

# Public Interest Disclosures (Whistleblowers) Policy

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## 1. OVERVIEW

On 6 August 2009, the State Government released the discussion paper, *Integrity and Accountability in Queensland* (the discussion paper), to facilitate public discussion on the issue of integrity and accountability.

The discussion paper outlined a raft of legislative and administrative reforms, including a commitment to reform the *Whistleblowers Protection Act 1994* (Qld). The *Public Interest Disclosure Act 2010* (Qld) (PID Act), which received assent on 20 September 2010, replaces the *Whistleblowers Protection Act 1994* (Qld).

The main objects of the PID Act are to:

1. promote the public interest by facilitating public interest disclosures of wrongdoing in the public sector;
2. ensure that public interest disclosures are properly assessed and, when appropriate, properly investigated and dealt with;
3. ensure that appropriate consideration is given to the interests of persons who are the subject of a public interest disclosure; and
4. afford protection from reprisals to persons making public interest disclosures.

Government Owned Corporations are now subject to the requirements of the PID Act in respect to disclosures relating to conduct that amounts to 'corrupt conduct' as defined under the *Crime and Corruption Act 2001* (Qld).

## 2. OBJECTIVES & APPLICATION

The objective of this policy is to establish a reporting system within Port of Townsville Limited (POTL) for the reporting and management of public interest disclosures in accordance with the PID Act, and to provide special protection to persons who make public interest disclosures.

This policy applies to all of POTL's employees and Directors. It also extends to POTL's consultants, volunteers, work experience students and contractors.

This policy is to be read in conjunction with POTL's Integrity and Accountability Framework (POT 676), Code of Conduct (POT 219) and Fraud and Corrupt Conduct Control Policy and Guidelines (POT 1093 & POT 389).

## 3. REVIEW

This policy is to be reviewed every three (3) years to ensure compliance with the PID Act and standards issued by the Queensland Ombudsman. The administration of this policy will also be subject to internal or external audit every three (3) years to ensure regular evaluation and monitoring of the effectiveness of this policy.

## 4. TRAINING

Employees and Directors will receive training on the requirements of this policy at the commencement of their employment with POTL as part of the induction program. Training sessions will also be conducted every three (3) years as a refresher or where there are significant changes to legislative requirements. Information bulletins will also be distributed on a 6-monthly basis which will include a component on PIDs.

## 5. DEFINITIONS

The following definitions apply in this policy:

**Discloser** means a person who has provided information that may constitute a PID within the meaning of the PID Act.

**Corrupt Conduct** is defined in the *Crime and Corruption Act 2001* (Qld) as conduct of a person, regardless of whether the person holds or held an appointment, that:

- (a) Adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of:
  - (i) a unit of public administration; or
  - (ii) a person holding an appointment; and
- (b) results, or could result, directly or indirectly, in the performance of functions or the exercise of powers mentioned in paragraph (a) in a way that:
  - (i) is not honest or is not impartial;
  - (ii) or involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or

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- (iii) involves a misuse of information or material acquired in or in connection with the performance of functions or the exercise of powers of a person holding an appointment; and
- (c) is engaged in for the purpose of providing a benefit to the person or another person or causing a detriment to another person; and
- (d) would, if provided, be:
  - (i) a criminal offence; or
  - (ii) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment.

Examples under the *Crime and Corruption Act 2001* (Qld) of Corrupt Conduct include:

- abuse of public office;
- bribery, including bribery relating to an election;
- extortion;
- obtaining or offering a secret commission;
- fraud;
- stealing;
- forgery;
- perverting the course of justice;
- an offence relating to an electoral donation;
- loss of revenue of the State;
- sedition;
- homicide, serious assault or assault occasioning bodily harm or grievous bodily harm;
- obtaining a financial benefit from procuring prostitution or from unlawful prostitution engaged in by another person;
- illegal drug trafficking; and
- illegal gambling.

**Public Interest Disclosure (PID)** means an appropriate disclosure of public interest information made by a person or employee to POTL or other appropriate government entity (i.e. the government entity involved, other government entities that can investigate the matter or a member of Parliament). The types of public interest information that can be disclosed by certain individuals include:

Any person (including members of the general public)	Port of Townsville Limited employees and Directors
<ul style="list-style-type: none"> <li>• Danger to health or safety of a person with a disability</li> <li>• Danger to the environment</li> <li>• Contravention of an environmental condition</li> <li>• Reprisal</li> </ul>	<ul style="list-style-type: none"> <li>• Corrupt Conduct</li> <li>• Maladministration</li> <li>• Misuse of public resources</li> <li>• Danger to health and safety</li> <li>• Danger to the environment</li> <li>• Reprisal</li> </ul>

The Discloser is required to hold an honest and reasonable belief that the information tends to show the conduct or other matter, or the information tends to show the conduct or other matter regardless of whether the Discloser honestly believes the information tends to show the conduct or other matter.

For making the disclosure, the Discloser is protected from reprisal, exposure of their identity and/or civil (e.g. defamation), criminal (e.g. for breaching statutory confidentiality provisions) or administrative liability providing they were not involved in the commission of an offence. However, making a PID does not exclude a Discloser from being reasonably managed or disciplined for any unsatisfactory performance or wrongdoing on their part.

If a disclosure amounts to a PID, then the confidentiality and reprisal provisions of the PID Act apply from the date of disclosure, not from the date that it is assessed and determined to be a PID.

