

Public Interest Disclosure Procedure

1. Introduction/Policy Statement

The Mental Health Review Tribunal (**Tribunal**) (meaning both the tribunal and its administrative office) is committed to fostering an ethical, transparent culture. In pursuit of this, the Tribunal values the disclosure of information about suspected wrongdoing in the public sector so that it can be properly assessed and, if necessary, appropriately investigated. The Tribunal 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* (Qld) (**PID Act**).

2. Objective/Purpose

By complying with the PID Act, the Tribunal 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 President will implement this Procedure to ensure that:

- any public officer who makes a PID is given appropriate support
- PIDs made to the Tribunal 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 Tribunal, consistent with the standard issued by the Queensland Ombudsman, is developed and implemented
- public officers who make PIDs are offered protection from reprisal by the Tribunal or other public officers of the Tribunal.

The Tribunal's Public Interest Disclosure Procedure is available for public viewing at the Tribunal's website (www.mhrt.qld.gov.au). The Public Interest Disclosure Procedure will be reviewed and updated as required to ensure it meets the requirements of the PID Act and the standard issued by the Queensland Ombudsman.

3. PID Management Program

The President has overall responsibility for ensuring that the Tribunal develops, implements and maintains a PID management program. The Tribunal's PID management program encompasses:

- commitment to encouraging the internal reporting of wrongdoing
- senior management endorsement of the value to the Tribunal of PIDs and the proper management of PIDs
- a communication strategy to raise awareness among employees about PIDs and the Tribunal's PID procedure
- a training strategy to give employees access to training about how to make a PID, information on the support available to a discloser, and advice on how PIDs will be managed
- specialist 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 the Executive 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 this Procedure and evaluation of the effectiveness of the PID management program.

The President has designated the following roles and responsibilities for managing PIDs within the Tribunal:

Role:	Responsibilities:	Officer:
PID Coordinator	<ul style="list-style-type: none"> • principal contact for PID issues within the Tribunal • document and manage implementation of PID management program • review and update PID procedure as required • maintain and update internal records of PIDs received • report data on PIDs to Queensland Ombudsman • assess PIDs received • provide acknowledgment of receipt of PID to discloser • undertake risk assessments in consultation with disclosers and other relevant officers • liaise with other agencies about referral of PIDs • allocate Investigator and Support Officer to PID matter 	Executive Officer (07) 3338 8314
PID Support Officer	<ul style="list-style-type: none"> • provide advice and information to discloser on the Tribunal PID procedure • provide personal support and referral to other sources of advice or support as required • facilitate updates on progress of investigation • proactively contact discloser throughout PID management process 	An appropriate PID Support Officer will be appointed for each PID investigated.
Investigator	<ul style="list-style-type: none"> • conduct investigation of information in PID in accordance with terms of reference • prepare report for delegated decision-maker 	An appropriate internal or external investigator will be appointed for each PID investigated depending upon the type of disclosure and other relevant considerations.
Delegated decision-maker	<ul style="list-style-type: none"> • review investigation report and determine whether alleged wrongdoing is substantiated 	An appropriate decision-maker will be appointed for each PID investigated.

4. 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 Tribunal supports the disclosure of information about wrongdoing because:

- implementing systems for reporting and dealing with wrongdoing contributes to the integrity of the Tribunal
- the outcomes of PIDs can include improvements to systems that prevent fraud and other economic loss to the Tribunal
- 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 Tribunal and employees of the Tribunal 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.

5. 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 sector officers can make a disclosure about the following public interest matters:

- corrupt conduct
- 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
- substantial and specific danger 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 Tribunal 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.

6. 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 Tribunal 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 Tribunal:	Other agencies that can receive PIDs:
<p>Any person (including employees) can make a disclosure to:</p> <ul style="list-style-type: none"> • any person in a supervisory or management position • the Principal Lawyer • the Executive Officer • the President or the Deputy President. 	<p>Disclosures can be made to an agency that has a responsibility for investigating the information disclosed:</p> <ul style="list-style-type: none"> • 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 Child Safety, Youth and Women 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.

7. 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.

8. 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.

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.

9. Assessing a PID

The disclosure will be assessed in accordance with the PID Act, this Procedure and any other relevant procedure(s).

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

- that their information has been received and assessed as a PID
- the action to be taken by the Tribunal in relation to the disclosure, which could include referring the matter to an external agency, or investigating
- the likely timeframe involved
- the name and contact details of the Tribunal PID 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 Tribunal 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 Tribunal's Employee Assistance Program.

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

Upon receiving a PID, the Tribunal will consider 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.

Consistent with the assessed level of risk, the Tribunal will arrange any reasonably necessary support or protection for the discloser.

10. Referring a PID

If the Tribunal 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.

In these cases, the discloser will be advised of the action taken by the Tribunal.

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* (Qld)).

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

11. Declining to take action on a PID

Under the PID Act, the Tribunal 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 Tribunal from the performance of its functions
- another agency with jurisdiction to investigate the information has informed the Tribunal that an investigation is not warranted.

If a decision is made not to investigate or deal with a PID the Tribunal 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 President of the Tribunal within 28 days of receiving the written reasons for decision.

12. 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 Tribunal will review systems, policies and procedures to identify whether there are improvements that can be made and consider if staff training is required.

13. 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 Tribunal 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.

Details about disclosures, investigations, and related decisions will be kept secure and accessible only to the people involved in the management of the PID. The Tribunal will ensure that communication with all parties involved will be arranged discreetly to avoid identifying the discloser wherever possible.

