

Public Interest Disclosure 002088



Purpose and intent

The purpose of this procedure is to ensure Metro North Hospital and Health Service (Metro North) complies with the *Public Interest Disclosure Act 2010* (Qld) (PID Act), the *Public Interest Disclosure Standards* (the Standards), to explain what constitutes a public interest disclosure (PID), how to make a public interest disclosure, and the process when a PID has been made.

This document also outlines the legislative provisions and procedures that are in place under the PID Act, including the Standards. The Metro North Public Interest Disclosure Policy outlines the roles and responsibilities and should be read in conjunction with this procedure.

The intent of this document is to ensure that Metro North complies with the PID Act whilst also respecting the human rights of every individual in accordance with the *Human Rights Act 2019* (Qld).

Scope and target audience

This procedure applies to all Metro North employees (permanent, temporary and casual including contractors and consultants) and all organisations and individuals acting as its agents (including visiting medical officers and other partners contractors, consultants, students / trainees and volunteers).

This procedure does not replace the need to read or refer to the PID Act and the Public Interest Disclosure Standards.

What is a public interest disclosure (PID)?

A PID is a disclosure of information about wrongdoing in the public sector.

PIDs may be made anonymously and do not have to be in writing.

Section 12 and 13 of the PID Act details what information may be disclosed and who may disclose it.

For the information, or complaint, to be considered a PID and attract the protections afforded by the PID Act, the information must be disclosed to a proper authority.

The person disclosing the information must also have an honest belief, on reasonable grounds, that there is wrongdoing or danger (subjective test), or the information must tend to indicate the wrongdoing or danger, regardless of the belief of the person disclosing the information (objective test).

The Metro North Requirements for Reporting Corrupt Conduct procedure outlines the process for employees reporting suspected corrupt conduct, the most common form of PID.

Types of information that can be disclosed under the PID Act

Any person (whether or not the person is a public officer i.e. Metro North employee) can disclose information under section 12 of the PID Act about:

- a substantial and specific danger to the health and safety of a person with a disability (e.g. a serious assault of a person with a disability).
- a substantial and specific danger to the environment (defined in Appendix 1).
- the conduct of another person that could, if proved, be a reprisal (defined in Appendix 1)

A **public officer** can also disclose information under section 13 of the PID Act about:

- corrupt conduct
- maladministration that adversely affects a person's interests in a substantial and specific way
- a substantial and specific danger to public health and safety
- a substantial misuse of public resources - other than an alleged misuse based on mere disagreement over policy that may properly be adopted about amounts, purposes or priorities of expenditure
- substantial and specific danger to the environment.

On occasion, information is disclosed by a person to a proper authority because of another process without the person who disclosed the information honestly believing (or knowing) the matter concerned was (alleged) wrongdoing or danger, e.g. suspected corrupt conduct. For example, when lodging a grievance or complaint at the local level, there may be information contained in the grievance that raises a suspicion of corrupt conduct.

Often managers, through the course of managing their employees, may disclose information as part of performing their duties. Internal auditors may disclose information as a consequence of an internal audit.

In these circumstances, and applying the objective test, the reason for disclosing the information does not limit the PID Act from being applied where legislatively required.

A purported disclosure is when a person explicitly requests that their information is treated as a public interest disclosure, but the information does not meet the criteria of the PID Act.

Proper authorities

A disclosure of information must be made to a proper authority.

A proper authority is a person or organisation authorised to receive a PID.

Disclosing to a proper authority ensures the reputation of the person(s) about whom a disclosure is made is not unfairly damaged (defamed) and to encourage disclosures to appropriate proper authorities that have a responsibility or the power to take action. It also serves to maintain the integrity and confidentiality of the matter and to mitigate the risk of reprisal.

What is a proper authority?

A proper authority includes:

- a public sector entity if the disclosure is about the conduct of the entity or any of its officers, for example, Metro North

- an entity the discloser believes is a proper authority that has the power to deal with or investigate the matter – for example the Crime and Corruption Commission (CCC) for matters of suspected corrupt conduct.

Who can you disclose to?

Employees of Metro North can disclose information to:

- certain officers in Metro North (see below)
- another public sector entity that has power to investigate or remedy the matter (external)
- a Member of the Legislative Assembly (external).

If a disclosure is made to a person or an entity other than a proper authority, the person making the disclosure will not receive the protections of the PID Act.

While Metro North strongly encourages internal reporting, a person may report to an external proper authority as a first step.

External proper authorities include:

- CCC – for corrupt conduct, including reprisal
- Human Rights Commission for reprisal
- Queensland Ombudsman – for maladministration
- Queensland Audit Office – for the substantial misuse of public resources
- Department of Communities, Disability Services and Seniors and the Office of the Public Guardian – for danger to the health and safety of a person with a disability
- Department of Child Safety, Youth and Women – for danger to the health and safety of a child or young person with a disability
- Department of Environment and Science – for danger to the environment
- a Member of the Legislative Assembly (MP) – for any wrongdoing or danger. MPs do not have any authority to investigate a public interest disclosure. An MP will need to refer the disclosure to another appropriate proper authority. For example, the Minister for Health may refer the disclosure to the Department of Health
- person disclosing information should be aware when disclosing externally, it is very likely the other proper authority will discuss the matter with Metro North, or refer the information, or complaint, to Metro North to deal with
- person who decides to make a disclosure of information to a proper authority other than Metro North should contact the other entity to find out how to make the disclosure to that entity (e.g. what is that entity's procedure).