PIDs are often entangled with employee-related complaints (e.g. grievances), issues between personnel or performance management concerns. It is important to distinguish PIDs from any other issues as each one will be dealt with separately using the appropriate mechanisms. A complainant usually 'owns' the complaint and can withdraw it at any stage. In contrast, a PID relates to a matter of public interest which, once made, is no longer 'owned' by the complainant and must be fully explored by POTL under the PID Act.

Employees should be aware that issues they are considering disclosing may involve activity that is primarily directed at them, such as harassment or bullying. These types of issues are employee-related complaints or grievances. This does not mean employees should not report them, as they are contrary to POTL's Code of Conduct and should be reported.

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**Reasonable Management Action** taken by a line supervisor or senior manager in relation to an employee includes any of the following:

- reasonable appraisal of the employee’s work performance;
- a reasonable requirement that the employee undertake counselling;
- a reasonable suspension of the employee from the employment workplace;
- reasonable disciplinary action;
- a reasonable action to transfer or deploy the employee;
- a reasonable action to end the employee’s employment by way of redundancy or retrenchment; and/or
- 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** means conduct or an omission which is substantially to cause, or attempts or conspires to, cause detriment to another person because, or in the belief that:

- the other person or someone else has made, or intends to make, a public interest disclosure;
- the other person or someone else is, has been, or intends to be, involved in a proceeding under the PID Act against any person.

Examples include:

- personal injury or prejudice to safety;
- property damage or loss;
- intimidation or harassment;
- unlawful discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business;
- threats of any of the above; or
- financial loss from any of the above.

## 6. POLICY

### 6.1 Commitment

POTL is committed to creating and maintaining a work environment that encourages and facilitates the disclosure of PIDs. POTL encourages any employee who considers that he or she has witnessed an incident that amounts to a PID to come forward and report it. POTL aspires to provide an environment where all employees feel confident and comfortable about reporting PIDs.

POTL believes that it has an obligation to deal with wrongdoings in POTL. Disclosing wrongdoings is in accordance with POTL’s ethical culture, in particular, acting with integrity. Further POTL believes that employees and Directors that come forward with disclosures of wrongdoing are acting in an exemplary manner by assisting POTL in promoting openness, accountability and good management.

When a PID is reported, POTL will commit to:

- protecting the dignity, wellbeing, career interests and good name of all persons involved;
- investigate the disclosure thoroughly and impartially;
- when the incident is found to be a PID, take action to deal with it;
- protecting the Discloser from any adverse action taken as a result of making the disclosure;
- treating any bullying, harassment, unfair treatment, victimisation or discrimination that results from a disclosure being made as a breach of POTL’s disciplinary procedures; and
- keeping the Discloser informed of progress and the outcome of the investigation.

In line with POTL’s Code of Conduct and POTL’s statutory and common law duties to ensure that the workplace is safe, POTL is committed to protecting any employee or Director who raises concerns about wrongdoing from retaliation or reprisal.

### 6.2 Roles and Responsibilities

#### Board of Directors

The Board of Directors are responsible for:

- promoting a corporate culture which encourages and facilitates the disclosure of PIDs and providing appropriate protection to Disclosers;
- monitoring and reviewing the effectiveness of POTL’s Integrity and Accountability Framework and administration of this policy;
- receiving PIDs from internal and/or external sources;
- disclosing PID wrongdoing;
- forwarding all PIDs and supporting evidence to the Chief Executive Officer and Company Secretary and Legal Counsel;
- overseeing the investigation process into a reported PID and implementation of protection mechanisms for Disclosers (where appropriate);
- supporting Disclosers (where appropriate); and

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- ensuring the requirements of confidentiality are maintained

### Chief Executive Officer

- receiving PIDs from internal and/or external sources;
- disclosing PID wrongdoing;
- establishing clear lines of authority and accountability;
- overseeing the assessment of PIDs and investigation process;
- appointing an investigator (internal or external);
- ensuring offences are reported to the appropriate external authorities, particularly ‘corrupt conduct’ offences to the Crime and Corruption Commission (CCC) and criminal activities to the Queensland Police Service (QPS);
- liaising with the Company Secretary and Legal Counsel and Manager Employee Relations;
- ensuring support mechanisms for Disclosers have been implemented;
- ensuring any risks of reprisal are identified and addressed;
- ensuring that PIDs are addressed quickly and effectively;
- ensuring all reasonable steps have been taken to ensure that Disclosers are not subject to reprisals or any form of detrimental action;
- ensuring that the rights of those who are the subject of a PID are protected and natural justice is accorded;
- keeping confidential the identity of the Discloser and subject(s) of the PID;
- deciding on what appropriate action to take following a PID;
- taking action following the outcome of any investigation or review, including taking any disciplinary or management action required; and
- implementing organisational change necessary as a result of a PID.

### Line Supervisors & Managers

All supervisors and managers are expected to:

- fully understand and support POTL’s attitude, program, policies and procedures in relation to PIDs;
- lead by example to create a corporate culture that encourages, values and supports disclosure;
- ensuring that strategies to prevent public interest wrongdoing are included in their business unit plans so that they are treated as an integral part of work activities;
- receiving PIDs from internal and external sources;
- disclosing PID wrongdoing;
- forwarding all PIDs and supporting evidence to POTL’s Chief Executive Officer;
- supporting Disclosers and linking them to other support mechanisms;
- identifying and addressing/reporting any risks of reprisal;
- taking all reasonable steps to ensure that Disclosers are not subject to reprisals or any form of detrimental action;
- keeping confidential the identity of the Discloser and subject(s) of the PID; and
- identifying areas where opportunities for public interest wrongdoing may occur and/or management systems are inadequate.

