure to their supervisor.

Any staff member of the Office of the Prostitution Licensing Authority who receives a disclosure that may be a PID must advise the PID Coordinator.

**Other agencies that can receive PIDs:**

Disclosures can be made to an agency that has a responsibility for investigating the information disclosed:

- Crime and Corruption Commission (CCC) for disclosures about corrupt conduct including reprisal
- Queensland Ombudsman for disclosures about maladministration
- Queensland Audit Office for disclosures about a substantial misuse of resources
- Department of Children, Youth Justice and Multicultural Affairs for disclosures about danger to the health and safety of a child or young person with a disability
- Department of Communities, Disability Services and Seniors for disclosures about danger to the health and safety of a person with a disability
- Office of the Public Guardian for disclosures about danger to the health and safety of a person with a disability
- Department of Environment and Science disclosures about danger to the environment

- a Member of the Legislative Assembly (MP) for any wrongdoing or danger
- the Chief Judicial Officer of a court or tribunal in relation to a disclosure about wrongdoing by a judicial officer.

A disclosure can also be made **to a journalist** if the following conditions have been met:

- a valid PID was initially made to a proper authority, and
- the proper authority:
  - decided not to investigate or deal with the disclosure, or
  - investigated the disclosure but did not recommend taking any action, or
  - failed to notify the discloser within six months of making the disclosure whether or not the disclosure was to be investigated or otherwise dealt with.

A person who makes a disclosure to a journalist in these circumstances is protected under the PID Act. However, disclosers should be aware that journalists are not bound under the confidentiality provisions of section 65 of the PID Act.

## How to make a PID

A discloser can make a PID in any way, including anonymously, either verbally or in writing. To assist in the assessment, and any subsequent investigation of a PID, disclosers are requested to:

- provide contact details (this could be an email address that is created for the purpose of making the disclosure or a telephone number)
- provide as much information as possible about the suspected wrongdoing, including:
  - who was involved
  - what happened
  - when it happened
  - where it happened
  - whether there were any witnesses, and if so, who they are
  - any evidence that supports the PID, and where the evidence is located
  - any further information that could help investigate the PID
- provide this information in writing.

## Deciding whether a matter is a PID

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. Where appropriate, guidance will be sought from the Ombudsman's office.

Mere disagreements over policy do not meet the threshold for a PID under the PID Act.

It is an offence under the PID Act to intentionally give false or misleading information intending it be acted on as a PID. Employees may be subject to disciplinary action for intentionally giving false or misleading information in a PID, or during an investigation into a PID.

## Assessing a PID

The disclosure will be assessed in accordance with the PID Act, the PID Standard, the Prostitution Licensing Authority Public Interest Disclosure Procedure and any other relevant procedure(s). Where appropriate, guidance will be sought from the Ombudsman's office.

Once the matter has been assessed as a PID, the Authority will advise the discloser:

- that their information has been received and assessed as a PID
- the action to be taken by the Authority in relation to the disclosure, which could include referring the matter to an external authority, or investigating
- the likely timeframe involved
- the name and contact details of the Authority support officer they can contact for updates or advice of the discloser's obligations regarding confidentiality
- the protections the discloser has under the PID Act
- the commitment of the Authority to keep appropriate records and maintain confidentiality, except where permitted under the PID Act
- how updates regarding intended actions and outcomes will be provided to the discloser
- contact details for the Employee Assistance Program.

If the PID has been made anonymously and the discloser has not provided any contact details, the Authority will not be able to acknowledge the PID or provide any updates.

Upon receiving a PID, the Authority will conduct a risk assessment to assess the likelihood of the discloser suffering reprisal action as a result of having made the disclosure. This assessment will take into account the actual and reasonably perceived risk of the discloser suffering detriment, and will include consultation with the discloser, to the extent practicable.

Consistent with the assessed level of risk, the Authority will develop and implement a risk management plan and arrange any reasonably necessary support or protection for the discloser.

## Referring a PID

If the Authority decides there is another proper authority that is better able to deal with the PID, the PID may be referred to that agency. This may be because:

- the PID concerns wrongdoing by that agency or an employee of that agency
- the agency has the power to investigate or remedy the matter.

Before referring the PID to another agency, the Authority will conduct a risk assessment, and will not proceed with the referral if there is an unacceptable risk of reprisal.