A **member of the public** can disclose information to:

- any Metro North officer who may receive information or a complaint that relates to Metro North - noting the complaint or information of alleged wrongdoing or danger may be forwarded to other officers or units within Metro North
- another proper authority with the power to investigate or remedy the matter
- a Member of the Legislative Assembly.

Who can receive a PID?

Officers within Metro North who can receive a disclosure of information include:

- an employee's manager; or any other person in a management role within Metro North
- Metro North's Chief Executive (CE), Director, Integrity Unit (PID Coordinator) at MNHHS-Integrity@health.qld.gov.au
- Human Resources.

It is preferable for an employee who decides to report wrongdoing or danger reports the conduct to their manager.

If the discloser believes their manager is involved in the wrongdoing or danger, the disclosure should be made to an alternative manager, senior manager or other officer as listed above.

Procedure for making a disclosure

The PID Act states a disclosure of information to a proper authority can be made in any way including anonymously.

A disclosure of information can be made to Metro North in writing (preferable) or verbally. If information, or a complaint, is received verbally, Metro North may request the information in writing as outlined in the [process](#).

A disclosure of information, or complaint, must still be assessed, and may be a PID, regardless of how it is made - written, verbally or anonymously.

Disclosing anonymously can make it difficult to seek clarification or further information, to inform of progress or the action to be taken or has been taken on the PID.

An anonymous discloser may also experience difficulties in relying upon the protections afforded by the PID Act. A person disclosing information does not need to state the information, or complaint, is a PID for the matter to be assessed under the PID Act. Metro North cannot decline to assess information, or a complaint, to determine if it is a PID under the PID Act.

When a disclosure may be made to a journalist

The PID Act provides a disclosure of information may be made to a journalist in certain circumstances. However, a journalist is not considered a 'proper authority' under the PID Act.

A disclosure of information to a journalist **can only** occur after certain pre-conditions of the PID Act have been met, including:

- the disclosure was initially made to a proper authority and the information was determined to be a PID under the PID Act; and
- the proper authority:
 - decided not to investigate or deal with the PID; or
 - investigated the PID but did not recommend the taking of any action; or
 - did not notify the person, within 6 months after the date the PID was made, whether or not the PID was to be investigated or dealt with.

An employee may place themselves at risk of breaching other legal requirements when disclosing information to an unauthorised person. Disclosers are strongly encouraged to seek advice, including legal advice, before reporting information to the media.

A journalist is not bound by the preservation of confidentiality under section 65 of the PID Act.

False or misleading information

Section 66 of the PID Act states that a person who gives information to a proper authority, knowing it is false or misleading, and intending it be acted upon as a public interest disclosure, commits a criminal offence.

The protections of the PID Act do not extend to those who intentionally make a disclosure of information known to be false or misleading.

Internal proper authorities who receive a disclosure of information and have concerns the information is false or misleading must refer the information to the Integrity Unit for assessment.

In the event the Integrity Unit obtains information raising a reasonable suspicion a disclosure of information is false or misleading, the matter will be referred to the Queensland Police Service (QPS) and the CCC.

An employee making a false or misleading disclosure may also face disciplinary action.

Reasonable management action

The PID Act recognises taking reasonable management action is not prevented because a PID has been, or may be, made. The employment relationship between an employee who makes a PID and Metro North continues when a disclosure has been or may be made.

The PID Act confirms taking reasonable management action in relation to a person who has, or may make, a PID is not reprisal action.

Reasonable management action is defined in the PID Act. It includes actions such as:

- an appraisal of an employee's work performance
- suspension of an employee from the workplace
- disciplinary action
- management decisions regarding transfer, deployment, redundancy or retrenchment
- any reasonable action in relation to any of the above.

When it is confirmed for an employee, they have made a PID under the PID Act, the employee remains responsible for:

- achieving the performance expectations of their position
- their own behaviour
- observing all workplace policy and procedures.

Conduct of a discloser and liability for own conduct

Under the PID Act a person is still liable for their own conduct even if the conduct forms part of, or is the basis, for the PID. The person who made the PID is not protected civilly, criminally or from any liability, including by way of an administrative process, including disciplinary action, for their own conduct.

An employee who has made a PID must ensure their conduct is at all times appropriate and in accordance with the Code of Conduct. In particular, a discloser must ensure their conduct towards a person who is the subject of a PID, or who has participated in the process of dealing with a disclosure, is proper and appropriate.

Protections under the PID Act for a discloser

Reprisal and grounds for reprisal

A purpose of the PID Act is to provide protections for a person who makes a PID, including from reprisal, as far as reasonably practicable.

Under section 40 of the PID Act, a person must not reprimand against another person, by causing or attempt to cause *detriment*, because a PID has been made.

Schedule 4 of the PID Act defines 'detriment'. It includes such actions as intimidation or harassment; or adverse discrimination, disadvantage or treatment about a person's career.

Immunity from liability

A person who makes a PID under the PID Act is not subject to any civil or criminal liability or any liability arising by way of administrative process, including disciplinary action, for making the PID.

Confidentiality provisions do not apply

A person who makes a PID will have immunity from prosecution or other legal proceedings for a breach of any confidentiality requirements under another Act.

This means a person who makes a PID, does not breach an obligation by way of oath, or a rule of law (e.g. another Act), restricting or requiring the person to maintain confidentiality, provided the disclosure is *made to a proper authority*.

Protection from defamation action

A person who makes a PID will have absolute privilege in defamation proceedings from the making of the disclosure, provided the disclosure is *made to a proper authority*.

Confidentiality

The identity of a person who has made PID will be protected, where possible. The Process provides detailed information regarding management of confidentiality and obligations.

Employees who are subject of a PID (subject officer)

Metro North is committed and required to act to address information about wrongdoing or danger to determine the substance.