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

- provide natural justice to subject officers
- respond to a court order, legal directive or court proceedings.

Disclosers should be aware that while the Tribunal will make every attempt to keep their details confidential, it cannot guarantee that others will not try to deduce their identity. Information and support will be provided to the discloser until the matter is finalised.

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

14. Rights of subject officers

The Tribunal acknowledges that for officers who are the subject of a PID the experience may be stressful. The Tribunal 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.

15. Record-keeping

In accordance with its obligations under the PID Act and the *Public Records Act 2002* (Qld), the Tribunal 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, if required.

16. 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"> (i) a decision and an act; and (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 (iii) the formulation of a proposal or intention; and (iv) the making of a recommendation, including a recommendation made to a Minister; and (v) an action taken because of a recommendation made to a Minister; and <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"> (i) information about the identity, occupation, residential or work address or whereabouts of a person — <ul style="list-style-type: none"> (A) who makes a public interest disclosure; or (B) against whom a public interest disclosure has been made; and (ii) information disclosed by a public interest disclosure; and (iii) information about an individual's personal affairs; and (iv) information that, if disclosed, may cause detriment to a person; and <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> (Qld):</p> <p>(1) Corrupt conduct means conduct of a person, regardless of whether the person holds or held an appointment, that—</p> <ul style="list-style-type: none"> (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"> (i) a unit of public administration; or (ii) a person holding an appointment; and (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"> (i) is not honest or is not impartial; or (ii) involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or (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 (c) is engaged in for the purpose of providing a benefit to the person or another person or causing a detriment to another person; and (d) would, if proved, be— <ul style="list-style-type: none"> (i) a criminal offence; or (ii) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment. <p>(2) Without limiting subsection (1), conduct that involves any of the following could be corrupt conduct under subsection (1)—</p> <ul style="list-style-type: none"> (a) abuse of public office; (b) bribery, including bribery relating to an election; (c) extortion; (d) obtaining or offering a secret commission; (e) fraud; (f) stealing; (g) forgery; (h) perverting the course of justice;

	<ul style="list-style-type: none"> (i) an offence relating to an electoral donation; (j) loss of revenue of the State; (k) sedition; (l) homicide, serious assault or assault occasioning bodily harm or grievous bodily harm; (m) obtaining a financial benefit from procuring prostitution or from unlawful prostitution engaged in by another person; (n) illegal drug trafficking; (o) illegal gambling.
Detriment	<p>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	<p>As defined in section 11 of the <i>Disability Services Act 2006</i> (Qld), for the purposes of this procedure:</p> <p>(1) A disability is a person's condition that—</p> <ul style="list-style-type: none"> (a) is attributable to— <ul style="list-style-type: none"> (i) an intellectual, psychiatric, cognitive, neurological, sensory or physical impairment; or (ii) a combination of impairments mentioned in subparagraph (i); and (b) results in— <ul style="list-style-type: none"> (i) a substantial reduction of the person's capacity for communication, social interaction, learning, mobility or self care or management; and (ii) the person needing support. <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 <i>Public Interest Disclosure Act 2010</i> (Qld).
Employee	of an entity, includes a person engaged by the entity under a contract of service.
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 <i>Public Interest Disclosure Act 2010</i> (Qld), maladministration is administrative action that—</p> <ul style="list-style-type: none"> (a) was taken contrary to law; or (b) was unreasonable, unjust, oppressive, or improperly discriminatory; or (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 (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.
Organisational support	<p>For the purposes of this procedure, organisational support means actions such as, but not limited to:</p> <ul style="list-style-type: none"> • providing moral and emotional support • advising disclosers about agency resources available to handle any concerns they have as a result of making their disclosure • appointing a mentor, confidante or other support officer to assist the discloser through the process • referring the discloser to the agency’s Employee Assistance Program or arranging for other professional counselling • generating support for the discloser in their work unit where appropriate • ensuring that any suspicions of victimisation or harassment are dealt with • maintaining contact with the discloser • negotiating with the discloser and their support officer a formal end to their involvement with the support program when it is agreed that they no longer need assistance.
Proper authority	A person or organisation that is authorised under the <i>Public Interest Disclosure Act 2010</i> (Qld) 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> <p>(a) a reasonable appraisal of the employee’s work performance;</p> <p>(b) a reasonable requirement that the employee undertake counselling;</p> <p>(c) a reasonable suspension of the employee from the employment workplace;</p> <p>(d) a reasonable disciplinary action;</p> <p>(e) a reasonable action to transfer or deploy the employee;</p> <p>(f) a reasonable action to end the employee’s employment by way of redundancy or retrenchment;</p> <p>(g) a reasonable action in relation to an action mentioned in paragraphs (a) to (f);</p> <p>(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.</p>
Reprisal	<p>The term ‘reprisal’ is defined under the <i>Public Interest Disclosure Act 2010</i> (Qld) as 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"> • has made or intends to make a disclosure; or • has been or intends to be involved in a proceeding under the disclosure Act against any person. <p>Reprisal under the <i>Public Interest Disclosure Act 2010</i> (Qld) 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>
--------------------------	---

17. Relevant Legislation

Crime and Corruption Act 2001

Local Government Act 2009

Ombudsman Act 2001

Public Interest Disclosure Act 2010

Public Records Act 2002

Public Sector Ethics Act 1994