### Company Secretary and Legal Counsel

The Company Secretary and Legal Counsel, under the supervision of the Chief Executive Officer, is responsible for:

- ensuring that procedures for making, receiving and managing PIDs are developed and implemented and evaluated on a regular basis;
- implementing employee awareness and training;
- ensuring employees have access to information on POTL’s policy and reporting options;
- coordinating the reporting system;
- receiving PIDs from internal and/or external sources;
- disclosing PID wrongdoing;
- overseeing the investigation process;
- ensuring that all involved in conducting investigations understand the principles of the PID Act;
- impartially assessing information to determine whether it is a PID;
- ensuring offences are reported to the appropriate external authorities, particularly ‘corrupt conduct’ offences to the CCC and criminal activities to the QPS;
- providing advice about PIDs and the PID Act;
- liaising with the Chief Executive Officer and Manager Employee Relations;
- ensuring support mechanisms for Disclosers have been implemented;
- identifying and addressing any risks of reprisal;
- ensuring that PIDs are addressed quickly and effectively;
- ensuring all reasonable steps have been taken to ensure that Disclosers are not subject to reprisals or any form of detrimental action;
- ensuring that the rights of those who are the subject of a PID are protected and natural justice is accorded;
- keeping confidential the identity of the Discloser and subject(s) of the PID;
- assisting the Chief Executive Officer and relevant senior manager/s with deciding on what appropriate action to take following a PID;

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- identifying areas where opportunities for public interest wrongdoing may occur and/or management systems are inadequate;
- establishing and maintaining a confidential filing system;
- reporting on the number of PIDs received each year and their outcomes; and
- collating and publishing statistics on PIDs.

### Manager Employee Relations

The Manager Employee Relations, under the supervision of the Chief Financial Officer, is responsible for:

- ensuring employees have access to information on POTL's policy and reporting options;
- receiving PIDs from internal and/or external sources;
- disclosing PID wrongdoing;
- working with the Company Secretary and Legal Counsel during the assessment of the PID and assisting with the coordination of the reporting system;
- overseeing and coordinating the investigation process;
- reporting offences to the appropriate external authorities, particularly 'corrupt conduct' offences to the CCC and criminal activities to the QPS;
- linking the Discloser to support mechanisms;
- advising the Discloser about what making a PID means;
- assessing the immediate protection needs of the Discloser;
- listening and responding to any concerns of harassment, intimidation or victimisation in reprisal for making a PID;
- coordinating and providing support to the Discloser;
- working with management to foster a supportive work environment;
- advising the Discloser of progress;
- keeping records of all aspects of the case management of the Discloser, including all contact and follow-up action;
- assisting the Chief Executive Officer and the senior manager/s with deciding on what appropriate action to take following a PID;
- taking action following the outcome of any investigation or review, including taking any disciplinary or management action required;
- ensuring that the rights of those who are the subject of a PID are protected and natural justice is accorded;
- identifying areas where opportunities for public interest wrongdoing may occur and/or management systems are inadequate; and
- endeavouring to ensure that the expectations of the Discloser are realistic.

### Investigators

Investigators that are appointed by the Chief Executive Officer to investigate a PID are responsible for:

- carrying out the investigation in an independent manner and keeping the Chief Executive Officer advised as to the progress and outcomes; and
- providing the Discloser and subject officer with information about the investigation subject to confidentiality requirements.

### Employees

All employees are responsible for ensuring that they comply with this policy and report potential PIDs and/or reprisal in accordance this policy.

All employees are expected to conduct themselves in a manner which is consistent with the ethical standards expected by POTL. If there are any areas where opportunities for public interest wrongdoing may occur and/or management systems are inadequate they should report such issues immediately.

All employees are expected to support peers who 'do the right thing' and make PIDs and keep confidential the identity of the Discloser and subject(s) of the PID, if known.

## 6.3 How to make a PID

### 6.3.1 Internal Reporting

There are a number of options for internally reporting a potential or actual PID. A PID may be reported by an employee or Director to:

- a Director;
- the Chief Executive Officer;
- a line manager or supervisor;
- the Manager Employee Relations; or
- the Company Secretary and Legal Counsel.

Disclosures can be made in any way, including in person, in writing, by telephone or electronically via email or the internet. All PIDs will be recorded and referred to the appropriate part of POTL to be dealt with in accordance with this policy. It is important when a

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disclosure is made that the information provided be clear and factual and that speculation, emotive language or embellishment is avoided.

Line managers and supervisors play a key role in addressing wrongdoing in the workplace and in supporting employees who report PIDs. Employees should consider who will be the best person to receive the disclosure. If it is a matter that can be resolved by a line supervisor or senior manager, an employee should make the disclosure to them. However, if an employee thinks that their line supervisor or senior manager may be involved, they should consider disclosing the issue to the Chief Executive Officer or an external body.

### 6.3.2 External Reporting

If an employee, senior manager or Directors holds any concerns about the manner in which POTL is addressing their disclosure, PIDs can also be made directly to other government entities that can investigate the matter or a member of Parliament including:

- the CCC;
- a member of the Legislative Assembly such as POTL's shareholding Ministers.

Depending on the nature of the PID, other external agencies which may be capable of receiving a PID include:

- the QPS; or
- the Queensland Audit Office (QAO).

While employees and Directors are urged to internally report PIDs in the first instance, POTL will respect and support employees who make reports to appropriate external agencies. Disclosers should be aware that when they disclose to an external entity, it is very likely that it will discuss your case with POTL. POTL will make every effort to assist any external agency dealing with a report of wrongdoing in POTL to bring the matter to a satisfactory conclusion.