A PID will be managed impartially and objectively. It is only an allegation until the information is dealt with and a finding made.

Subject officers must be afforded natural justice. The right to natural justice includes being provided with an opportunity to respond to an allegation prior to any adverse decision being made. Affording natural justice does not mean a subject officer must be advised of the allegation as soon as the information or complaint has been received.

Subject officers must also be afforded consideration of their human rights under the *Human Rights Act 2019* (Qld), particularly their right to privacy and reputation under s 25 freedom of expression under section 21, right to liberty and security under section 29 and right to recognition and equality before the law under section 15.

Subject officers are entitled to:

- a presumption of innocence and to be treated fairly
- have the matter handled confidentially

- have the matter dealt with, reviewed or investigated impartially (procedural fairness)
- be informed, where necessary, and at a time considered appropriate by the decision-maker or delegate, of the alleged wrongdoing or danger.

Management, or the delegate, should advise a subject officer who to contact with any questions, or support available such as Employee Assistance. Subject officers may also seek assistance from their union or other support person during the PID process.

A subject officer must ensure their conduct or workplace behaviour is not improper or detrimental towards a person who has, or is believed to have, made a PID, or a person who has participated in a process of dealing with a disclosure (e.g. a witness). To do so may be a reprisal under the PID Act and constitute a criminal offence.

A subject officer may not be advised about an allegation if it is misleading or of no substance and the decision maker intends to take no action, nor make an adverse finding in relation to it.

Referral to other entities

The PID Act allows a receiving public sector entity to refer a disclosure of information to another public sector entity. This may be done, for example, when the disclosure relates to the conduct of the other entity, or its employees, or the other entity has the necessary jurisdiction, expertise and technical skills or knowledge to investigate. Metro North will consider the risk of reprisal before referring the disclosure to another entity to deal with, and where practical, consult with the discloser.

In some instances, public sector entities may need to work together and share confidential information to manage a PID.

Reviews will also aim to identify ongoing risks to Metro North and its officers by identifying any trends of information disclosed and substantiated by developing measures to prevent a reoccurrence of improper or inappropriate conduct, process or practice.

Process

Guidelines from the Queensland Ombudsman regarding management of PIDs

The Queensland Ombudsman, Crime and Corruption Commission (CCC) and the Public Service Commission have collaborated to develop guidelines about public interest disclosures (PIDs) for the Queensland public sector.

The guidelines may be used as an adjunct to the PID Act, the Queensland Ombudsman's Public Interest Disclosure Standards (the Standards), Metro North Public Interest Disclosure policy and procedure.

The purpose of the guidelines is to provide guidance only and do not bind or substitute delegate or management decision making or discretion in line with the PID Act, the Standards or HR policy in response to the unique set of facts and circumstances of each individual disclosure, or complaint.

The guidelines, 'fact sheets' and other public interest disclosure information for managers and individuals are located on the Queensland Ombudsman website: <https://www.ombudsman.qld.gov.au/improve-public-administration/public-interest-disclosures/public-interest-disclosure-resources>

How to make a public interest disclosure

When reporting alleged wrongdoing or danger, it is preferable the information is in writing, especially if the matter is complex or involves a number of concerns.

Ideally, information should include:

- the name (and position) of the person who is the subject of the disclosure (who did the wrongdoing, if known)
- information about the wrongdoing or danger, relevant events, dates and places
- the names of people who may be able to provide additional information (e.g. any witnesses)
- your contact details (for communication about assessment, action and outcome).

Disclosures of information should remain clear and factual and avoid speculation, emotive language, embellishment or only 'vague' details.

The disclosure must be made to a proper authority.

Assessment of the public interest disclosure

Upon receipt of information, the Integrity Unit will assess the information to determine if the information amounts to a PID under the PID Act.

Where the matter relates to suspected corrupt conduct, the Integrity Unit will report the matter to the CCC in accordance with the Chief Executive's (CE) reporting obligations under the *Crime and Corruption Act 2001*.

If the matter involves a possible criminal offence and requires reporting to the Queensland Police Service (QPS), the Integrity Unit will refer the matter to the QPS.

Taking action to deal with a public interest disclosure

A disclosure of information may be dealt with through a variety of processes. It will not necessarily undergo formal investigation. The Integrity Unit may refer the PID to the appropriate delegate to deal with, review or investigate or for any other action to be taken. On limited occasions, the Integrity Unit may retain oversight for review or facilitate formal investigation of matters disclosed in a PID.

Providing reasonable information to a discloser

Where information is assessed by the Integrity Unit as a PID, a discloser will be given reasonable information in writing including information about confidentiality, protections from reprisal and how to report an alleged reprisal, employee support and assistance information and who to contact for further information.

Under the PID Act, reasonable information includes:

- confirmation the disclosure has been received
- a description of the action proposed to be taken
- if action has been taken, a description of the results of the action
- the name and contact details of the nominated PID Support Officer the discloser can contact for support
- details of control measures implemented to protect the discloser from potential reprisal
- contact details for Metro North's Employee Assistance Program.

Metro North may choose not to release information if it will impact upon anybody's safety; the investigation of an (alleged) offence or possible offence; or the confidentiality of the person(s) about whom a disclosure of information has been made.

Advice to management and/or the delegate

The Integrity Unit will provide management or the delegate with relevant information about the PID to enable action to be taken to deal with it.

A delegate must ensure relevant and appropriate management are advised of the PID and of the requirements for support and protection in the workplace. Management must consider the risk of reprisal against the discloser. If a more formal risk assessment is required, this must be undertaken to ensure an appropriate and reasonable level of protection and support is provided for the discloser in the workplace. The Integrity Unit can provide assistance when requested.

