

# Public Interest Disclosure

## Statement

The Energy and Water Ombudsman Queensland (EWOQ) is committed to fostering an ethical, transparent culture.

EWOQ values the disclosure of information about suspected wrongdoing in the public sector so that it can be properly assessed and, if necessary, appropriately investigated.

EWOQ will provide support to a team member or others who make disclosures about matters in the public interest. This procedure demonstrates EWOQ's commitment and ensures that practical and effective procedures are implemented which comply with the requirements of the *Public Interest Disclosure Act 2010* (PID Act).

## Scope

This procedure applies to all EWOQ team members, and members of the public, who make a PID about the conduct of an EWOQ team member in accordance with the PID Act.

## Definitions

### Confidential information / Confidentiality

- a. includes –
  1. information about the identity, occupation, residential or work address or whereabouts of a person —
    - (A) who makes a public interest disclosure, or
    - (B) against whom a public interest disclosure has been made, and
  2. information disclosed by a public interest disclosure, and
  3. information about an individual's personal affairs, and
  4. information that, if disclosed, may cause detriment to a person, and
- 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.

### Detriment / Detrimental action

includes –

- a. personal injury or prejudice to safety, and
- b. property damage or loss, and
- c. intimidation or harassment, and
- d. adverse discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business, and
- e. financial loss, and

- f. damage to reputation, including, for example, personal, professional or business reputation

## **Disability**

As defined in section 11 of the *Disability Services Act 2006*

## **Discloser**

A person who makes a disclosure in accordance with the *Public Interest Disclosure Act 2010*.

## **Maladministration**

As defined in schedule 4 of the *Public Interest Disclosure Act 2010*

## **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:

- avoid bias, and
- give a fair hearing.

act only on the basis of logically probative evidence

## **Proper authority**

A person or organisation that is authorised under the *Public Interest Disclosure Act 2010* to receive disclosures.

## **Reasonable management action**

Action taken by a manager in relation to an employee, includes 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**

As defined in the *Public Interest Disclosure Act 2010*

## Substantial and specific

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.

## Team member

An employee of Energy and Water Ombudsman Queensland includes a person engaged by Energy and Water Ombudsman Queensland under a contract of service.

## Purpose

By complying with the PID Act, the Energy and Water Ombudsman Queensland will:

- promote the public interest by facilitating Public Interest Disclosures (PID) 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 PID.

As required under the PID Act, the Energy and Water Ombudsman will implement procedures to ensure that:

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

The Energy and Water Ombudsman Queensland PID Procedure is available for public viewing at [EWOQ - Our policies](#). The PID 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.

## Public Interest Disclosure Management Program

The Energy and Water Ombudsman has overall responsibility for ensuring that the Energy and Water Ombudsman Queensland develops, implements and maintains a PID Management Program. The Energy and Water Ombudsman Queensland PID Management Program encompasses:

- commitment to encouraging the internal reporting of wrongdoing
- senior management endorsement of the value to the Energy and Water Ombudsman Queensland of PIDs and the proper management of PIDs

- a communication strategy to raise awareness among team members about PIDs and the Energy and Water Ombudsman Queensland PID Procedure
- a training strategy to give team members 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 the Leadership Team 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
- an induction program for new team members and team members returning to the Energy and Water Ombudsman Queensland workforce after a period of leave
- 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 PID Procedure and evaluation of the effectiveness of the PID Management Program.

## Organisational commitment to encourage internal reporting of wrongdoing

The Leadership Team of the Energy and Water Ombudsman Queensland:

- recognise the important role disclosers play in identifying wrongdoing and thus improving the integrity and performance of the Energy and Water Ombudsman Queensland and deterring wrongdoing
- is committed to ensuring that PIDs are properly assessed, investigated and dealt with
- recognises the value and importance of providing protection to team members who report wrongdoing using appropriate internal or external channels
- is committed to ensuring that appropriate consideration is given to the interests of persons who are the subject of a PID.

The Energy and Water Ombudsman will take all reasonable steps to protect a team member from any detrimental action by way of a reprisal taken because they have made a PID.

