

PUBLIC INTEREST DISCLOSURE POLICY

Approved 13 September 2018

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1. PURPOSE

To outline how a Public Interest Disclosure (PID) can be made at the Queensland Art Gallery | Gallery of Modern Art (QAGOMA), and how QAGOMA will comply with the *Public Interest Disclosure Act 2010* (PID Act) to support a person who makes a disclosure about matters in the public interest.

2. SCOPE

The PID Policy applies to all QAGOMA employees, and to other persons who wish to make a PID relating to QAGOMA.

3. POLICY STATEMENT

QAGOMA is committed to fostering an ethical, transparent culture, promoting the public interest, and maintaining public confidence in the integrity of QAGOMA. This includes supporting its employees and others to make a disclosure about matters in the public interest.

Disclosures in the public interest received by QAGOMA will be assessed in accordance with the PID Act, the PID Standard and this policy. To facilitate appropriate management of PIDs, the Gallery will establish systems and procedures to ensure:

- any public officer who makes a PID is offered support and protection from reprisal
- appropriate consideration is given to the interests of persons who are subject of a PID
- PIDs received are properly assessed and, where appropriate, properly investigated
- appropriate action is taken in relation to any wrongdoing established as a result of a PID
- a PID management program is developed and implemented.

4. OVERVIEW OF PIDS

4.1 WHAT IS A PID?

A Public Interest Disclosure (PID) is a report about suspected wrongdoing or danger.

A PID may be made by any person who has a reasonable belief, or provides evidence which tends to show, that wrongdoing has occurred about any of the following matters:

- substantial and specific danger to the health or safety of a person with a disability
- substantial and specific danger to the environment
- reprisal because of a belief that a person has made, or intends to make a disclosure.

Additionally, public officers may make a PID about any of the following public interest matters:

- corrupt conduct
- maladministration that adversely affects a person's interests in a substantial and specific way
- a substantial misuse of public resources
- a substantial and specific danger to public health or safety
- substantial and specific danger to the environment.

The following types of disclosure are not considered a PID, and are not protected under the PID Act:

- frivolous or vexatious matters
- except as permitted in section 4.4, a disclosure made to the media

- a disclosure which primarily questions the relative merits of government or agency policy
- a disclosure made substantially to avoid disciplinary action.

4.2 WHY MAKE A PID?

PIDs are an important source of information about wrongdoing in the public sector, and information derived from PIDs help to improve systems that prevent fraud and other economic loss.

Employees who speak up about public sector misconduct, wastage of public funds, suspected unlawful activity or danger to health, safety or the environment play a key role in identifying and addressing problems in public sector administration, and in strengthening the community's trust in public administration.

4.3 WHO CAN A PID BE DISCLOSED TO?

A PID must be made to a 'proper authority'. Disclosers are encouraged to make a disclosure to QAGOMA initially. If the matter is not resolved, or the discloser is concerned about confidentiality, the disclosure may be made to an external agency who may receive PIDs (Section 6 details procedures for making and dealing with PIDs).

PROPER AUTHORITIES FOR RECEIVING A PID	
QAGOMA positions for receiving PIDs	External agencies who receive PIDs
<ul style="list-style-type: none"> • the PID Coordinator (Assistant Director, Operations and Governance) • any supervisor or manager • any member of the Executive Management Team • the Director 	<ul style="list-style-type: none"> • Crime and Corruption Commission (CCC) for corrupt conduct including matters relating to reprisal • Queensland Ombudsman for maladministration • Queensland Audit Office for substantial misuse of resources • Department of Child Safety, Youth and Women for danger to the health and safety of a child or young person with a disability • Office of the Public Guardian for danger to the health and safety of a person with a disability • Department of Environment and Science for danger to the environment • a Member of the Legislative Assembly for any wrongdoing or danger • Chief Judicial Officer of a court or tribunal about wrongdoing by a judicial officer.

4.4 DISCLOSURE TO A JOURNALIST

For a discloser to be protected under the PID Act, any disclosure about a PID to a journalist should only be made in the following circumstances—a valid PID was initially made to a proper authority, and the proper authority:

- decided not to investigate or deal with the disclosure; or
- investigated the disclosure but did not recommend taking any action; or
- failed to notify the discloser within six months of making the disclosure whether or not the disclosure was to be investigated or otherwise dealt with.

Disclosers should be aware that journalists are not bound by the confidentiality provisions of the PID Act.