Disclosers are urged, but not obliged, to:

- outline their concerns in writing in a concise manner as this assists those conducting the assessment of the PID claim; and
- specifically state whether they are claiming to have made a PID.

Disclosers should be aware that if they make a disclosure to a person or another external agency other than one that can investigate and deal with the matter or a Parliamentary Member, you may not receive the protections provided to them under the PID Act. Disclosures will not receive the protections outlined under the PID Act if they are made to:

- the media (unless the Discloser has already made a disclosure to POTL or another appropriate government entity and the entity decided not to investigate or deal with the disclosure or investigated the disclosure but did not recommend any action be taken or the Discloser was not notified within six months whether or not the disclosure would be dealt with or investigated);
- unions or professional associations;
- Commonwealth Government departments and agencies;
- private organisations; and
- organisations operating outside Queensland.

There are two main reasons why the PID Act limits protection to appropriate entities:

- to ensure that the reputation of the person(s) about whom the disclosure was made is not unfairly damaged; and
- to encourage Disclosers to make a disclosure to public sector entities that have responsibility or power to take action.

### 6.3.3 Advice to Disclosers

A Discloser may make a PID about events that happened or may have happened, events that are or may be happening or events that will or may happen.

A PID can be made anonymously. However, the practical result of this is that it may be difficult to obtain sufficient information to make an informed assessment of the matter and the Discloser cannot be notified of the outcome.

PIDs can also be made in other formats rather than a formal complaint or report. A PID can be any information provided in support of an investigation, including evidence provided by witnesses.

A person may make a PID whether or not the person is able to identify a particular person to whom the information disclosed relates. A person may make a PID even though the person makes it under a legal requirement.

The fewer people who know about the disclosure before it is made the more likely POTL will be able to maintain confidentiality, and provide support. Disclosers are discouraged from discussing the disclosure with work colleagues.

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Each separate allegation should be reported as a separate PID, unless matters are clearly linked and it would be reasonable to view them as a single disclosure. For example, an allegation that an employee acted negligently on a number of occasions might be recorded as a single PID provided the subject matter and circumstances are sufficiently linked to warrant it, whereas an allegation that an employee acted corruptly, and also assaulted a customer, might warrant recording as separate PIDs.

Disclosers are discouraged from investigated the matter themselves before disclosing as this may hinder any future investigation.

The PID Act does not provide immunity to a Discloser against liability, including disciplinary action, for any offence committed by the Discloser, nor does it provide protection to an employee who discloses a potential PID to the media unless the Discloser has already made a disclosure to POTL or another appropriate government entity and the entity decided not to investigate or deal with the disclosure or investigated the disclosure but did not recommend any action be taken or the Discloser was not notified within six months whether or not the disclosure would be dealt with or investigated.

#### 6.3.4 Receipt of a PID

Upon receipt of a PID, the relevant Director, line manager or supervisor and/or Manager Employee Relations is to notify the Chief Executive Officer and Company Secretary and Legal Counsel as soon as possible. Any relevant information produced in relation to the PID is to be forwarded to the Company Secretary and Legal Counsel for assessment and subsequent action.

#### 6.3.5 Assessment by the Company Secretary and Legal Counsel

The Company Secretary and Legal Counsel is to conduct an assessment of the disclosure in order to determine whether it amounts to a PID. POTL cannot decline to receive and assess a disclosure as a PID merely because it doubts the motives of the Discloser in making the disclosure.

In assessing a disclosure, the following matters will be considered:

- whether the person making the disclosure is in the category of persons able to receive the protection of the PID Act<sup>1</sup>;
- whether the disclosure concerns a matter about which a PID can be made<sup>2</sup>;
- whether the disclosure meets either the subjective or objective test set out in the PID Act<sup>3</sup>;
- whether the disclosure has been made to a party or entity to which a PID can be made<sup>4</sup>; and
- whether the disclosure has been made in accordance with POTL's policy or to a person listed in section 17(3) of the PID Act.

In making the assessment, the Company Secretary and Legal Counsel may obtain independent expert advice. The Company Secretary and Legal Counsel may refer a PID to an appropriate entity for investigation or review for the purpose of determining whether the PID is substantially verified.

If there is doubt about whether a disclosure is a PID, POTL will err on the side of caution and assume the disclosure is protected by the PID Act and manage the matter accordingly. A Discloser cannot request that their information not be treated as a PID, nor does POTL have such discretion.

Once a disclosure has been identified as a PID, a determination will be made as to the identity or identities of the Discloser/s where sufficient information is available.

#### 6.3.6 Determination by an External Agency or Court of Law

Whether a disclosure constitutes a PID is ultimately a matter of law. Therefore a PID assessment made by the Company Secretary and Legal Counsel may be set aside by a court as the ultimate decision maker on such matters.

#### 6.3.7 Notification of Assessment

POTL is to notify the Discloser of the outcome of the assessment when appropriate. In the event that a disclosure of information is assessed as a PID, the Discloser of the information is then classified as an internal witness and is protected under the PID Act from retaliation or reprisals.

#### 6.3.8 When a potential PID is denied

In the event that information is assessed and subsequently denied PID status, POTL may advise the Discloser of this determination. When appropriate, POTL is to advise the Discloser of his or her entitlement to a review of the decision, and advise of the review avenues available to the Discloser. Review avenues include referring the matter to an external agency such as the CCC.

When a potential PID is denied, POTL is committed to protecting any employee who raises concerns about an incident or matter that may amount to a breach of POTL's policies and procedures from retaliation or reprisal. Employees with complaints which are assessed as not constituting PIDs will be dealt with by the Manager Employee Relations in accordance with POTL's normal operating procedures, e.g. the grievance process.