Risk assessment

Whenever a disclosure of information or a complaint is received by Metro North, the receiving manager or delegate is obligated to consider the likelihood of the person disclosing the information suffering a reprisal for having made the disclosure. It is the responsibility of the manager to assess the *actual and reasonably perceived risk* of detriment, including intimidation or harassment.

While a discloser may express an apprehension or fear of reprisal, the risk assessment must consider the *likelihood, and consequence*, of a reprisal occurring based upon identified contributory factors and known control measures. Protection for a discloser need only be proportionate to the degree of risk and where it is within Metro North's jurisdiction to manage.

Where the risk of reprisal is determined to be sufficiently high¹, the manager or delegate must develop a plan or other record of reasonable procedures (or control measures), in conjunction with, where feasible and required, the person who has made the PID and other relevant stakeholders (e.g. Work Health and Safety).

Any plan and control measures must be implemented and actively monitored. A review of the plan should occur if the risk of reprisal changes or throughout dealing with the disclosure.

It is to be remembered that a reprisal can occur not only against the person who made the PID, but also those associated with the discloser or those who are wrongly suspected of being the discloser. A causal link must however be established.

Comprehensive record keeping in relation to risk assessments and management plans completed and reviewed is required.

Management **must** keep secure and confidential records to demonstrate the risk of reprisal was considered and any steps taken to prevent reprisal (where identified). Records are to be contemporaneous, document support provided or offered to the discloser, other actions taken, and any advice sought in relation to managing risk or reprisal concerns.

The Integrity Unit may be contacted for discloser risk assessment assistance.

When information (or a complaint) is not a PID

Often when information is reported, or a complaint is made, it may be intertwined with other employee related complaints, such as workplace conflict or grievance matters.

Some of these types of complaints, or other information, may not be considered a disclosure of information allowed for under the PID Act. In such cases, it is important to distinguish the PID matters from any other complaint issues.

¹ AS/NZS ISO 31000:2009 Risk Management or other reasonable risk assessment process or strategy

These other matters do not form part of the PID and will be referred to management for addressing. Management can deal with the information, or complaint, as they determine or in accordance with an applicable process.

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.

Notwithstanding a disclosure of information or complaint is assessed as not being a PID, the Code of Conduct states employees who report genuine concerns of wrongdoing will be supported. All reports of suspected wrongdoing must be managed in a fair, transparent and consistent manner.

Rights of review – when information disclosed is not a public interest disclosure

When a purported disclosure is made and all requirements have been met regarding the making of the disclosure, but the information is assessed as **not** being a PID under the PID Act, the person who made the disclosure may request a review of the assessment decision.

A review of the assessment decision can be made by **writing** to the Director, Integrity Unit stating the reasons why a review is being sought. A request for review must be lodged within 14 days after receiving written notice the information disclosed was assessed as **not** being a PID.

Any review of the assessment will be based upon the *same information* that was initially made available to the assessor. In reviewing the original assessment, the Director, Integrity Unit may seek secondary assessment of the information, obtain legal advice or seek input from the Queensland Ombudsman.

Whether a disclosure of information falls under the PID Act, and constitutes a PID, is ultimately a matter of law. A complainant may wish to seek independent legal advice regarding options for review, including under the *Judicial Review Act 1991* (Qld).

Alternatively, the person making the disclosure may contact the Queensland Ombudsman as the oversight agency for PIDs for further advice and information.

No action taken on a public interest disclosure

The PID Act provides that Metro North may decide not to take action on a disclosure of information in defined circumstances, even when the information or complaint has been assessed as a PID under the PID Act.

If it has been determined by Metro North not to take action on a PID, the person who has made the PID must be provided with written reasons for the decision.

A discloser, who receives a written reason for a decision to take no action, may choose to seek a review of the decision by **writing** to the CE of Metro North within 28 days after receiving the decision (section 30 of the PID Act).

When no action is taken, all obligations under the PID Act still apply, including confidentiality and protections from reprisal.

Confidentiality

Confidentiality not only protects the rights of those who are involved in a PID, it also maintains the integrity of Metro North's reporting system, any investigation or review. It is also a strategy in mitigating the risk of reprisal.

Confidentiality also protects the reputation of an employee whose (alleged) conduct is the subject of a disclosure.

The confidentiality provisions under the PID Act apply to persons who have gained the information because of their involvement in the administration (implementing or carrying out) of the PID Act.

Those who lawfully receive information in the administration of the PID Act must not disclose confidential information, intentionally or recklessly.

Confidential information may be disclosed to another person, or entity, in accordance with the allowable reasons under the PID Act.

What is confidential information under the PID Act?

Confidential information under the PID Act is:

- the identity, occupation, residential or work address or whereabouts of a person who has made or is the subject of a PID
- information disclosed by a PID – the nature, subject matter and content
- information about a person's individual affairs
- information that may cause detriment to a person.

When can confidential information be disclosed to another person or entity?

Confidential information can be disclosed to another person or entity if:

- for the purposes of the PID Act
- to discharge a function under another Act, including for the purposes of investigation
- for a proceeding in a court or tribunal
- if the person to whom the confidential information relates consents
- if the person reasonably believes making the record or disclosing the information is necessary to provide for the safety and welfare of a person
- if it is essential under the principles of natural justice.

Managing confidentiality

Proper authorities, including managers, receiving a disclosure of information, or complaint, must maintain confidentiality of information that *may be* a PID. This however does not limit appropriately **and confidentially** referring the information for assessment, or to another person to seek advice or assistance to deal with the information (e.g. the Integrity Unit).

