

# Specification

## Public Interest Disclosures

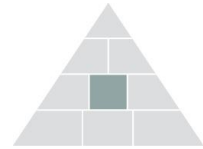
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QUEENSLAND RAIL OFFICIAL

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# Document history

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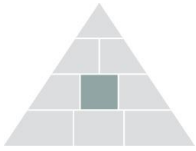
\*Contact for further information

## Document Amendment History

Version	Date	Section(s) Amended	Summary of Amendment
3.0	18/11/2014	Whole document	Updated due to a change in a Statutory Authority and a review conducted by the Ombudsman's Office.
2.0	17/07/2012		Document updated into new template
1.0	10/08/2011	New	First released

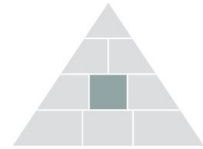
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# 1 Purpose

## 1.1 Business or technical need?

This Specification has been prepared to comply with section 28 of the Public Interest Disclosure Act 2010 (the PID Act) and Public Interest Disclosure Standard (the Standard) issued by the Queensland Ombudsman under section 60 of the PID Act.

# 2 Requirements of this Specification

Section 6.1.2 of the Standard requires Queensland Rail to develop and implement reasonable procedures for dealing with Public Interest Disclosures (PIDs) under Section 28 of the PID Act.

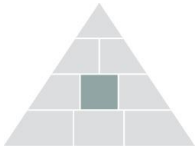
In accordance with section 28 of the PID Act, this Specification will be published on Queensland Rail's website. More PID information and resources can be obtained from the Queensland Ombudsman's website.

## 2.1 Reporting of wrongdoing

The Chief Executive Officer and the Executive Leadership Team and through them the leaders of Queensland Rail, encourage the reporting of PIDs through –

- Endorsing the value of PIDs and the proper management of PIDs and disclosers including -
  - Implementing an effective and efficient reporting process through Queensland Rail's Legal Unit – Ethics/Integrity who will be responsible for confidentially and securely managing the PID process.
  - Providing appropriate protection, support and communication with the discloser.
  - Ensuring disclosures are properly assessed and investigated in a timely and confidential manner.
- Continuing communication and training efforts on PIDs through such means as employee bulletins, emails, and educational awareness sessions as appropriate.

The information from disclosures will also be considered for the potential to improve Queensland Rail systems and procedures relating to serviced delivery, business process and internal controls.



## 2.2 Disclosures

Section 19 of the PID Act applies a restricted Queensland Rail disclosure protection framework (confirmed by the Queensland Ombudsman’s Office on 30 July 2014).

Any person (including an employee of Queensland Rail) may make a PID about conduct by Queensland Rail employees or other Queensland Government public sector entities that may be -

- A substantial and specific danger to the health or safety of a person with a disability; or
- A substantial and specific danger to the environment; or
- A reprisal

In addition to the above, Queensland Rail employees only may also make a PID declaration about the corrupt conduct within Queensland Rail.

Although not constituting a PID, non-Queensland Rail employees wishing to make a report about corrupt conduct of a Queensland Rail employee, can do so by contacting the Crime & Corruption Commission or [ethics@qr.com.au](mailto:ethics@qr.com.au).

## 2.3 Criteria in order for Disclosure to be protected

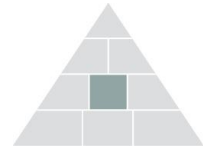
For a disclosure to be considered a PID, and to gain the protections of the PID Act, the discloser must –

- have actual evidence (objective test) or reasonable grounds (subjective test) for believing there is wrongdoing (or have information that tends to indicate wrongdoing), and
- make a report to a proper authority.

A disclosure may be made orally or in writing and can be anonymous. An anonymous disclosure will be not be treated differently, however it can be more difficult to investigate and to protect the discloser from reprisal.

Disclosures which are required to be made under other legislation are not prevented because of the operation of the PID Act.