5. PID MANAGEMENT PROGRAM

As required under the PID Act, the Gallery will develop and implement a PID management program. The aim of the PID management program is to encourage the internal reporting of wrongdoing. The PID management program will provide for the following matters:

- appointment of a PID Coordinator
- development of a communication strategy to raise awareness among employees about PIDs
- delivery of appropriate training for managers with responsibilities for receiving and/or managing PIDs
- access for employees to training and information about how to make a PID, the support available to a discloser, and how PIDs will be managed by the Gallery
- the outcomes from PIDs inform improvements to the Gallery's service delivery, business processes and internal controls
- regular review of the PID Policy and the effectiveness of the PID management program.

6. PROCEDURES FOR MAKING AND DEALING WITH PIDS

6.1 MAKING A PID

A discloser must make a PID to a proper authority either verbally or in writing. Where appropriate, disclosers are encouraged to make their initial disclosure in writing to a proper authority at QAGOMA.

A PID may be made anonymously, however, the discloser is encouraged to provide contact details to help in dealing with the PID (this may be an email address that is created for the purpose of making the disclosure or a telephone number).

Disclosers are requested to provide as much information as possible about the suspected wrongdoing that could help investigate the PID, including all of the following:

- who was involved
- what happened
- when it happened
- where it happened
- whether there were any witnesses, and the identity of any witnesses
- any evidence that supports the PID, and where the evidence is located.

Disclosers should note it is an offence under the PID Act to intentionally give false or misleading information intending it to be acted on as a PID. Employees who intentionally giving false or misleading information in a PID, or during an investigation into a PID, may be subject to disciplinary action.

6.2 DECIDING WHETHER A MATTER IS A PID

Any person who receives a PID, or a matter they think may be a PID, should immediately refer it to the Gallery's PID Coordinator (Assistant Director, Operations and Governance) to determine if the matter is a PID. For an allegation to be considered a PID and attract the protections under the PID Act, it must be all of the following:

- public interest information about substantial and specific wrongdoing or danger;
- an appropriate disclosure
- made to a proper authority.

A disclosure may still be a PID, even if any of the following apply:

- the discloser reports the information as part of their duties – such as an auditor reporting a fraud or an occupational health and safety officer reporting a safety breach
- the disclosure is made anonymously – the discloser is not required to give their name or any identifying information
- the discloser has not identified the material as a PID – it is up to QAGOMA to assess information received and decide if it is a PID
- the disclosure is unsubstantiated following investigation – the discloser is protected when the information they provide is assessed as a PID, whether or not it is subsequently investigated or found to be substantiated.

If there is any doubt as to whether a matter is a PID, the PID Coordinator may obtain further information from the Office of the Queensland Ombudsman to inform the decision. If doubt still remains, the matter will be considered and managed as a PID.

6.3 SUPPORTING AND PROTECTING DISCLOSERS

Disclosers should not suffer any form of detriment as a result of making a PID and QAGOMA will provide the strongest protection possible for a discloser.

On receipt of the PID, a risk assessment will be carried out as soon as possible to assess the likelihood of the discloser suffering reprisal action as a result of having made the disclosure. Where the discloser has provided contact details, the risk assessment will include consultation with the discloser. Support and/or protection for the discloser will be offered to the discloser based on the results of the risk assessment. Support and information will continue to be provided to the discloser until the matter is finalised.

Making a PID does not protect employees from any reasonable management, disciplinary or criminal action if the employee has been involved in improper conduct, or their performance is unsatisfactory. QAGOMA will continue to manage a discloser in accordance with normal, fair and reasonable management practices during, and after, the handling of the PID.

All QAGOMA employees are protected from reprisal. The nature of the protection is dependent upon the circumstances and seriousness of the reprisal. It is an offence for someone to:

- take reprisal action against a discloser
- mistakenly take reprisal action against an employee in the belief that they are a discloser, or
- take reprisal action against potential witnesses in a PID matter.

If reprisal does occur, the person subject to the reprisal has the right to request that QAGOMA take positive action to protect them. All managers must immediately notify the PID Coordinator of any allegations of reprisal action, or if they themselves suspect that reprisal action is occurring. In the event of reprisal action being alleged or suspected, QAGOMA will:

- attend to the safety of disclosers or affected third parties as a matter of priority
- review its risk assessment and any protective measures needed to mitigate any further risk or reprisal, and
- manage any allegation of a reprisal as a PID in its own right.