It may also be necessary to refer the PID to another agency because of a legislative obligation. For example, refer a matter to the Crime and Corruption Commission where there is a reasonable suspicion that the matter involves or may involve corrupt conduct (as required by section 38 of the *Crime and Corruption Act 2001*).

The confidentiality obligations of the PID Act permit appropriate officers of the Authority to communicate with another agency about the referral of a PID. Officers will exercise discretion in their contacts with any other agency.

The discloser will be advised of the action taken by the Authority.

## **Declining to take action on a PID**

Under the PID Act, the Authority may decide not to investigate or deal with a PID in various circumstances, including:

- the information disclosed has already been investigated or dealt with by another process
- the information disclosed should be dealt with by another process
- the age of the information makes it impractical to investigate
- the information disclosed is too trivial and dealing with it would substantially and unreasonably divert the Authority from the performance of its functions
- another authority with jurisdiction to investigate the information has informed the Authority that an investigation is not warranted.

If a decision is made not to investigate or deal with a PID, the Authority will give the discloser written reasons for that decision.

If the discloser is dissatisfied with the decision, they can request a review by writing to the Executive Director within 28 days of receiving the written reasons for the decision. If they are not happy with the outcome, they can contact the Queensland Ombudsman to request a review of the matter.

## **Investigating a PID**

If a decision is made to investigate a PID, this will be done with consideration for the:

- principles of natural justice
- obligation under the PID Act to protect confidential information
- obligation under the PID Act to protect officers from reprisal
- interests of subject officers.

If as a result of investigation, the information about wrongdoing provided in the PID is substantiated, appropriate action will be taken.

Where the investigation does not substantiate wrongdoing, the Authority will consider review of its systems, policies and procedures to identify whether there are improvements that can be made and consider if staff training is required, where necessary.

## **Confidentiality**

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

While the Authority will make every attempt to protect confidentiality, a discloser's identity may need to be disclosed:

- for full investigation of the PID
- under a legal requirement

- to provide safety or welfare
- for natural justice / procedural fairness (after considering the risk of reprisal)
- under right to information / information privacy legislation.

The Authority will ensure that communication with all parties involved will be arranged discreetly to avoid identifying the discloser wherever possible.

Disclosers should be aware that while the Authority will make every attempt to keep their details confidential, it cannot guarantee that others will not try to deduce their identity.

Staff breaches of confidentiality may attract disciplinary action.

## Organisational Support for Disclosers

Disclosers should not suffer any form of detriment as a result of making a PID. In the event of reprisal action being alleged or suspected, the Authority will:

- attend to the safety of disclosers or affected third parties as a matter of priority
- review its risk assessment and any protective measures needed to mitigate any further risk of reprisal
- manage any allegation of a reprisal as a PID in its own right.

Staff of the Office of the PLA are able to access professional counselling and well-being support through the Employee Assistance Program.

Making a PID does not prevent reasonable management action. That means that the discloser will continue to be managed in accordance with normal, fair and reasonable management practices during and after the handling of the PID.

## Rights of subject officers

The Authority acknowledges that for officers who are the subject of a PID the experience may be stressful. The Authority will protect their rights by:

- assuring them that the PID will be dealt with impartially, fairly and reasonably in accordance with the principles of natural justice
- confirming that the PID is an allegation only until information or evidence obtained through an investigation substantiates the allegation
- providing them with information about their rights and the progress and outcome of any investigation
- referring them to the Employee Assistance Program for support.

Information and support will be provided to the subject officer until the matter is finalised.

## Record-keeping

In accordance with its obligations under the PID Act and the *Public Records Act 2002*, the Authority will ensure that:

- accurate data is collected about the receipt and management of PIDs
- anonymised data is reported to the Office of the Queensland Ombudsman in their role as the oversight agency, through the PID reporting database.