<sup>1</sup> ss.12 and 19, PID Act.

<sup>2</sup> s.19, PID Act.

<sup>3</sup> s.19(3), PID Act.

<sup>4</sup> s. 19, PID Act.

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Disclosures that involve activity that is specifically aimed at the Discloser (e.g. harassment or bullying) are personnel grievances. This does not mean that they are not to be reported, as this behaviour is contrary to POTL’s Code of Conduct. Personnel grievances relating to these types of issues are to be reported in accordance with the Code of Conduct.

**6.3.9 Feedback to the Discloser**

The Discloser is to be provided with feedback as to how the disclosure is to be investigated or managed.

The information provided is subject to any applicable legislative and confidentiality requirements. Managers and supervisors are to note that when a PID relates to a potential breach of the *Corporations Act 2001* (Cth), it is a requirement under the whistleblowing provisions of that Act that consent be obtained from the Discloser to the provision of that information to POTL’s Chief Executive Officer and to the CCC.

In addition to the information listed in section 32 of the PID Act which is required to be provided in writing, POTL is to also advise the Discloser of the following:

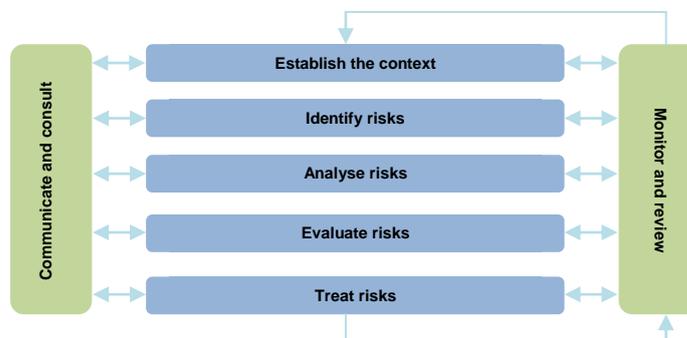
- that their information is a PID and what that means;
- likely timeframes;
- their involvement in the process (e.g. providing further information to investigators);
- the protections that will apply;
- their responsibilities (e.g. maintaining confidentiality except when seeking support);
- that POTL will keep the information confidential except in certain circumstances;
- how they will be updated on progress and outcomes; and
- who to contact if they want further information or are concerned about reprisals.

Information will be provided in a manner which ensures the integrity of any investigation or review is not compromised, and the safety of any person is not jeopardised. Regular follow up with the Discloser will be arranged by agreement to advise on the progress of resolving the PID (where this is desired by the Discloser, and it is safe to do so). At the conclusion of any investigation or review, the Discloser is to be advised of the outcome. At this time, consideration is also to be given about whether a formal exit from the support program is appropriate.

**6.3.10 Support and Protection**

POTL is committed to protecting its employees and Directors from reprisals that are, or may be, taken against them as a result of making a PID. As soon as possible after receiving a PID, POTL will take the following action to determine the level of protection and support appropriate for a Discloser:

- Conduct a risk assessment of a reprisal or other adverse outcome to the Discloser and others associated with the Discloser (including those who may wrongly be suspected of being a Discloser). If a risk assessment shows a risk of reprisal, POTL will ensure protective measures are in place that is proportionate to the risk of reprisal, and the potential consequences of a reprisal. If the risk is assessed as sufficiently high, POTL will prepare a management plan to protect Disclosers. Where feasible, it may be developed in consultation with the Discloser and other relevant stakeholders. POTL will also check on an ongoing basis as to whether any reprisal action has occurred or if the Discloser has any concerns that it will occur. Risk assessments will be conducted on an ongoing basis throughout the investigation process and after the matter has been closed. The following diagram demonstrates how risk management is to be an evolving process:



- Make an assessment of the need of the Discloser for support in consultation with the Discloser. POTL may appoint a peer support person as internal support officer for the Discloser. This person will be separate from the investigation function but with sufficient authority to ensure the Discloser has appropriate support and protection. The Discloser will also be provided with details of POTL’s employee assistance program, which provides free and confidential counselling services to POTL’s personnel. POTL will also ensure there are regular checks on the Discloser’s wellbeing (where this is an issue) and where

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the health of the Discloser becomes an issue, liaise with POTL's occupational health and safety officers or such other person as appropriate.

If a Discloser requires support as a result of making a disclosure, employees and Directors are urged to contact the Chief Executive Officer. All line supervisors and senior managers are under an obligation to notify the Company Secretary and Legal Counsel if they believe a Discloser is suffering detriment as a result of reporting a wrongdoing.

### 6.3.11 Reprisals

If a Discloser considers that reprisal action has been taken against them for having made a PID, the matter is to be referred immediately to the Chief Executive Officer and Company Secretary and Legal Counsel. All line supervisors and senior managers must notify the Chief Executive Officer and Company Secretary and Legal Counsel of any allegations of reprisal action against a Discloser, or if they themselves suspect that reprisal action against a Discloser is occurring.

Any allegation of reprisal taken against a Discloser will be taken seriously by POTL. Any employees found to have engaged in reprisal will be subject of disciplinary action. In the event of a reprisal being alleged or suspected, POTL will act in the interest of the Discloser by:

- attending to the safety of the Discloser or affected third parties as a matter of priority;
- reviewing the risk assessment of reprisal and any protective measures needed; and
- managing any allegation of a reprisal as a PID in its own right.

The nature of the action POTL will take is dependent upon the circumstances and seriousness of the reprisal that the Discloser is likely to suffer.