## Leadership Team endorsement

The Leadership Team recognise that, in order for the Energy and Water Ombudsman Queensland to have a successful disclosure program, it is critical that the Leadership Team commit to the implementation of the Energy and Water Ombudsman Queensland PID Management Plan and procedure in relation to disclosures.

The Leadership Team encourage any team member who considers that they have witnessed wrongdoing to come forward and make a disclosure. The Leadership Team believe that disclosing wrongdoing is in accordance with the Energy and Water Ombudsman Queensland's ethical culture, in particular, acting with integrity. It recognises the benefit to the Energy and Water Ombudsman Queensland of encouraging team members to report wrongdoing.

When team members come forward with information about wrongdoing, managers commit to:

- protecting the dignity, wellbeing, career interests and good name of all persons involved

- protecting the discloser from any adverse action taken as a result of making the disclosure
- dealing efficiently and effectively with any bullying, harassment, unfair treatment, victimisation or discrimination that results from a disclosure as a breach of the Energy and Water Ombudsman Queensland's disciplinary procedures
- responding to the disclosure thoroughly and impartially
- taking appropriate action to deal with wrongdoing
- keeping the discloser informed of progress and the outcome.

The Leadership Team also recognise that members of the public may have information about the operations of Energy and Water Ombudsman Queensland that meets the criteria for a PID. Members of the public are encouraged to report this information to the PID Coordinator. A PID made by a member of the public will be acknowledged. The discloser will be informed about the outcome of the PID assessment and any action taken as a result of the disclosure.

## Delegated officer responsible for issues related to the management of PIDs

The Energy and Water Ombudsman is the delegated officer responsible for issues related to the management of PIDs. The Energy and Water Ombudsman has delegated a PID Coordinator who has:

- direct access to the Energy and Water Ombudsman in relation to PID matters
- delegated authority to appropriately manage PIDs
- access to resources to allow for the proper management of PIDs.

A member of the public or a team member of the Energy and Water Ombudsman Queensland can make a disclosure to the PID Coordinator by way of:

Email: [PID@ewoq.com.au](mailto:PID@ewoq.com.au)

Letter:

PID Coordinator

GPO Box 3640

Brisbane South BC Qld 4101

Telephone: 1800 662 837 (ask for the PID Coordinator)

## About Public Interest Disclosures

### 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
- the commission of an offence, or 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
- 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 Energy and Water Ombudsman Queensland 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.

## Who can a Public Interest Disclosure 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 the General Manager – Strategy, Operations and Governance, Energy and Water Ombudsman Queensland first. If the matter is not resolved, or the discloser is concerned about confidentiality, the disclosure may be made to another appropriate agency.

<b>Conduct</b>	<b>Appropriate Entity</b>
Corrupt conduct	Crime and Corruption Commission
Danger to public health or safety	Queensland Health; Health Ombudsman; Workplace Health and Safety Queensland; Queensland Police Service; or the relevant local council
Danger to health and safety of a person with a disability	Department of Communities, Disability Services and Seniors; Adult Guardian; Department of Health; Queensland Police Service
Danger to environment	Department of Environment and Science or the relevant local council
Substantial loss of public funds	Queensland Audit Office

Conduct	Appropriate Entity
Reprisal	Crime and Corruption Commission (a reprisal would normally constitute corrupt conduct), Anti-Discrimination Commission Queensland.

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 Public Interest Disclosure

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 Public Interest Disclosure 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. Team members may be subject to disciplinary action for intentionally giving false or misleading information in a PID, or during an investigation into a PID.

Where a discloser states they are making a PID, but it is assessed that the matter is not a PID the Energy and Water Ombudsman Queensland 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 Energy and Water Ombudsman Queensland proposes to take in relation to the matter
- any other options the discloser has in relation to the matter.

## **Assessing a Public Interest Disclosure**

The disclosure will be assessed in accordance with the PID Act, the PID standards, the Energy and Water Ombudsman Queensland PID Procedure and any other relevant procedure(s).

Once the matter has been assessed as a PID, the Energy and Water Ombudsman Queensland will advise the discloser:

- that their information has been received and assessed as a PID
- the action to be taken by the Energy and Water Ombudsman Queensland 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 Energy and Water Ombudsman Queensland 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 Energy and Water Ombudsman Queensland 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 Energy and Water Ombudsman Queensland Employee Assistance Program.

