



Policy and Procedure – Public Interest Disclosure

Policy Statement

1. The Mental Health Review Tribunal (**Tribunal**) 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**).

Objective / Purpose

2. By complying with the PID Act, the Tribunal will:
 - a) promote the public interest by facilitating public interest disclosures (**PIDs**) of wrongdoing
 - b) ensure that PIDs are properly assessed and, where appropriate, properly investigated and dealt with
 - c) ensure appropriate consideration is given to the interests of persons who are the subject of a PID
 - d) ensure protection from reprisal is afforded to persons making PIDs.
3. As required under the PID Act, the President will implement procedures to ensure that:
 - a) any public officer who makes a PID is given appropriate support
 - b) PIDs made to the Tribunal are properly assessed and, where appropriate, properly investigated and dealt with
 - c) appropriate action is taken in relation to any wrongdoing which is the subject of a PID
 - d) a management program for PIDs made to the Tribunal, consistent with the standards issued by the Queensland Ombudsman, is developed and implemented
 - e) public officers who make PIDs are offered protection from reprisal by the Tribunal or other public officers of the Tribunal.
4. The Tribunal's Policy and Procedure – Public Interest Disclosures is available for public viewing at the Tribunal's website. The Policy and Procedure will be reviewed annually and updated as required to ensure it meets the requirements of the PID Act and the standards issued by the Queensland Ombudsman.

Authority

- *Public Interest Disclosure Act 2010*
- *Crime and Corruption Act 2001*
- *Human Rights Act 2019*
- *Ombudsman Act 2001*
- *Public Records Act 2002*
- *Public Sector Ethics Act 1994*
- Code of Conduct for the Queensland Public Service



- Administrative Review Council Guide to standards of conduct for tribunal members
- Public Interest Disclosure Standard No 1/2019, No 2/2019, No 3/2019

Tribunal's Associated Documents

- Policy – Managing individual worker grievances
- Procedure – Managing individual worker grievances
- Policy – Preventing and responding to workplace sexual harassment
- Policy – Human Rights

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 a specialist 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 Policy and Procedure – Public Interest Disclosures and evaluation of the effectiveness of the PID management program.
- The President has designated the following roles and responsibilities for managing PIDs with 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 policy and 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 	Executive Officer (07) 3338 8314



	<ul style="list-style-type: none"> • 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 	
PID Support Officer	<ul style="list-style-type: none"> • provide advice and information to discloser on the Tribunal's PID policy and 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.

Why make a PID?

7. 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:
 - a) implementing systems for reporting and dealing with wrongdoing contributes to the integrity of the Tribunal
 - b) the outcomes of PIDs can include improvements to systems that prevent fraud and other economic loss to the Tribunal
 - c) the community's trust in public administration is strengthened by having strong processes in place for reporting wrongdoing.
8. When making a PID, the discloser receives the protections provided under the PID Act, including
 - a) confidentiality – the discloser's name and other identifying information will be protected to the extent possible
 - b) 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



- c) immunity from liability – the discloser cannot be prosecuted for disclosing the information but is not exempt from action if they have engaged in wrongdoing
- d) protection from defamation – the discloser has a defence against an accusation of defamation by any subject officer.

What is a PID?

9. Under the PID Act, any person can make a disclosure about a:
 - a) substantial and specific danger to the health or safety of a person with a disability
 - b) the commission of an offence, or a contravention of a condition imposed under a provision of legislation mentioned in Schedule 2 of the PID Act, if the offence or contravention would be a substantial and specific danger to the environment
 - c) reprisal because of a belief that a person has made, or intends to make a disclosure.
10. In addition, public sector officers can make a disclosure about the following public interest matters:
 - a) corrupt conduct
 - b) maladministration that adversely affects a person’s interests in a substantial and specific way
 - c) a substantial misuse of public resources
 - d) a substantial and specific danger to public health or safety
 - e) substantial and specific danger to the environment.
11. A discloser can have either a ‘reasonable belief’ that wrongdoing has occurred or provide evidence which tends to show the wrongdoing has occurred.
12. A disclosure amounts to a PID and is covered by the PID Act even if the:
 - a) 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
 - b) disclosure is made anonymously – the discloser is not required to give their name or any identifying information
 - c) 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
 - d) 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.

Who can a PID be disclosed to?

13. A PID must be made to the ‘proper authority’ to receive disclosures of the type being made.
14. 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:
Any person (including employees) can make a disclosure to: <ul style="list-style-type: none"> • any person in a supervisory or management position 	Disclosures can be made to an agency that has a responsibility for investigating the information disclosed: <ul style="list-style-type: none"> • Crime and Corruption Commission (CCC) for disclosures about corrupt conduct including



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| <ul style="list-style-type: none">• the Senior Principal Lawyer• the Executive Officer• the Deputy President• the President. | <p>reprisal</p> <ul style="list-style-type: none">• 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 Seniors, Disability Services, and Aboriginal and Torres Strait Islander Partnerships 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. |
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15. A disclosure can also be made to a journalist if the following conditions have been met:

- a) a valid PID was initially made to a proper authority, and
- b) the proper authority:
 - i) decided not to investigate or deal with the disclosure, or
 - ii) investigated the disclosure but did not recommend taking any action, or
 - iii) 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.