An employee or Director who takes reprisal against a Discloser may be guilty of misconduct and may be disciplined and in serious cases dismissed. Reprisal is also an indictable offence with a maximum penalty of two years imprisonment or 167 penalty units under the PID Act<sup>5</sup>.

A person who suffers reprisal is entitled under the PID Act to seek an injunction from the Industrial Commission, damages and/or injunction in the Supreme or District Court or in the alternative make a complaint under the *Anti-Discrimination Act 1991* (Qld) regardless of whether a criminal prosecution has been brought (the *Workers' Compensation and Rehabilitation Act 2003* (Qld) does not apply to damages in this instance)<sup>6</sup>. These actions can be brought against POTL and also the person who commits the reprisal<sup>7</sup>.

Reasonable Management Action is not prevented in relation to an employee who has made a public interest disclosure providing that the reasons for taking the action do not include the fact that the person has made a public interest disclosure<sup>8</sup>. For example, managers and supervisors may address the work performance issues of a Discloser, which are unrelated to the PID claim.

### 6.3.12 Confidentiality Issues

Confidentiality when handling a PID is important and must be maintained as it protects Disclosers from reprisals, as well as protects any other persons affected by the PID.

Under the PID Act, confidential information relating to a PID includes:

- information about the identity, occupation, residential or work address or whereabouts of a person who makes a PID or against whom a PID has been made;
- information disclosed by a PID;
- information about an individual's personal affairs; and
- information that, if disclosed, may cause detriment to a person.

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

Information considered to be confidential information under the PID Act is to be treated as strictly confidential by those employees involved in the administration of this policy and is not to be disclosed to another person, except in accordance with the PID Act.

In the course of an investigation, various employees or other persons may be contacted on a strictly confidential basis to provide information, comment or other assistance. For example, a manager or supervisor in which the Discloser is employed may be told of the PID and charged with the responsibility to monitor workplace conduct and to report any harassment, bullying or other workplace behaviour that might be construed as a reprisal.

<sup>5</sup> s.41, PID Act.

<sup>6</sup> ss.42, 44 and 48, PID Act.

<sup>7</sup> s.43, PID Act.

<sup>8</sup> s.45, PID Act.

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To the extent practicable, the identity of the Discloser must not be revealed. Employees who lawfully receive information in the administration of this policy are not to make a record or disclose that information, except in the proper administration of this policy or as may be authorised by legislation. Penalties apply under the PID Act where a person makes a record of confidential information or intentionally or recklessly discloses confidential information unless otherwise permitted by the PID Act or other legislation.<sup>9</sup>

While every attempt to protect confidentiality is to be made there may be occasions when disclosure of the identity of a Discloser may be required by law. These include where POTL is required to provide natural justice to the subject officer or is required to respond to a subpoena or other court order, search warrant, notice of produce, a direction by a Parliamentary Committee, court proceedings or to the CCC.

Confidential information may also be disclosed where POTL has obtained consent in writing from the person to whom the confidential information relates, or where POTL cannot reasonably obtain the person's consent and making a record or disclosing the information is unlikely to harm the interests of the person or the making of the record, or disclosure of the information is necessary to provide for the safety or welfare of a person and disclosure is reasonable in all the circumstances.

If an employee has concerns about issues of confidentiality or disclosing confidential information to another person, it is necessary to obtain advice from the Company Secretary and Legal Counsel prior to making any such disclosure of confidential information to another person or entity.

### 6.3.13 Vexatious and False & Misleading PIDs

Disclosures are not to be made if the information is known to be malicious, false, misleading or vexatious. While a legal level of proof is not required, a Discloser must be prepared to demonstrate reasonable grounds for his/her suspicions.

In the event POTL obtains information raising a reasonable suspicion that a potential PID is vexatious or intentionally false, and the Discloser intended that the false information be acted upon, the matter is to be referred to the Chief Executive Officer for reporting to the CCC. On the advice of the CCC, POTL may withdraw or alter PID status previously granted to a Discloser.

In some circumstances, it may constitute a breach of POTL's Code of Conduct and could constitute an indictable offence under the PID Act if the person makes a statement intending that it be acted upon as a PID and the person intentionally provides false or misleading information (maximum penalty 167 penalty units or 2 years imprisonment)<sup>10</sup>

### 6.3.14 Recordkeeping and Reporting of PIDs

POTL is to maintain a confidential file pertaining to each potential PID, with the following minimum requirements:

- the results of the assessment of the disclosure;
- the date the disclosure was received and how it was received;
- details of the allegations;
- the category of the subject matter of each disclosure according to the types of disclosures permitted by the PID Act<sup>11</sup>;
- the name and contact details of the Discloser (if known);
- the name and contact details of the subject officer;
- the relationship between the Discloser and the subject officer;
- if referred by another source, the name of the entity or Member of Parliament who made the referral;
- any referral or reporting to another entity (e.g. the CCC) and when this was done;
- a summary of any risk of reprisal to the Discloser and action taken to minimise the risk;
- those internal employees allocated to the assessment, investigation and management of the PID;
- the response to the disclosure including any action taken and the outcome;
- if no action was taken, the reason for this decision<sup>12</sup>;and
- when the outcome was advised to the Discloser (where known).

All records relating to PIDs are to be kept in POTL's official recordkeeping systems in accordance with POTL's recordkeeping policies and procedures and must be kept confidential.

## 6.4 Advice for Managers and Supervisors Receiving a PID

The attitudes, knowledge and skills of managers are key assets for overcoming barriers to a positive reporting environment. Managers and supervisors play an important role in developing a culture of transparency and a workplace in which employees can feel supported when making a disclosure.

<sup>9</sup> s.65, PID Act.