Where there is doubt as to whether a disclosure is a PID, the assumption will be that it is, and it will be managed as such.



A disclosure that is knowingly false or misleading is an offence under the PID Act, punishable by up to two years imprisonment. Queensland Rail employees who make false declarations will also be in breach of the Code of Conduct, and if the matter relates to false allegations of corrupt conduct, it may be investigated by the Crime & Corruption Commission.

## 2.4 Reporting a Disclosure – proper authority

To be treated as a PID, a disclosure meeting the criteria outlined in Section 2.2 above, must be made to a ‘proper authority’ being -

- Queensland Rail’s Chief Executive Officer
- Board Members of Queensland Rail
- Office of the Queensland Rail Customer Advocate
- Crime & Corruption Commission (for corrupt conduct)
- Member of Queensland Parliament, including Ministers with responsibility for the Queensland Rail portfolio

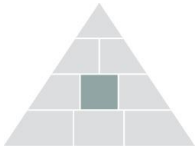
If the discloser is an employee of Queensland Rail, then in addition to the above disclosures can also be made to -

- another employee who, directly or indirectly, supervises or manages the person – (Note: A manager or supervisor who receives information that the supervisor suspects may constitute a PID must immediately refer the disclosure to Legal Unit Ethics/Integrity.
- HR Central
- Legal Unit – Ethics / Integrity

In limited situations, a person may receive protections under the PID Act if they make a disclosure to a journalist. This protection may apply where a person has made a PID of substantially the same information to a proper authority and the proper authority to which the disclosure was referred -

- Decided not to investigate or deal with the disclosure, or
- Investigated the disclosure but decided not to recommend the taking of any action in relation to the disclosure, or
- Did not notify the person within 6 months after the date the disclosure was made, whether the disclosure would be investigated or dealt with.

In order for the protections as a PID to apply for a disclosure made to a journalist, the discloser could not have made the original disclosure anonymously.



A disclosure can be received from or referred to another public sector entity when the PID received relates to the conduct of that agency; and if the other agency has the necessary jurisdiction, expertise and technical knowledge to investigate or take other action. This will not be done where it is considered that there is an unacceptable risk that a reprisal would happen because of the referral – and, where practical, the discloser (if known) will be consulted.

## 2.5 Record keeping

A Queensland Rail employee who obtains confidential information because of their involvement in the administration of the PID Act, must not make a record of such information, or intentionally or recklessly disclose it, except as permitted by the PID Act.

Examples of authorised disclosures include -

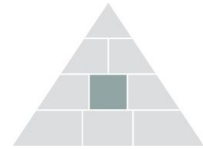
- For the purposes of the PID Act or other legislation; or
- For a proceeding in a court or tribunal; or
- If the person to whom the confidential information relates consents; or
- If the person reasonably believes that making the record or disclosing the information is necessary to provide for the safety and welfare of a person; or
- If it is essential under the principles of natural justice and it is unlikely that a reprisal will be taken against the person because of the disclosure.

## 2.6 Assessment of risk of reprisal

An individual who takes a reprisal commits an indictable (criminal) offence, and if they are a Queensland Rail employee and the reprisal relates to the workplace, they may be liable to disciplinary action.

Leaders have a duty of care to ensure that employees are protected from harassment, discrimination or any other form of detriment as a result of reporting wrongdoing. Further, under the PIDs Act, Queensland Rail can also be held liable if reprisal and detriment occurs. It is a defence to a proceeding if Queensland Rail can prove, on the balance of probabilities, that it took reasonable steps to prevent reprisal against an employee or person who has made a disclosure. Integral to this is that there are effective systems for monitoring for signs of reprisal action, including regular checks on the discloser's wellbeing.

In order to assess the likelihood of reprisal, Queensland Rail's Risk Management Process will be used to conduct a risk assessment, ideally in consultation with the discloser (where known). This assessment can be initiated by Management, Human Resources or Legal – Ethics/Integrity. The assessment will be initiated when the disclosure is first made, and then on an ongoing basis until a reasonable risk of reprisal action has passed.