Any employee found to have engaged in reprisals may be the subject of disciplinary action. There is no time limit on the protection against reprisal under the PID Act.

6.4 ASSESSING A PID

The PID Coordinator will undertake assessment of PIDs, except where the matter is referred to an external agency for assessment. QAGOMA will advise the discloser (if identifiable) that their information was assessed as a PID, and provide information in writing about the following matters:

- acknowledgement of receipt of the PID
- the action to be taken by QAGOMA, which could include referring the matter to an external agency (see section 4.8), declining to take action (see section 4.9), or investigating (see section 4.10)
- the likely timeframes
- contact details of the QAGOMA support officer they can contact for updates or advice
- the discloser's obligations regarding confidentiality
- the protections the discloser has under the PID Act
- the commitment of QAGOMA to keep appropriate records and maintain confidentiality, except where permitted under the PID Act
- how updates regarding intended actions and outcomes will be provided to the discloser
- contact details for the QAGOMA Employee Assistance Program.

6.5 REFERRING A PID TO AN EXTERNAL AGENCY

QAGOMA may decide there is an external agency that is better able to deal with the PID. Consequently, the PID may be referred to that agency for assessment. Reasons for referring a PID may include:

- the PID primarily concerns wrongdoing by an employee of the other agency
- the other agency is a proper authority with the power to investigate or remedy the matter
- the Gallery has a legislative obligation to refer the matter (for example where there is a reasonable suspicion that the matter involves or may involve corrupt conduct (as required by section 38 of the *Crime and Corruption Act 2001*).

6.6 DECLINING TO TAKE ACTION ON A PID

Following assessment, QAGOMA may decide not to investigate or deal with a PID, including for the following reasons:

- the information disclosed was investigated or dealt with by another process
- the information disclosed should be dealt with by another process
- the age of the information makes it impractical to investigate
- the information disclosed is too trivial and dealing with it would substantially and unreasonably divert QAGOMA from the performance of its functions
- another agency with appropriate jurisdiction informed QAGOMA that an investigation is not warranted.

If a decision is made not to investigate or deal with a PID, QAGOMA will provide written reasons for that decision to the discloser. If the discloser is dissatisfied with the decision they may request a review by writing to the Director, QAGOMA, within 28 days of receiving the written reasons for decision.

6.7 INVESTIGATING A PID

If QAGOMA decides to investigate a PID, an internal or external investigator will be appointed by the PID coordinator. The investigation will be done with consideration of all of the following:

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

If, as a result of investigation, the information about wrongdoing provided in the PID is substantiated, appropriate action will be taken by QAGOMA. Even if the investigation does not substantiate wrongdoing, QAGOMA will consider whether improvements should be made to systems, policies and procedures, or if employee training is required.

6.8 MAINTAINING CONFIDENTIALITY

Details about disclosures, investigations, and related decisions will be kept securely on the Gallery's record management system, and be accessible only to the people directly involved in the management of the PID. While every attempt will be made to protect confidentiality, QAGOMA cannot guarantee that others will not try to deduce a discloser's identity.

QAGOMA will communicate with all parties involved discretely to avoid identifying the discloser wherever possible. This includes communication with an external agency to facilitate the referral of a PID. In some circumstances, QAGOMA may be required to share information, or a discloser's identity, to provide natural justice to subject officers, or to respond to a court order, legal directive or court proceedings.

6.9 RIGHTS OF SUBJECT OFFICERS

QAGOMA acknowledges that for officers who are the subject of a PID, the experience may be stressful. Information and support will be provided to the subject officer until the matter is finalised. QAGOMA will also protect the rights of subject officers by taking the following actions:

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

6.10 RECORD-KEEPING

In accordance with its obligations under the PID Act and the *Public Records Act 2002*, QAGOMA will ensure that accurate data is collected about the receipt and management of PIDs. Anonymised data will be reported to the Officer of the Queensland Ombudsman in their role as the oversight agency.