16. 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

17. 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:

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



Deciding whether a matter is a PID

18. 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.
19. Mere disagreements over policy do not meet the threshold for a PID under the PID Act.
20. 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.
21. Where a discloser states they are making a PID, but it is assessed that the matter is not a PID the Tribunal will advise the discloser:
- that their information has been received but was not assessed as a PID
 - the reasons for the decision
 - the review rights available if the discloser is dissatisfied with the decision and how to request review
 - any action the Tribunal proposes to take in relation to the matter
 - any other options the discloser has in relation to the matter.

Assessing a PID

22. The disclosure will be assessed in accordance with the PID Act, the PID standards, the Tribunal's Policy and Procedure - Public Interest Disclosure and any other relevant procedure(s).
23. 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 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.
24. 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.

Referring a PID

25. 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
 - that agency has the power to investigate or remedy the matter.



26. Before referring the PID to another agency, the Tribunal will conduct a risk assessment, and will not proceed with the referral if there is an unacceptable risk of reprisal.
27. 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*).
28. 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.
29. The discloser will be advised of the action taken by the Tribunal.

Risk assessment and protection from reprisal

30. Disclosers should not suffer any form of detriment as a result of making a PID. Upon receiving a PID, the Tribunal will conduct a risk assessment to assess the likelihood of the discloser (or witnesses or affected third parties) 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 (or witnesses or affected third parties) suffering detriment and will include consultation with the discloser.
31. A risk assessment will be undertaken if the discloser is anonymous on the basis of information available in the PID. The risk assessment will also take into account the risk to persons who may be suspected of making the PID.
32. Consistent with the assessed level of risk, the Tribunal will develop and implement a risk management plan and arrange any reasonably necessary support or protection for the discloser (or witnesses or affected third parties).
33. The Tribunal will regularly reassess the risk of reprisal while the PID is being managed, in consultation with the discloser, and review the risk management plan if required.
34. In the event of reprisal action being alleged or suspected, the Tribunal will:
 - a) attend to the safety of the discloser (or witnesses or affected third parties) as a matter of priority
 - b) review its risk assessment, risk management plan and any protective measures needed to mitigate any further risk of reprisal
 - c) manage any allegation of a reprisal as a PID in its own right.

Declining to take action on a PID

35. Under the PID Act, the Tribunal may decide not to investigate or deal with a PID in various circumstances, including:
 - a) the information disclosed has already been investigated or dealt with by another process
 - b) the information disclosed should be dealt with by another process
 - c) the age of the information makes it impractical to investigate
 - d) the information disclosed is too trivial and dealing with it would substantially and



unreasonably divert the Tribunal from the performance of its functions

- e) another agency with jurisdiction to investigate the information has informed the Tribunal that an investigation is not warranted.

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

37. 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.

Communication with disclosers

38. Under the PID Act, the Tribunal must give reasonable information to a discloser.

39. The Tribunal will acknowledge receipt of the PID in writing as soon as practicable. The discloser will be provided with information that meets the requirements of the PID Act and the standards issued by the Queensland Ombudsman, including:

- a) the action that will be taken in response to the PID
- b) the protections under the PID Act
- c) confidentiality obligations of the discloser and the Tribunal
- d) support arrangements.

40. The Tribunal will maintain contact with the discloser and provide regular updates during the management of the PID.

41. In accordance with the PID Act, after finalising action in response to the PID, the Tribunal will advise the discloser in writing of the action taken and the results of the action.

Confidentiality

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

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

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

44. 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.

Support for disclosers

45. The Tribunal recognises that providing appropriate support to a discloser is an important feature of effective PID management.

46. An assessment will be undertaken to identify the support needs of the discloser. Where appropriate, a PID Support Officer will be assigned to the discloser. The PID Support Officer will assist the discloser to access information about PIDs, protections available under the PID Act and the PID management process. The PID Support Officer will proactively contact the



discloser to offer support.

47. Information and support will be provided to the discloser until the matter is finalised.

48. 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.

Investigating a PID

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

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

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

51. 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.

Rights of subject officers

52. 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:

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

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

Recordkeeping

54. In accordance with its obligations under the PID Act and the Public Records Act 2002, the Tribunal will ensure that:

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

55. Records about disclosures, investigations, and related decisions will be kept secure and accessible only to appropriately authorised people involved in the management of the PID.