Protective measures will be proportionate to the assessed risk of reprisal to the disclosure, and those who may wrongly be suspected of being the discloser.

## 2.7 Types of support to discloser

Queensland Rail will provide reasonable support to disclosers which may include –

- Developing a case management plan for the discloser, having regard to the nature of the information disclosed, their duties and working environment, the potential for reprisals against them and their medical and/or psychological needs
- Relocating or changing the duties of the discloser or the subject employee
- Enhancing physical security protections
- Providing general and limited legal advice
- Taking management action up to and including dismissal against employees involved in a reprisal or failing to properly protect the interests of the discloser

Queensland Rail's ability to provide support to external disclosers is limited however will consider refunding reasonable costs incurred and which can be evidenced through invoices/receipts, etc., and this will generally only be of a token nature (.e.g. costs of copying documents, and postage), and taking appropriate management action against employees involved in the reprisal.

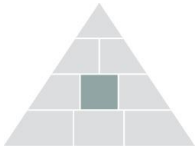
## 2.8 Reasonable management action is not reprisal

Making a PID does not protect the Queensland Rail employee discloser from disciplinary or criminal action if the discloser has been involved in improper conduct. Furthermore a discloser who is a Queensland Rail employee remains subject to reasonable management action in relation to their work conduct and performance.

Reasonable management action includes but is not limited to –

- appraisal of work performance
- disciplinary action
- medical / counselling referral
- exclusion from the workplace





## 2.9 Assessment, investigation and handling of PIDs

All PIDs received in Queensland Rail will be treated professionally and confidentially and are to be referred to Queensland Rail's Legal Unit for assessment and actioning.

Where a disclosure received by Queensland Rail relates to a matter assessed as 'Corrupt Conduct', Queensland Rail has a statutory obligation to refer it on to the Crime and Corruption Commission.

In certain circumstances, it may be deemed unnecessary for action to be taken on a reported PID. These circumstances may include:

- The substance of the PID has already been investigated or dealt with by another appropriate process; or
- The matter should be dealt with by another appropriate process; or
- The age of the information makes it impractical to investigate the matter; or
- The information is considered too trivial to warrant investigation.

An officer of the Legal Unit Ethics/Integrity will contact the discloser (if known) and advise in writing how the matter will be handled, or conversely the reasons for not taking any further action, and where appropriate, arrangements for support and protection from reprisal. The discloser can be provided with or seek updates but has an obligation to maintain confidentiality of any information received.

Subsequent information gathering or investigations will be conducted in line with Queensland Rail's Human Resource procedures and/or the Crime & Corruption Commission's *Corruption in Focus* Guide.

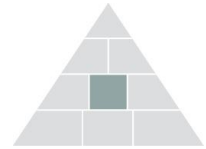
At the conclusion of the process, the discloser, where known, will be notified in writing of the results of the action. This will signal the end of the reporting process and the finalisation of the matter. However, the obligation on Queensland Rail to provide protection from reprisal and to maintain confidentiality about PID matters continues even after the investigation is closed.

Subject Officers will not be provided with the names or details of the discloser unless:

- It is necessary to afford natural justice, and
- It is unlikely a reprisal will be taken against the discloser.

Subject officers have the right to -

- Be informed at a time considered appropriate by the investigator of the alleged wrongdoing (subject to the above)



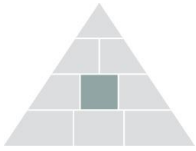
- Make a response
- Be treated fairly
- Have the matter handled confidentially and objectively
- Be informed if considered appropriate by the investigator and/or leader of the outcome of an investigation/information gathering process if one is conducted

The provision of any information to the discloser or other persons including the subject officer will be considered in light of whether releasing the information is likely to adversely affect the –

- Safety of any individual party to the complaint; or
- investigation process; or
- necessary confidentiality about an informant's existence or identity

Should the discloser not be satisfied with the action taken by Queensland Rail, they can seek to have the matter reviewed by Queensland Rail's General Counsel or Executive GM Human Resources.