7. ROLES AND RESPONSIBILITIES

The Director has designated the following roles and responsibilities for managing PIDs within QAGOMA:

Role	Responsibility	Officer
Director	<ul style="list-style-type: none"> • Ensure effective procedures, systems, and compliance with the <i>PID Act</i>. • Responsible for PID management program 	<i>Chris Saines, Director, QAGOMA</i>
PID Coordinator	<ul style="list-style-type: none"> • Principal contact for PID issues with QAGOMA. • Document and manage implementation of PID management program. • Review PID Policy 12 months after first approved and then on every three years. • Maintain and update internal records of PIDs received. • Report data on PIDs to the Queensland Ombudsman. • Assess PIDs received. • Provide acknowledgement of receipt of a PID to the discloser. • Undertake risk assessments in consultation with disclosers and other relevant officers. • Liaise with other agencies about referral of PIDs. • Allocate an Investigator and Support Officer to a PID matter. • Provide outcome advice for PIDs. 	<i>Duane Lucas, Assistant Director, Operations and Governance</i> <i>T: 3840 7292</i> <i>duane.lucas@qagoma.qld.gov.au</i>
PID Support Officer	<ul style="list-style-type: none"> • Provide advice and information to discloser on the QAGOMA PID Policy. • Provide personal support and referral to other sources of advice or support as required. • Facilitate updates on the progress of any investigation. • Proactively contact the discloser throughout PID management process. 	<i>Gail Pini, Head, Governance and Reporting</i> <i>T: 3842 9166</i> <i>gail.pini@qagoma.qld.gov.au</i>
Investigator	<ul style="list-style-type: none"> • Conduct investigation of information in the PID in accordance with the terms of reference. • Prepare a report for delegated decision-maker. 	An appropriate internal or external investigator will be appointed for each PID investigated.
Delegated decision-maker	<ul style="list-style-type: none"> • Review the investigation report and determine whether the alleged wrongdoing is substantiated. 	An appropriate decision-maker will be appointed for

Role	Responsibility	Officer
		each PID investigated.
Management	<ul style="list-style-type: none"> • Maintain an ethical culture. • Raise awareness of PIDs and encourage reporting of wrongdoing. • Respond to a reported PID using QAGOMA's established process. • Support disclosers and minimise the risk of reprisal. • Notify the PID Coordinator if they believe any employee is suffering detriment as a result of making a PID. • Maintain confidentiality and keep appropriate records. 	EMT, managers, and supervisors
Employees	<ul style="list-style-type: none"> • Act ethically, and comply with the <i>Code of Conduct for the Queensland Public Service</i>. • Report suspected wrongdoing or danger to a proper authority and maintain appropriate confidentiality. For QAGOMA matters, employees are encouraged to report PIDs internally to their direct manager or the PID Coordinator. • An employee may choose other internal reporting pathways including reporting to a manager, a member of the Executive Management Team, or to the Director. 	All QAGOMA employees
Any person	<ul style="list-style-type: none"> • Any person (including members of the public) are encouraged to report information about wrongdoing to the PID Coordinator 	

8. ADMINISTRATION

8.1 RELATED DOCUMENTS

- [Code of Conduct for the Queensland Public Service](#)
- [Crime and Corruption Commission Act 2001](#)
- [Employee Assistance Program](#)
- [Making a public interest disclosure - A guide for individuals working in the public sector](#)
- [Public Interest Disclosure Act 2010](#)
- [Public Records Act 2002](#)
- [Public Service Act 2008](#)
- [Public Sector Ethics Act 1994](#)
- [Queensland Ombudsman - Public Interest Disclosure Standard No. 1](#)

8.2 DOCUMENT OVERSIGHT

Approval authority	Director, Queensland Art Gallery Gallery of Modern Art		
Maintained by	Assistant Director, Operations & Governance		
Prepared by	Corporate Administration Agency (CAA)		
Release	Internal and external	File reference	Current document in RM8
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8.3 DOCUMENT HISTORY

Version	Approved by	Date	Revisions
1.0	Director	13 Sep 2018	New policy prepared by CAA

9. LICENCE

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APPENDIX 1 - DEFINITIONS

The following definitions apply to this policy:

Administrative action: As defined in Schedule 4 of the PID Act, is any action about a matter of administration including:

- a decision and an act;
- a failure to make a decision or do an act, including a failure to provide a written statement of reasons for a decision;
- the formulation of a proposal or intention;
- the making of a recommendation, including a recommendation made to a Minister; and
- an action taken because of a recommendation to a Minister.

Administrative action does not include an operational action of a police officer or of an officer of the Crime and Corruption Commission.

Confidential information: 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;
- disclosed by a PID;
- about an individual's personal affairs; and
- that if disclosed, may cause detriment to a person.

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.