The PID Act provides the preservation of confidentiality does not affect an obligation a person may have under the principle of natural justice to disclose information to a person whose rights would otherwise be detrimentally affected (e.g. a subject officer).

If it is **essential** the *identity* of a person who has made a PID needs to be revealed for the purpose of natural justice, the delegate must consider that it is *unlikely* that a reprisal will be taken against the person.

If it is possible for a subject officer to answer allegations without the source of the allegations being identified, the release of identifying information **cannot be said to be essential**.

However, a person who has made a PID **must never** be promised anonymity or that their identity will not be disclosed at any time.

While Metro North is prepared to take required steps to protect confidential information, a discloser also has a responsibility to maintain confidentiality about making, and the information in, a PID.

A person who has made a PID should not communicate about the disclosure with work colleagues or any other unauthorised person. The fewer people who know about the disclosure, both before and after it has been made, the more likely it is Metro North will be able to keep a discloser's identity confidential.

When a discloser has spoken to colleagues or others about possibly making or having made a PID, this may unnecessarily increase the risk of reprisal. Any reasonable steps taken by Metro North to protect against reprisal may be obstructed or undermined where a discloser has openly communicated about having made the disclosure.

Confidential record keeping and access to records

Delegates dealing with PID information **must** keep the information secure and restrict access only to those dealing with the disclosure in accordance with obligations under the PID Act and *Public Records Act 2002* (Qld).

PID records and information held by Metro North are confidential records and will not be released or referred to anyone unless required to do so, because of a provision within an Act, including but not limited to the PID Act and the *Right to Information Act 2009* (Qld).

Those who have made, or who are the subject of, a PID may apply for access to information held by Metro North under Right to Information legislation.

Metro North's Privacy and Right to Information Unit is responsible for processing these applications. Access to the relevant information is subject to the consideration of exception provisions contained within relevant legislation.

The Right to Information and Information Privacy website can be accessed by employees from a Queensland Health computer at: <https://qheps.health.qld.gov.au/metronorth/information/access>

Reprisal

Metro North will aim to ensure employees will be reasonably protected from **detriment**, such as harassment or discrimination, because a PID has been made.

Detriment

Schedule 4 of the PID Act lists types of detriment, which may include such things as:

- personal injury or prejudice to safety
- intimidation or harassment
- adverse discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business.

In order to be considered a reprisal, there must be a *causal link* between the detriment and a PID. The reprisal must be in retaliation *for the PID*. Additionally, the reprisal is done with the intention of causing harm.

Reasonable procedures

Metro North is required to have reasonable procedures to protect a person from reprisal. The procedures may include such actions as providing conciliation or advice, counselling or training to employees or organising a temporary or permanent transfer for a discloser where the risk of reprisal is sufficiently high.

Having regard to the culture of the workplace, reasonable procedures may include early and/or ongoing intervention by managers or another delegate by:

- monitoring the workplace for any signs of detriment for making the public interest disclosure
- reinforcing values in the workplace about wrongdoing or corruption, reporting and reminding employees we all must report wrongdoing
- increasing supervision of the workplace

- conducting training about public interest disclosures, the Code of Conduct or appropriate workplace behaviours
- proactively confronting general workplace prejudices, and misconceptions, about making a public interest disclosure
- informing employees that committing a reprisal is a criminal offence and Metro North may take administrative action against those who are found to have committed a reprisal
- reinforcing it is management's role to resolve the situation, including what action to take to deal with the disclosure and how to deal with subject officers
- exercising independent judgment and setting an example for employees.

Other procedures may include reasonable management decisions, including:

- approving leave entitlements for a discloser, when requested, during the review or investigation of a public interest disclosure
- temporary adjustment in the workplace to change seating, work location or supervisory arrangements for a person who has made a disclosure or a subject officer
- facilitating a voluntary transfer or relocation of the discloser or the subject of the public interest disclosure to another position
- where appropriate, provide reasonable lawful directions to the subject of a public interest disclosure (e.g. maintaining confidentiality, attendance at certain work locations only) or written information about reprisal and detriment
- where there are grounds, suspension of a subject officer from the workplace (in accordance with Metro North policy).

Reporting and dealing with reprisal

Where it is reasonably established an alleged reprisal may have occurred, or is occurring, management must take reasonable steps to stop the activity, or to attend to the safety and welfare of the affected person. The nature of the action will be dependent upon the circumstances and seriousness of the reprisal.

If a discloser considers detriment is occurring for having made a PID, they must report it immediately to their manager, providing the particulars of the alleged detriment.

Allegations of reprisal **must be referred** to the Integrity Unit for assessment. If assessed as an alleged reprisal, the Integrity Unit will report the matter to the CCC. An alleged reprisal is considered a PID in its own right, and suspected corrupt conduct, and will be, where appropriate, properly investigated and dealt with by Metro North.

As Metro North is not a prosecuting authority, Metro North can only deal with an alleged reprisal administratively.

The committing of a reprisal is an indictable offence, with a maximum penalty of 167 penalty units or two (2) years imprisonment. Therefore, a discloser may choose to report an alleged reprisal directly to the Queensland Police Service.

A reprisal is also a tort. A person who commits a reprisal may be liable for damages where a civil claim is made. A court may grant an appropriate remedy, including exemplary damages, for a reprisal. A discloser should seek legal advice when wanting to bring proceedings for damages through a civil claim.

A person who is alleged to have committed a reprisal is innocent of the alleged conduct until proven otherwise through an administrative process by Metro North or by the courts.