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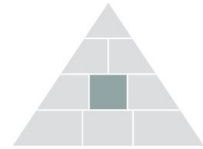
## 3 Responsibilities

The following establishes the unique accountabilities and responsibilities of the key internal stakeholders for this Specification.

### 3.1 Who does what?

Who	What
<b>Legal</b>	Assessment as to: <ul style="list-style-type: none"><li>• whether a disclosure constitutes a PID</li><li>• supervise risk assessment of reprisal actions</li><li>• what if any investigative action will be conducted</li><li>• keep the disclosure informed of actions</li><li>• develop a support plan</li><li>• oversee investigation process</li><li>• report PID 'statistical' information to the Queensland Ombudsman at times and in the format required by the Ombudsman</li></ul>
<b>HR Central</b>	Provide support to the PID process
<b>Leader</b>	Referral of PID information received to Legal Duty of care to ensure a safe workplace by means of initial and on-going risk assessments particularly as it relates to disclosers
<b>Queensland Ombudsman</b>	The Ombudsman reviews the management of PIDs; reviews the way public sector entities deal with PIDs; and undertakes an educational and advisory role about PIDs much of which information can be found on the Ombudsman's website.

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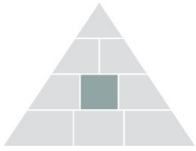


## 4 Terms and definitions

The following key terms and definitions are unique to this Procedure. Please refer to the [Business Glossary](#) for other terms not included in this section.

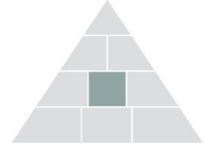
Term	Definition	Source <sup>1</sup>
<b>Corrupt Conduct</b>	See the <i>Crime &amp; Corruption Act 2001</i> (Qld)	<i>Crime &amp; Corruption Act 2001</i> (Qld)
<b>Detriment</b>	Includes – <ul style="list-style-type: none"> <li>(a) Personal injury or prejudice to safety; and</li> <li>(b) Property damage 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>	PID Act (Qld)
<b>Discloser</b>	A person who makes a public interest disclosure	
<b>Disclosure</b>	Refer to Public Interest Disclosure as per section 2.2 of this Procedure	
<b>Journalist</b>	A person engaged in the occupation of writing or editing material intended for publication in the print or electronic news media.	PID Act (Qld)
<b>PID</b>	Public Interest Disclosure	
<b>Public Sector Entities</b>	As defined in Section 6 of the Public Interest Disclosure Act 2010	PID Act (Qld)
<b>Reprisal</b>	A person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that – <ul style="list-style-type: none"> <li>(a) The other person or someone else has made, or intends to make, a public interest disclosure; or</li> <li>(b) The other person or someone else is, has been or intended to be, involved in proceeding under the Act against any person.</li> </ul>	PID Act (Qld)
<b>Subject Officer</b>	The person about whom a PID is made.	

<sup>1</sup> Where left blank, Source is not applicable.



Term	Definition	Source <sup>1</sup>
<b>Substantial and specific</b>	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.	

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## 5 Appendices

### Appendix 1 – Related documents

#### Queensland Rail documents

Document type	Document title
<b>Principle</b>	MD-12-555 <u>Values</u>
<b>Standard</b>	MD-10-62 <u>Code of Conduct</u> MD-11-1338 <u>Risk Management</u>
<b>Strategy / Plan</b>	N/A
<b>Specification / Framework</b>	N/A
<b>Procedure</b>	N/A
<b>Instruction</b>	N/A
<b>Guideline</b>	N/A
<b>Form / Template</b>	N/A

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