Definitions

Administrative action means any action about a matter of administration, including for example:

- a) a decision and an act
 - b) a failure to make a decision or do an act, including a failure to provide a written statement of reasons for a decision
 - c) the formulation of a proposal or intention
 - d) the making of a recommendation, including a recommendation to a Minister
 - e) an action taken because of a recommendation made to a Minister
- and
- f) does not include an operational action of a police officer or an officer of the Crime and Corruption Commission.

Confidential information includes:

- a) information about the identity, occupation, residential or work address or whereabouts of a person:
 - i) who makes a PID
 - ii) against whom a PID has been made
- b) information disclosed by a PID
- c) information about an individual's personal affairs
- d) information that, if disclosed, may cause detriment to a person

and does not include information publicly disclosed in a PID made to a court, tribunal or other entity that may receive evidence under oath, unless further disclosure of the information is prohibited by law.

Corrupt conduct, as defined in section 15 of the *Crime and Corruption Act 2001* means

1. Corrupt conduct means conduct of a person, regardless of whether the person holds or held an appointment, that:
 - a) adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of:
 - 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:
 - 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) would, if proved, be:
 - 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.
2. Corrupt conduct also means conduct of a person, regardless of whether the person holds or held an appointment that:
 - a) impairs, or could impair, public confidence in public administration, and
 - b) involves, or could involve, any of the following:



- i) collusive tendering
- 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 howsoever described:
 - A. protecting health or safety of persons
 - B. protecting the environment
 - C. protecting or managing the use of the State's natural, cultural, mining or energy resources
- 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
- iv) evading a State tax, levy or duty or otherwise fraudulently causing a loss of State revenue
- v) fraudulently obtaining or retaining an appointment, and
- c) would, if proved be:
 - 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.

Detriment includes:

- a) personal injury or prejudice to safety
- b) property damage or loss
- c) intimidation or harassment
- d) adverse discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business
- e) financial loss
- f) damage to reputation, including, for example, personal, professional or business reputation.

Disability, as defined in section 11 of the *Disability Services Act 2006*, for the purposes of this document means

1. A disability is a person's condition that:
 - a) is attributable to:
 - i) an intellectual, psychiatric, cognitive, neurological, sensory or physical impairment; or
 - ii) a combination of impairments mentioned in subparagraph i); and
 - b) results in:
 - 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.
2. For subsection 1, the impairment may result from an acquired brain injury.
3. The disability must be permanent or likely to be permanent.
4. The disability may be, but need not be, of a chronic episodic nature.

Discloser means a person who makes a disclosure in accordance with the PID Act.

Employee of an entity, includes a person engaged by the entity under a contract of service.

Investigation, for the purposes of this document, includes an enquiry undertaken to establish



whether the information provided in a PID can be substantiated, including a review or audit.

Journalist means a person engaged in the occupation of writing or editing material intended for publication in the print or electronic news media.

Maladministration, as defined in Schedule 4 of the PID Act, means administrative action that:

- 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
 - 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, 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. The rules of natural justice, which have been developed to ensure that decision-making is fair and reasonable, are:

- a) avoid bias
- b) give a fair hearing
- c) act only on the basis of logically probative evidence.

Organisational support, for the purposes of this document, means actions such as but not limited to:

- a) providing moral and emotional support
- b) advising disclosers about agency resources available to handle any concerns they have as a result of making their disclosure
- c) appointing a mentor, confidante or other support officer to assist the discloser through the process
- d) referring the discloser to the agency's Employee Assistance Program or arranging for other professional counselling
- e) generating support for the discloser in their work unit where appropriate
- f) ensuring that any suspicions of victimisation or harassment are dealt with
- g) maintaining contact with the discloser
- h) 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 means a person or organisation that is authorised under the PID Act to receive disclosures.

Public officer of a public sector entity, means an employee, member or officer of the entity.

Reasonable belief means a view which is objectively fair or sensible.



Reasonable management action is action taken by a manager in relation to an employee, including any of the following taken by the manager

- a) a reasonable appraisal of the employee's work performance;
- b) a reasonable requirement that the employee undertake counselling;
- c) a reasonable suspension of the employee from the employment workplace;
- d) a reasonable disciplinary action;
- e) a reasonable action to transfer or deploy the employee;
- f) a reasonable action to end the employee's employment by way of redundancy or retrenchment;
- g) a reasonable action in relation to an action mentioned in paragraphs (a) to (f);
- 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.

Reprisal is defined under the PID Act as causing, attempting to cause, or conspiring to cause detriment to another person in the belief that they or someone else:

- a) has made or intends to make a disclosure, or
- b) has been or intends to be involved in a proceeding under the PID Act against any person.

Reprisal under the PID Act is a criminal offence and investigations may be undertaken by the Queensland Police Service.

Subject officer means an officer who is the subject of allegations of wrongdoing made in a disclosure.

Substantial means of a significant or considerable degree. It must be more than trivial or minimal and have some weight or importance.

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.