Actions by officers who are not employees of Metro North, or where the conduct is committed privately, is not within the jurisdiction of Metro North. A discloser may wish to seek independent legal advice about options in this regard.

Vicarious liability

Vicarious liability means Metro North can be held liable for any detriment or suffering caused by reprisal action taken by one of its employees. Metro North can be held jointly liable with the person who took the reprisal action (i.e. they are both held responsible); or held singularly liable (i.e. the entity is held responsible instead of the person who took the reprisal action).

Relocation (transfer)

Section 47 of the PID Act allows for a public service employee to apply for relocation. The application must be made on the ground it is *likely* a reprisal will be taken against the employee if the employee continues in the employee's existing work location **and** the only practical way to substantially remove the danger of reprisal is to relocate the employee.

The application is taken to be an appeal against a decision by Metro North not to relocate the employee.

Support

Metro North will make available an appropriate and reasonable level of support to any person who has made a PID, including nominating a PID support officer for the discloser.

For public officers, a discloser's direct manager is usually well placed to act as a PID support officer and support the discloser, unless the manager is excluded from this role because of involvement in the PID disclosure or investigation. Alternatively, it may be more appropriate to appoint a PID support officer who is a manager in another area but able to be easily reached by the discloser.

The relevant appointment will be dependent upon about whom a PID has been made and working relationships in the workplace.

When selecting a PID support officer for a discloser, considerations include:

- Does the officer have appropriate authority and knowledge about the PID process (or can they acquire knowledge about the PID process)?
- Is the officer sufficiently removed from the current PID process?
- Does the officer have an established relationship with the discloser, or do they have the ability to build necessary rapport? (ideally, the support officer will be someone known and trusted by the discloser)
- What assistance will the discloser need (or are they likely to need) and is the proposed officer available and able to provide that assistance?

A PID support officer must not be involved in a process to deal with the PID, including investigation, or be a discloser or witness for the same PID process.

Taking into consideration any expressed reasonable requests by the discloser about the need for or type of support, appropriate and reasonable support may include:

- acknowledgement the making of the PID was the right thing to do
- referring the discloser to Metro North's Employee Assistance Program or arranging for other professional counselling for emotional or psychological support
- ensuring any acts or suspicions of detriment are reported and/or dealt with when known or raised by the discloser
- provide the discloser with regular updates about progress
- check on the discloser's wellbeing, where this is warranted, has been agreed to and is safe to do so
- advising the discloser about PID resources or the contacts available to raise questions or concerns they may have

- where the health of the person who has made the disclosure becomes a concern, including mental wellbeing, liaising with the appropriate delegate responsible for employee wellbeing or workplace health and safety, or affirming the availability of psychological support through Employee Assistance.

Employees may also wish to seek support from their union or professional association or advisor, general practitioner or other health professional.

In the interest of confidentiality, a discloser must remember that the disclosure of information is protected under the PID Act and balance this appropriately when seeking support.

Support does not extend to sharing, exchanging or divulging PID information between co-workers and colleagues. A discloser who talks about a PID in the workplace may expose persons to an unnecessary risk of reprisal.

If the PID support officer cannot continue to fulfil the role, an alternate contact is to be identified if continued support and contact with a discloser is required.

Employee Assistance Program

Metro North's Employee Assistance Program provides free, confidential and professional counselling for a wide variety of personal and work-related issues that may adversely affect an employee. Accessing the service is voluntary through a self-referral system.

Disclosers who require counselling and/or emotional or psychological support, or a need to debrief in a confidential setting, are strongly encouraged to access Employee Assistance.

Further information, including contact details, can be accessed by staff with a Queensland Health device via QHEPS at: <http://qheps.health.qld.gov.au/hr/staff-health-wellbeing/counselling-support/employee-counselling.htm>.

Manager assistance

Managers will provide assistance to employees in the workplace if they have made a PID and require some level of workplace support. On occasion, the capacity and capability of a manager to do so may be limited due to the nature of the support required or expected.

Managers can access help and advice through the Manager Assist Program through Benestar to deal with the sometimes complex and varied support expectations associated with managing other people and teams.

Further information on the Manager Assist program can be accessed by staff with a Queensland Health device via QHEPS at: <https://qheps.health.qld.gov.au/metronorth/staff-wellness/employee-assistance-program>

Support for members of the public who are disclosers

Unlike employees, Metro North does not have the legislative authority to provide a member of the public with the same level of support it can provide to its employees, e.g. direct access to Employee Assistance. However, through the appropriate delegate, Metro North may be able to organise appropriate supportive counselling upon request for a discloser who is a member of the public.

This does not mitigate the requirement of Metro North to consider the risk of reprisal and other legislative provisions available to a member of the public who has made a PID.

Members of the public are encouraged to use their own support network including immediate family, professional associations, general practitioner or legal advisor.

Action taken – outcome advice

The PID Act requires a person who has made a PID to be given reasonable information when action has been taken to deal with the disclosure.

Reasonable information under the PID Act includes a description of the results of the action. The information must be given to the person **in writing** (e.g. letter, secure email etc.).

At the conclusion of taking action on the disclosure, the decision maker or delegate must provide the Integrity Unit a copy of the written outcome advice that has been provided to a discloser, along with other information on dealing with the PID as requested by the Integrity Unit, for reporting and record keeping purposes.

A PID matter is considered ‘closed’ when the decision-maker determines an outcome, including no action. However, obligations regarding confidentiality and protection from reprisal continue beyond a PID matter having been dealt with and closed.

Outcome reviews

Internal review

If a person who has made a PID is dissatisfied with the outcome, the person is able to request an internal review to the decision maker, in the first instance.