Corrupt conduct: As defined in section 15 of the *Crime and Corruption Act 2001*, means conduct of a person, regardless of whether the person holds or held an appointment that:

- adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of a unit of public administration or a person holding an appointment; and
- results, or could result, directly or indirectly, in the performance of functions or the exercise of powers (of a unit of public administration or a person holding an appointment) in a way that:
 - is not honest or is not impartial; or
 - involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or
 - 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
- is engaged for the purpose of providing a benefit to another person; and
- would, if proved, be:
 - 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.

Conduct that involves any of the following could be corrupt conduct:

- abuse of a 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;
- 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; or
- illegal gambling.

Detriment: As defined in section 4 of the PID Act, includes:

- personal injury or prejudice to safety;
- property damage or loss;
- intimidation or harassment;
- adverse discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business;
- financial loss; or
- damage to reputation, including personal, professional or business reputation.

Disability: As defined in section 11 of the *Disability and Services Act 2006*, means:

- a person's condition that is attributable to:
 - an intellectual, psychiatric, cognitive, neurological, sensory or physical impairment; or
 - a combination of these impairments; and
- results in:
 - a substantial reduction of the person's capacity for communication, social interaction, learning, mobility, or self care or management; and
 - the person needing support.

The disability must be permanent or likely to be permanent. The disability may be, but need not be, of an episodic nature.

Employee: Includes a person engaged by QAGOMA under a contract of service.

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

Maladministration: As defined in section 4 of the PID Act, is administrative action that was:

- taken contrary to law; or
- unreasonable, unjust, oppressive, or improperly discriminatory; or
- in accordance with a rule of law or a provision of an Act or a practice that is or may be unreasonable, unjust, oppressive; or
- taken:
 - for an improper purpose;
 - on irrelevant grounds; or
 - having regard to irrelevant considerations; or
- an action for which reasons should have been given, but were not given; or
- based wholly or partly on a mistake of law or fact; or
- wrong.

Natural justice: Also referred to as 'procedural fairness' applies to any decision that can affect the rights, interests or expectations of individuals in a direct or immediate way. Natural justice is at law a safeguard applying to an individual whose rights or interests are being affected.

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

- avoid bias; and
- give a fair hearing; and
- act only on the basis of logically probative evidence.

Organisational support: Includes actions such as, but not limited to:

- providing moral and emotional support;

- advising disclosers about resources available to handle any concerns they have as a result of making their disclosure;
- appointing a mentor, confidante or other support officer to assist the disclosure through the process;
- referring the discloser to the Employee Assistance Program or arranging other professional counselling;
- generating support for the discloser in their work unit where appropriate;
- maintaining contact with the discloser;
- negotiating with the discloser or their support officer for a formal end to their involvement with the support program when it is agreed that they no longer need assistance.

Proper authority: A person or organisation that is authorised under the PID Act to receive disclosures. In QAGOMA a 'proper authority' is the PID Coordinator and any person in a supervisory or management position, including the Director and Executive Management Team.

Public Interest Disclosure (PID): A PID is a report about suspected wrongdoing or danger. For a report to be considered a PID and to gain the protections of the PID Act, the discloser must have reasonable grounds for believing there is wrongdoing, and make a report to a proper authority. The PID includes all information and help given by a discloser to a proper authority for the disclosure.

Public officer: A public officer, of a public sector entity, is an employee, member or officer of the entity.

Reasonable belief: A view which is objectively fair or sensible.

Reasonable management action: Action taken by a manager in relation to an employee, including a reasonable:

- appraisal of an employee's work performance;
- requirement that an employee undertake counselling;
- suspension of an employee from the workplace;
- disciplinary action;
- action to transfer or deploy an employee;
- to end an employee's employment by way of redundancy or retrenchment; or
- action in relation to an employee's failure to obtain a promotion, reclassification, transfer or benefit, or to retain a benefit, in relation to an employee's employment.

Reprisal: As defined in section 40 of the PID Act, means causing, attempting to cause or conspiring to cause detriment to another person in the belief that they or someone else:

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

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

Subject officer: An officer who is the subject of allegations of wrongdoing made in a disclosure.

Substantial and specific: *Substantial* means 'of a significant or considerable degree'. It must be more than trivial or minimal and have some weight or importance. *Specific* means 'precise or particular'. This refers to conduct or detriment that is able to be identified or particularised as opposed to broad or general concerns or criticisms.