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

## **Internal controls, evaluation and monitoring**

At the conclusion of a PID investigation, the General Manager – Strategy, Operations and Governance is responsible for assessing whether any change is needed to the Energy and Water Ombudsman Queensland policies, procedures or internal controls. The General Manager – Strategy, Operations and Governance will, within 60 days of the conclusion of the PID investigation, report to the Energy and Water Ombudsman with any recommendation for appropriate change. The General Manager – Strategy, Operations and Governance, as the nominated officer responsible for issues related to the management of PIDs, will conduct an annual review of the effectiveness of the Office's PID Management Plan and Procedure.

## **Referring a Public Interest Disclosure**

If the Energy and Water Ombudsman Queensland 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 a team member of that agency
- that agency has the power to investigate or remedy the matter.

Before referring the PID to another agency, the Energy and Water Ombudsman Queensland 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 Energy and Water Ombudsman Queensland 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 Energy and Water Ombudsman Queensland.

## **Risk assessment and protection from reprisal**

Disclosers should not suffer any form of detriment as a result of making a PID. Upon receiving a PID, the Energy and Water Ombudsman Queensland 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.

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.

Consistent with the assessed level of risk, the Energy and Water Ombudsman Queensland 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).

The Energy and Water Ombudsman Queensland 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.

In the event of reprisal action being alleged or suspected, the Energy and Water Ombudsman Queensland will:

- attend to the safety of the discloser (or witnesses or affected third parties) as a matter of priority
- review its risk assessment, risk management plan 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.

## **Declining to take action on a Public Interest Disclosure**

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

If a decision is made not to investigate or deal with a PID the Energy and Water Ombudsman Queensland 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 Energy and Water Ombudsman within 28 days of receiving the written reasons for decision.

## **Communication with disclosures**

Under the PID Act, the Energy and Water Ombudsman Queensland must give reasonable information to a discloser.

The Energy and Water Ombudsman Queensland 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:

- the action that will be taken in response to the PID
- the protections under the PID Act
- confidentiality obligations of the discloser and the Energy and Water Ombudsman Queensland
- support arrangements.

The Energy and Water Ombudsman Queensland will maintain contact with the discloser and provide regular updates during the management of the PID.

In accordance with the PID Act, after finalising action in response to the PID, the Energy and Water Ombudsman Queensland will advise the discloser in writing of the action taken and the results of the action.

## **Confidentiality**

While the Energy and Water Ombudsman Queensland 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.

The Energy and Water Ombudsman Queensland 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 Energy and Water Ombudsman Queensland will make every attempt to keep their details confidential, it cannot guarantee that others will not try to deduce their identity.

## **Support for disclosers**

The Energy and Water Ombudsman Queensland recognises that providing appropriate support to a discloser is an important feature of effective PID management.

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.

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 continue to be managed in accordance with normal, fair and reasonable management practices during and after the handling of the 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 Energy and Water Ombudsman Queensland will review systems, policies and procedures to identify whether there are improvements that can be made and consider if team training is required.

## **Rights of subject officers**

The Energy and Water Ombudsman Queensland acknowledges that for officers who are the subject of a PID the experience may be stressful. The Energy and Water Ombudsman Queensland 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 a subject officer until the matter is finalised.

## **Recordkeeping**

In accordance with its obligations under the PID Act and the *Public Records Act 2002*, the Energy and Water Ombudsman Queensland 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.

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.

# Associated documents

Legislation:

- *Crime and Corruption Act 2001*
- *Ombudsman Act 2001*
- *Public Interest Disclosure Act 2010*
- *Public Records Act 2002*
- *Public Sector Ethics Act 1994*

Useful links:

- Public Interest Disclosure Standard No. 1/2019
- Public Interest Disclosure Standard No. 2/2019
- Public Interest Disclosure Standard No. 3/2019
- Disclosure Fact sheet 1: What is a disclosure
- Disclosure Fact sheet 2: Checklist for making a disclosure
- Disclosure Fact sheet 3: Discloser information and support

## Approval

Approved by the Energy and Water Ombudsman and effective from the date endorsed.

  
Jane Pires (Sep 2, 2020 15:24 GMT+10)

Jane Pires

Energy and Water Ombudsman