The request must be made in writing within 14 days after the written outcome is received. The request must clearly state the reasons for dissatisfaction with the outcome, and not merely state a belief the decision made was unfair or unreasonable.

External review

Where a discloser remains dissatisfied after internal review, the person may make a complaint to the Queensland Ombudsman about the administrative decisions made by Metro North. Usually the Queensland Ombudsman will only consider a complaint if it has already been considered by Metro North first. The Queensland Ombudsman’s Office should be contacted direct for further information.

Appeals and injunctions

Where a public officer may, under an Act, appeal against or apply for a review of:

- disciplinary action taken against the officer
- the appointment or transfer of the officer or another public officer to a position as a public officer
- unfair treatment of the officer.

The public officer may appeal the action, or have the action set aside (whether or not the Act specifies grounds for the appeal or review) because it was the taking of a reprisal against the public officer.

There may also be a right to apply to the Queensland Industrial Relations Commission or the Supreme Court for an injunction about a reprisal in certain circumstances.

However, an application for an injunction cannot be made if a complaint has been made under the *Anti-Discrimination Act 1991* (Qld) about a reprisal. Individuals should seek independent legal advice regarding these options.

Reporting requirements

As part of Metro North’s PID management and reporting obligations, Metro North must ensure a secure and confidential reporting system is in place to receive, assess and manage disclosures of information.

In accordance with the Standards, the Integrity Unit will report particular (de-identified) details of PID information to the Queensland Ombudsman upon receiving a PID, when the level of risk changes, and upon closure of dealing with the PID.

To assist in meeting Metro North's mandatory reporting obligation, the Integrity Unit will request particular information in relation to a disclosure of information from decision maker or delegate, or another Metro North unit, if required. The information, when requested, must be provided.

Contact details

To report information or make a complaint about the conduct of Metro North or any of its employees, please contact the Integrity Unit:

| | | |
|--|--|-------------------|
| Mail: | Email: | Telephone: |
| Integrity Unit Level 7, Block 6 RBWH HERSTON QLD 4006 | MNHHS-Integrity@health.qld.gov.au | (07) 3646 1566 |

Queensland Ombudsman

<https://www.ombudsman.qld.gov.au/>

Telephone: 1800 068 908

Email: ombudsman@ombudsman.qld.gov.au

Crime and Corruption Commission

<http://www.ccc.qld.gov.au/>

Telephone: (07) 3360 6060

Email: mailbox@ccc.qld.gov.au

Partnering with consumers

Information about lodging a public interest disclosure should be provided in a way that meets the patients, carers and family's needs and that is easy to understand. They should be encouraged and given the opportunity to ask questions to clarify information. Staff are responsible for checking their understanding of discussions.

Aboriginal and Torres Strait Islander considerations

Metro North considers the cultural needs and rights of Aboriginal and Torres Strait Islander peoples in accordance with section 28 of the *Human Rights Act 2019* (Qld). Consultation and feedback has been sought from the Aboriginal and Torres Strait Islander Unit in preparing this document. Where further cultural support is required, the Aboriginal and Torres Strait Islander Hospital Liaison Service is to be contacted.

Legislation and other authority

Anti-Discrimination Act 1991 (Qld)

Crime and Corruption Act 2001 (Qld)

Disability Services Act 2006 (Qld)

Environmental Protection Act 1994 (Qld)

Information Privacy Act 2009 (Qld)

Industrial Relations Act 2016 (Qld)

Judicial Review Act 1991 (Qld)

Public Interest Disclosure Act 2010 (Qld)

Public Service Act 2008 (Qld)

Public Sector Ethics Act 1994 (Qld)

Public Records Act 2002 (Qld)

Human Rights Act 2019 (Qld)

Related documents

Queensland Ombudsman Public Interest Disclosure Standard No. 1/2019

Queensland Ombudsman Public Interest Disclosure Standard No. 2/2019

Queensland Ombudsman Public Interest Disclosure Standard No. 3/2019

Code of Conduct for the Queensland Public Service

Metro North Requirements for Reporting Corrupt Conduct

Metro North [Corrupt conduct complaints involving the Chief Executive](#)

[Managing A Public Interest Disclosure Program](#): A Guide For Public Sector Organisations

[Making A Public Interest Disclosure](#): A Guide For Individuals Working In The Public Sector

[Handling A Public Interest Disclosure](#): A Guide For Public Sector Managers And Supervisors

Other PID resources available from the [Queensland Ombudsman PID Resources](#) webpage

Appendix 1- Definition of terms

| Term | Definition |
|-----------------------|--|
| Administrative action | <p>Defined in Schedule 4 of the PID Act and 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 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>It does not include an operational action of a police officer or of an officer of the CCC.</p> |
| Anonymous | Where the person disclosing information does not identify themselves at any stage, to anyone. |
| Corrupt Conduct | <p>Section 15 of the <i>Crime and Corruption Act 2001</i> (Qld) defines corrupt conduct for the purposes of the Act and this procedure.</p> <p>Type A – Section 15 (1)</p> <ul style="list-style-type: none"> a) The conduct, adversely affects or could adversely affect (directly or indirectly), the performance or function of Metro North or Metro North employees; and b) The conduct is or could be (directly or indirectly) <ul style="list-style-type: none"> • Dishonest or is not impartial; or • a breach of the trust places in the employee (either knowingly or recklessly); or • a misuse of information or material acquired in, or in connection with the performance of their role in Metro North; and c) The conduct if proven would be: <ul style="list-style-type: none"> • A criminal offence; or • A disciplinary breach providing reasonable grounds for termination of the person's employment. <p>Type B - Section 15 (2)</p> <ul style="list-style-type: none"> a) The alleged conduct impairs, or could impair, public confidence in public administration and b) Involves, or could involve, any of the following |