## Definitions (meanings of words and acronyms used in this Procedure)

Term	Definition
Administrative action	<p>(a) means any action about a matter of administration, including, for example:</p> <ul style="list-style-type: none"> <li>(i) a decision and an act; and</li> <li>(ii) a failure to make a decision or do an act, including a failure to provide a written statement of reasons for a decision; and</li> <li>(iii) the formulation of a proposal or intention; and</li> <li>(iv) the making of a recommendation, including a recommendation made to a Minister; and</li> <li>(v) an action taken because of a recommendation made to a Minister; and</li> </ul> <p>(b) does not include an operational action of a police officer or of an officer of the Crime and Corruption Commission.</p>
Confidential information	<p>(a) includes –</p> <ul style="list-style-type: none"> <li>(i) information about the identity, occupation, residential or work address or whereabouts of a person – <ul style="list-style-type: none"> <li>(A) who makes a public interest disclosure; or</li> <li>(B) against whom a public interest disclosure has been made; and</li> </ul> </li> <li>(ii) information disclosed by a public interest disclosure; and</li> <li>(iii) information about an individual's personal affairs; and</li> <li>(iv) information that, if disclosed, may cause detriment to a person; and</li> </ul> <p>(b) does not include information publicly disclosed in a public interest disclosure made to a court, tribunal or other entity that may receive evidence under oath, unless further disclosure of the information is prohibited by law.</p>
Corrupt conduct	<p>As defined in section 15 of the <i>Crime and Corruption Act 2001</i>:</p> <p>(1) <b>Corrupt conduct</b> means conduct of a person, regardless of whether the person holds or held an appointment, that:</p> <ul style="list-style-type: none"> <li>(a) adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of – <ul style="list-style-type: none"> <li>(i) a unit of public administration; or</li> <li>(ii) a person holding an appointment; and</li> </ul> </li> <li>(b) results, or could result, directly or indirectly, in the performance of functions or the exercise of powers mentioned in paragraph (a) in a way that – <ul style="list-style-type: none"> <li>(i) is not honest or is not impartial; or</li> <li>(ii) involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or</li> <li>(iii) involves a misuse of information or material acquired in or in connection with the performance of functions or the exercise of powers of a person holding an appointment; and</li> </ul> </li> <li>(c) would, if proved, be –</li> </ul>

	<ul style="list-style-type: none"> <li>(i) a criminal offence; or</li> <li>(ii) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment.</li> </ul> <p>(2) <b>Corrupt conduct</b> also means conduct of a person, regardless of whether the person holds or held an appointment, that –</p> <ul style="list-style-type: none"> <li>(a) impairs, or could impair, public confidence in public administration; and</li> <li>(b) involves, or could involve, any of the following – <ul style="list-style-type: none"> <li>(i) collusive tendering</li> <li>(ii) fraud relating to an application for a licence, permit or other authority under an Act with a purpose or object of any of the following (however described) – <ul style="list-style-type: none"> <li>(A) protecting health or safety of persons;</li> <li>(B) protecting the environment;</li> <li>(C) protecting or managing the use of the State's natural, cultural, mining or energy resources;</li> </ul> </li> <li>(iii) dishonestly obtaining, or helping someone to dishonestly obtain, a benefit from the payment or application of public funds or the disposition of State assets;</li> <li>(iv) evading a State tax, levy or duty or otherwise fraudulently causing a loss of State revenue;</li> <li>(v) fraudulently obtaining or retaining an appointment; and</li> </ul> </li> <li>(c) would, if proved, be – <ul style="list-style-type: none"> <li>(i) a criminal offence; or</li> <li>(ii) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment.</li> </ul> </li> </ul>
Detriment	<p>Includes –</p> <ul style="list-style-type: none"> <li>(a) personal injury or prejudice to safety; and</li> <li>(b) property damage or loss; and</li> <li>(c) intimidation or harassment; and</li> <li>(d) adverse discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business; and</li> <li>(e) financial loss; and</li> <li>(f) damage to reputation, including, for example, personal, professional or business reputation.</li> </ul>
Disability	<p>As defined in section 11 of the <i>Disability Services Act 2006</i>:</p> <p>(1) A <b>disability</b> is a person's condition that –</p> <ul style="list-style-type: none"> <li>(a) is attributable to – <ul style="list-style-type: none"> <li>(i) an intellectual, psychiatric, cognitive, neurological, sensory or physical impairment; or</li> <li>(ii) a combination of impairments mentioned in subparagraph (i); and</li> </ul> </li> </ul>