<sup>10</sup> s.66, PID Act.

<sup>11</sup> ss.12 and 19, PID Act.

<sup>12</sup> s.30, PID Act.

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Managers and supervisors have a critical role in influencing employee perceptions as to whether POTL appropriately responds to disclosures and supports Disclosers. Managers and supervisors therefore need to become familiar with this policy so that they know:

- how to identify a PID;
- where to report a PID as soon as possible;
- the requirements of confidentiality once a PID has been made;
- that they need to preserve evidence necessary for any assessment and subsequent investigation or review of the PID in consultation with the Chief Executive Officer and Company Secretary and Legal Counsel without unintentionally alerting other employees to the disclosure;
- to be aware of any risks and proactively assess any potential reprisal action against an Discloser during an investigation or a review, and to take reasonable management action to prevent an Discloser from suffering reprisal or detriment;
- to report any suspected or alleged reprisal action to the Chief Executive Officer and Company Secretary and Legal Counsel;
- to be aware that Disclosers and subject officers may experience anxiety and stress as a result of any investigation or review and provide support to employees (managers and supervisors are required to seek assistance of the Company Secretary and Legal Counsel and Manager Employee Relations in determining appropriate strategies to support employees in this situation).

Managers and supervisors are to note that when a PID relates to a potential breach of the *Corporations Act 2001* (Cth), it is a requirement under the whistleblowing provisions of that Act that consent be obtained from the Discloser to the provision of that information to POTL's Chief Executive Officer and to the CCC.

### 6.5 Advice for Employees who are the subject of a PID

The granting of internal witness status to a person who has made a PID does not mean that POTL considers the disclosed information to be verified. It means that POTL is committed to taking action to address the information disclosed to determine whether there is any substance to the disclosure. It also means POTL is to take reasonable management action to protect the Discloser from reprisal action.

Subject officers are assumed to be innocent of any adverse allegation unless there is evidence to the required standard of proof to show otherwise.

Subject officers may seek assistance from their industrial union, or engage their own legal representative at their own expense, during the process of an investigation of any allegations raised against them. The rules of natural justice apply to any subject officer under investigation in respect of an allegation raised against them. Accordingly, subject officers are to be advised of the nature of the allegations against them at the appropriate time and are to be afforded an opportunity to respond. PIDs will be assessed impartially, objectively and reasonably.

Natural justice does not mean that subject officers are entitled to know the identity of the Discloser unless this information is necessary in order for the subject officer to respond to the allegations. Further, in order to protect the identity of Discloser, it may not be possible to provide the subject officer with all correspondence or documentary information considered by investigators.

Subject officers may also use the *Right to Information Act 2009* (Qld) to apply for access to information held by POTL. Access to the relevant information is subject to the consideration of exception provisions contained within the *Right to Information Act 2009* (Qld) and the *Information Privacy Act 2009* (Qld). Subject officers can obtain further information regarding this process on POTL's website.

Employees who are the subject of a PID can also access POTL's employee assistance program, which provides free and confidential counselling services to POTL's personnel if they require support.

### 6.6 Rights of Review

If a Discloser is not happy with a decision made by POTL in respect to a PID, the Discloser may request in writing that the decision be internally reviewed.

An internal review of the decision is to be undertaken by the Chief Executive Officer or any person delegated by the Chief Executive Officer. The reviewer is not to be the person who undertook the original assessment of the matter or a person who is less senior than that person.

The reviewer must assess the PID and provide a decision as soon as practicable. When appropriate the Discloser will be notified of the reviewer's decision in respect to the PID.

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Alternatively, a Discloser is entitled to make a PID to another appropriate government entity (such as the QAO, CCC, QPS, etc.) or seek independent legal advice about his/her rights at their cost, such as whether an application could be made to the Supreme Court for a review of the decision under the *Judicial Review Act 1991* (Qld).

## 6.7 Continual Improvement

As part of POTL's commitment to continual improvement PIDs will be analysed by POTL for trends. Subject to confidentiality requirements, the outcomes will be used by POTL to inform improvements to service delivery, business processes and internal controls. This will not only improve the way in which POTL's conducts its operations but will also minimise the risk of such incidences occurring again.

## 6.8 Taking Action on a PID

POTL must first determine whether the PID is to be referred to another entity such as a CCC where the matter concerns conduct that amounts to Corrupt Conduct. If it is, the referral must be done in accordance with legislative and administrative requirements as outlined in POTL's Integrity and Accountability Framework.

Managers and supervisors are to note that when a PID relates to a potential breach of the *Corporations Act 2001* (Cth), it is a requirement under the whistleblowing provisions of that Act that consent be obtained from the Discloser to the provision of that information to POTL's Chief Executive Officer and to the CCC.

Action will be taken in respect to the matters raised in a PID unless no action is required pursuant to section 30 of the PID Act. In determining what action is to be taken, options include:

- providing an explanation to the Discloser (e.g. if the Discloser was not aware of the whole circumstances surrounding an action which appeared to them to be improper);
- resolving the disclosure managerially;
- conducting a desk top audit of relevant documentation;
- conducting an internal audit, or a review of an issue or the operations of a particular business unit;
- implementing or changing policies, procedures or practices;
- formally investigating the allegations;
- undertaking disciplinary action in accordance with the Code of Conduct; and/or
- providing training and/or counselling to employees.

A preliminary investigation may be necessary to help determine what course of action to take. In making such a determination, consideration will be given to the requirements of the PID Act and the CCC, especially with regard to confidentiality requirements and the protection for Disclosers. Care will be taken to ensure unauthorised information is not released during an investigation.