| Term | Definition |
|------------|---|
| | <ul style="list-style-type: none"> i. Collusive tendering ii. Fraudulent applications for licenses, permits and other authorities under an Act necessary to protect: <ul style="list-style-type: none"> • the health and safety of persons; • the environment; and/or • the use of the State's natural resources iii. dishonestly obtaining benefits from the payment or application of public funds or the disposition of state assets iv. evading States taxes, levies, duties or fraudulently causing a loss of State revenue v. fraudulently obtaining or retaining an appointment and c) The conduct if proven would be: <ul style="list-style-type: none"> • a criminal offence; or • a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment. |
| Danger | A threat or event that would cause harm or damage to both persons and/or property. |
| Detriment | <p>Defined in schedule 4 of the PID Act and 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>Pursuant to section 11 of the <i>Disability Services Act 2006</i> (Qld) Permanent disability or one likely to be permanent –</p> <ul style="list-style-type: none"> a) that is attributable to an intellectual, psychiatric, cognitive, neurological, sensory or physical impairment or a combination of impairments; and b) that results in - <ul style="list-style-type: none"> i. a substantial reduction of the person's capacity for communication, social interaction, learning or mobility; and ii. the person needing support. |

| Term | Definition |
|-------------------|---|
| Environment | <p>Pursuant to section 8 of the <i>Environmental Protection Act 1994</i> (Qld) an Environment includes –</p> <ol style="list-style-type: none"> a) ecosystems and their constituent parts, including people and communities; and b) all natural and physical resources; and c) the qualities and characteristics of locations, places and areas, however large or small, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony and sense of community; and d) the social, economic, aesthetic and cultural conditions that affect, or are affected by, things mentioned in paragraphs (a) to (c). |
| Journalist | <p>Pursuant to Section 20(4) of the PID Act – “a person engaged in the occupation of writing or editing material intended for publication in the print or electronic news media”.</p> |
| Maladministration | <p>Schedule 4 of the PID Act defines maladministration as administrative action that:</p> <ol 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 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 – <ol 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. • give a fair hearing. • act only on the basis of logically probative evidence. |

| Term | Definition |
|-------------------------------------|--|
| Public health or safety | <p>Includes the health or safety of persons:</p> <ul style="list-style-type: none"> a) under lawful care or control; or b) using community facilities or services provided by the public or private sector; or c) in employment workplaces. <p>For example - a patient under the care or control of a doctor, nurse or other health professional at a public health facility.</p> |
| Public Interest Disclosure (PID) | <p>A public interest disclosure is a disclosure about wrongdoing in the public sector that serves the public interest. For an allegation to be considered a public interest disclosure under the PID Act it must be:</p> <ul style="list-style-type: none"> • public interest information about serious wrongdoing or danger; • an appropriate disclosure; and • made to a proper authority. |
| Reprisal (and grounds for reprisal) | <p>Defined in section 40 of the PID Act as a person causing, attempting to conspire to cause, detriment to another person because, or in the belief that:</p> <ul style="list-style-type: none"> • the other person or someone else has made, or intends to make, a PID; or • the other person or someone else is, has been, or intends to be, involved in a procedure under the PID Act against any person. <p>An attempt to cause detriment includes an attempt to induce a person to cause detriment.</p> |

Document history

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| Author | Director, Integrity Unit (PID Coordinator) |
| Custodian | Director, Integrity Unit (PID Coordinator) |
| Compliance evaluation and audit | Review of PID database trends in consultation with the Ombudsman's Office. Liaise with Metro North Learning and Development Unit re orientation and induction training and ongoing opportunities to provide PID training to employees. Provide dedicated PID refresher information to managers/supervisors at training forums |
| Replaces Document/s | Public interest Disclosure Procedure v3.0 |
| Changes to practice from previous version | A new overarching Metro North Policy has been established for Public Interest Disclosure, providing a robust framework for PID processes and requirements. The procedure outlines the PID process, incorporating the Queensland Ombudsman's Public Interest Disclosure Standards (2019). |
| Education and training to support implementation | Mandatory training on Public Interest Disclosure is a requirement for all Metro North employees. (Available on TMS) |
| Consultation | <p>Key stakeholders</p> <p>Clinical Operations Strategy Implementation Unit Clinical Directorate Safety and Quality Units</p> <p>Broad Consultation</p> <p>Clinical Skills Development Centre Metro North Aboriginal and Torres Strait Islander Unit Metro North Allied Health Metro North Emergency Medicine and Access Coordination Stream Metro North Finance Metro North Human Resources Metro North Information Technology Metro North Legal Unit Metro North Nursing and Midwifery Metro North Risk and Compliance Officer Metro North Workplace Health and Safety Metro North Engage</p> |
| Marketing Strategy | Marketing through regular email to all line managers of new and updated policies and procedures; and a notification through Safety and Quality Units to key stakeholders. |

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|------------------|--|
| Key words | Misconduct; PID; Public; Interest; Disclosure; Discipline; CCC; Crime and Corruption; Commission; Ombudsman; Wrongdoing; MNHHS; Metro; North; Procedure; Act; Health; Workplace; Complaints; |
|------------------|--|

Custodian Signature **Date**
Director, Integrity Unit, Metro North Hospital and Health Service

AUTHORISATION

Authorising Officer Signature **Date**
Chief Executive, Metro North Hospital and Health Service

The signed version is kept in file at Clinical Governance Safety Quality and Risk, Metro North.