	<p>(b) results in –</p> <p>(i) a substantial reduction of the person’s capacity for communication, social interaction, learning, mobility or self care or management; and</p> <p>(ii) the person needing support.</p> <p>(2) For subsection (1), the impairment may result from an acquired brain injury.</p> <p>(3) The disability must be permanent or likely to be permanent.</p> <p>(4) The disability may be, but need not be, of a chronic episodic nature.</p>
Discloser	A person who makes a disclosure in accordance with the Public Interest Disclosure Act.
Employee	Of an entity, includes a person engaged by the entity under a contract of service.
Investigation	For the purposes of this procedure, investigation includes any enquiry undertaken to establish whether the information provided in a PID can be substantiated, including a review or audit.
Journalist	A person engaged in the occupation of writing or editing material intended for publication in the print or electronic news media.
Maladministration	<p>As defined in schedule 4 of the Public Interest Disclosure Act, maladministration is administrative action that –</p> <p>(a) was taken contrary to law; or</p> <p>(b) was unreasonable, unjust, oppressive, or improperly discriminatory; or</p> <p>(c) was in accordance with a rule of law 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</p> <p>(d) was taken –</p> <p>(i) for an improper purpose; or</p> <p>(ii) on irrelevant grounds; or</p> <p>(iii) having regard to irrelevant considerations; or</p> <p>(e) was an action for which reasons should have been given, but were not given; or</p> <p>(f) was based wholly or partly on a mistake of law or fact; or</p> <p>(g) was wrong.</p>
Natural justice	Also referred to as ‘procedural fairness’, natural justice 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>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"> <li>• avoid bias</li> <li>• give a fair hearing</li> <li>• act only on the basis of logically probative evidence.</li> </ul>
Organisational support	<p>For the purposes of this procedure, organizational support may include actions such as, but not limited to:</p> <ul style="list-style-type: none"> <li>• advising disclosers about agency resources available to handle any concerns they have as a result of making their disclosure</li> <li>• appointing a support officer to assist the discloser through the process</li> <li>• referring the discloser to the agency’s Employee Assistance Program or arranging for other professional counselling</li> <li>• generating support for the discloser in their work unit where appropriate</li> <li>• ensuring that any suspicions of victimization or harassment are dealt with</li> <li>• maintaining contact with the discloser.</li> </ul>
Proper authority	A person or organisation that is authorised under the Public Interest Disclosure Act to receive disclosures.
Public officer	A public officer, of a public sector entity, is an employee, member or officer of the entity.
Reasonable belief	A view which is objectively fair or sensible.
Reasonable management action	<p>Action taken by a manager in relation to an employee, includes any of the following taken by the manager –</p> <ul style="list-style-type: none"> <li>(a) a reasonable appraisal of the employee’s work performance</li> <li>(b) a reasonable requirement that the employee undertake counselling</li> <li>(c) a reasonable suspension of the employee from the employment workplace</li> <li>(d) a reasonable disciplinary action</li> <li>(e) a reasonable action to transfer or deploy the employee</li> <li>(f) a reasonable action to end the employee’s employment by way of redundancy or retrenchment</li> <li>(g) a reasonable action in relation to an action mentioned in paragraphs (a) to (f)</li> <li>(h) a reasonable action in relation to the employee’s failure to obtain a promotion, reclassification, transfer or benefit, or to retain a benefit, in relation to the employee’s employment.</li> </ul>
Reprisal	<p>Under section 40 of the Public Interest Disclosure Act, a ‘reprisal’ is causing, attempting to cause or conspiring to cause detriment to another person in the belief that they or someone else:</p> <ul style="list-style-type: none"> <li>• has made or intends to make a disclosure; or</li> </ul>

	<ul style="list-style-type: none"> <li>• has been or intends to be involved in a proceeding under the Act against any person.</li> </ul> <p>Reprisal under the Public Interest Disclosure Act is a criminal offence and investigations may be undertaken by the Queensland Police Service.</p>
Subject officer	An officer who is the subject of allegations of wrongdoing made in a disclosure.
Substantial and specific	<p>Substantial means 'of a significant or considerable degree'. It must be more than trivial or minimal and have some weight or importance.</p> <p>Specific means 'precise or particular'. This refers to conduct or detriment that is able to be identified or particularised, as opposed to broad or general concerns or criticisms.</p>
the Authority	The Prostitution Licensing Authority
The Office of the Prostitution Licensing Authority	Section 109 of the <i>Prostitution Act 1999</i> establishes the Office of the Prostitution Licensing Authority, consisting of the Executive Director and the staff of the office.

## Relevant Legislation

*Public Interest Disclosure Act 2010*

*Public Sector Ethics Act 1994*

*Crime and Corruption Act 2001*

*Disability Services Act 2006*

*Ombudsman Act 2001*

*Public Records Act 2002*

The Public Sector Ethics Act and the Public Interest Disclosure Act provide the ethical framework and detail the protection principles. The Crime and Corruption Act provides an external reporting mechanism and an independent investigative and enforcement body.