Anonymous disclosures should be received and managed in the same way as identified disclosures, and should not be rejected simply because they are anonymous. POTL will assess, however, how feasible it would be to continue to manage an anonymous PID, and what outcome could be achieved. For example, if POTL receives a single anonymous statement which simply states "the Director of XYZ Branch is corrupt" POTL may decide to record the disclosure but not take any further action in the absence of further information or contact details for the Discloser. In the alternative, if POTL receives an anonymous statement which says "contracts have been awarded by the XYZ Branch without any proper tendering process" POTL may respond by conducting a small sample audit of recent contracts awarded by the branch to determine whether there is any substance to the disclosure.

In assessing (and where necessary, investigating and taking action on) a PID, POTL will ensure that subject officers are afforded natural justice, particularly in any subsequent disciplinary process.

Section 30 of the PID permits POTL to decide not to investigate or deal with a PID if:

- the substance of the disclosure has already been investigated or dealt with by another appropriate process;
- the entity reasonably considers that the disclosure should be dealt with by another appropriate process;
- the age of the information the subject of the disclosure makes it impracticable to investigate;
- POTL reasonably considers that the disclosure is too trivial to warrant investigation and that dealing with the disclosure would substantially and unreasonably divert the resources of POTL from their use in the performance of its functions; or
- another Government entity that has jurisdiction to investigate the disclosure has advised POTL that investigation of the disclosure is not warranted.

If POTL decides not to investigate or deal with a PID for the above reasons, POTL is required to give written reasons for its decision to the Discloser. The Discloser will have 28 days after receiving the written reasons to apply for a review of the decision.

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## 6.9 Referral of a PID

POTL may refer a PID to another public sector entity (referral entity) if the disclosure is about the referral entity or a public officer of the referral entity, the conduct of an entity (including itself) or another matter that the referral entity has the power to investigate or remedy. POTL will not refer PIDs to another public sector entity if it considers there is an unacceptable risk that a reprisal would occur because of the referral. In considering whether there would be an unacceptable risk, POTL will, if practicable, consult with the person who made the PID.

When referring a PID to another public sector entity, POTL must provide at least the following information in writing:

- confirmation that the disclosure was received by POTL;
- a description of the action proposed to be taken, or taken, by POTL in relation to the PID; and
- if action has been taken by POTL in relation to the disclosure – a description of the results of the action.

POTL will not provide the above information if giving the information would be likely to adversely affect anybody's safety, the investigation of an offence or possible offence or necessary confidentiality about an informant's existence or identity.

## 7. OVERSIGHT AGENCY

The Queensland Ombudsman is the oversight agency responsible for ensuring compliance with the PID Act.<sup>13</sup> Their main functions are to<sup>14</sup>:

- monitor the management of PIDs, including, for example, by –
  - monitoring compliance with the PID Act;
  - collecting statistics about PIDs; and
  - monitoring trends in relation to PIDs;
- review the way in which public sector entities deal with PIDs generally, or particular PIDs; and
- perform an educational and advisory role, including, for example, by –
  - promoting the objects of the PID Act;
  - providing advice about PIDs; and
  - providing, or co-ordinating the provision of, education and training programs about PIDs.

The Queensland Ombudsman may make standards about the way in which Government Owned Corporations are to deal with PIDs.<sup>15</sup>

The Queensland Ombudsman will prepare an annual report on the operation of the PID Act which will replace individual agency reporting. However, agencies will still be required to provide the Queensland Ombudsman with information about PIDs on a quarterly basis via a PID database. The following information about PIDs will be provided to the Queensland Ombudsman on a quarterly basis<sup>16</sup>:

- the date the disclosure was received, and where it was received from;
- the status of the discloser (e.g. entity staff, staff from another entity, member of the public, anonymous);
- the gender and status of the subject officer (staff member, non-staff member);
- the relationship between the discloser and subject officer;
- the location of the subject officer (geographical region);
- a summary of the allegation/information received;
- the involvement of an external agency/party;
- the action taken to minimise any risk of reprisal;
- date inquiry/investigation commenced and completed;
- the outcome of the assessment, inquiry/investigation;
- the date the PID was resolved or closed;
- when the outcome was advised to the discloser;
- if no action was taken, the reason for the decision; and
- other legal processes associated with the disclosure.

The disclosers' personal details will not be provided to the Queensland Ombudsman when reporting the PID.

The Queensland Ombudsman is responsible for reviewing the PID Act within five years of commencement.<sup>17</sup>

<sup>13</sup> s.58, PID Act.

<sup>14</sup> s.59, PID Act.

<sup>15</sup> S.60, PID Act.

<sup>16</sup> Public Interest Disclosure Standard No. 1, clause 7.2.

<sup>17</sup> s.62, PID Act.

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## 8. AUTHORISATION AND REVIEW

This Policy is to be reviewed every three (3) years consistent with the requirements of POTL's Control of Documents Procedure (POT 108).

The Chief Executive Officer is responsible for approving any significant policy changes to this Policy consistent with POTL's Control of Documents Procedure (POT 108) and Delegation Policy (POT 1094).

## 9. COMPLIANCE AND COMPETENCE

<b>Guidelines and Directives</b>
Public Interest Disclosure Standard issued under s.60 of the <i>Public Interest Disclosure Act 2010</i> (Qld)
<b>Legislation</b>
<i>Public Interest Disclosure Act 2010</i> (Qld) <i>Integrity Act 2009</i> (Qld) <i>Crime and Corruption Act 2001</i> (Qld) <i>Government Owned Corporations Act 1993</i> (Qld) <i>Corporations Act 2001</i> (Cth)

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