

**Guideline**

Overlap of Public Interest Disclosures and

Complaints under the *Anti-Discrimination Act 1991* and the *Human Rights Act 2019*

**What this guideline is about**

This guideline sets out how the Queensland Human Rights Commission (the Commission) deals with:

* public interest disclosures made about the conduct of other agencies; and
* complaints that involve conduct about which a Public Interest Disclosure could be made.

**What the Commission will deal with**

The Commission will deal with:

* complaints about conduct that is alleged to be unlawful under the *Anti-Discrimination Act 1991*;
* complaints about reprisal under the *Public Interest Disclosure Act 2010*;
* human rights complaints under the *Human Rights Act 2019;* and
* public interest disclosures about the conduct of its officers.

**What the Commission won’t deal with**

The Commission will not deal with:

* public interest disclosures about the conduct of other agencies and their officers; and
* public interest disclosures about reprisal under the *Public Interest Disclosure Act 2010* by agencies other than the Commission.

**What is a Public Interest Disclosure (PID)?**

Any person can make a PID about:

* a substantial and specific danger to the health or safety of a person with a disability;
* a substantial and specific danger to the environment;
* the commission of an environmental offence;
* the conduct of another person that could, if proven, be a reprisal.

Only a public officer (e.g. public servant) can make a PID about:

* 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.

**Public Interest Disclosures about the conduct of other agencies**

The Commission does not deal with PIDs about the conduct of other agencies. This includes a PID about reprisal by another agency.

If this type of PID is made to the Commission, the Commission will refer the disclosure to another ‘proper authority’ in accordance with section 31 of the PID Act. The proper authority will be one of the following:

* the agency concerned;
* Crime and Corruption Commission (for corrupt conduct, and for reprisal);
* Queensland Ombudsman (for maladministration);
* Queensland Audit Office (for waste of public funds);
* Office of the Health Ombudsman (for danger to public health or safety);
* Department of Communities; or Adult Guardian; or Queensland Health (for danger to public health and safety of a person with a disability);
* Department of Environment and Resource Management; or relevant local council (for danger to environment).

**Complaints that include PIDs**

A complaint of unlawful discrimination, or other conduct that is unlawful under the AD Act, might also include information about conduct about which a PID could be made.

For example:

* Sexual harassment might also be *corrupt conduct* where it constitutes assault, rape or unlawful carnal knowledge.
* Discrimination in an administrative decision or act that adversely affects a person’s interests in a substantial and specific way might also be *maladministration*.

Where the complaint is accepted as being within the Commission’s jurisdiction, the Commission will:

* advise the agency that the matter may also be a PID; and
* recommend the agency consider whether action is required to support or protect the discloser and report the matter to the oversight agency.

Where the complaint is assessed as not within the Commission’s jurisdiction, the Commission will:

* offer to refer the complaint to a proper authority; and/or
* provide the person with a list of contact details of proper authorities.

**What conduct can be both a PID and a complaint?**

The conduct which is most likely to give rise to both a complaint under the AD Act as well as a PID is:

* *Corrupt conduct*; or
* *Maladministration* - if it adversely affects a person’s interests in a substantial and specific way.

**What is Corrupt Conduct?**

*Corrupt conduct* is defined in the *Crime and Corruption Act 2001*.

1. ***Corrupt conduct*** means conduct of a person, regardless of whether the person holds or held an appointment, that—
2. 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
3. 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—
   * + 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 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
4. 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.
5. ***Corrupt conduct*** also means conduct of a person, regardless of whether the person holds or held an appointment, that—
   1. impairs, or could impair, public confidence in public administration; and
   2. involves, or could involve, any of the following—
      1. collusive tendering;
      2. fraud relating to an application for a licence, permit or other authority under an Act with a purpose or object of any of the following (however described)—
         1. protecting health or safety of persons;
         2. protecting the environment;
         3. protecting or managing the use of the State’s natural, cultural, mining or energy resources
      3. dishonestly obtaining, or helping someone to dishonestly obtain, a benefit from the payment or application of public funds or the disposition of State assets;
      4. evading a State tax, levy or duty or otherwise fraudulently causing a loss of State revenue;
      5. fraudulently obtaining or retaining an appointment; and
   3. would, if proved, be—
      1. a criminal offence; or
      2. a disciplinary breach providing reasonable grounds for terminating the person’s services, if the person is or were the holder of an appointment.

**What is Maladministration?**

*Maladministration* is defined in the *Public Interest Disclosure Act 2010*.

It means administrative action that was:

1. taken contrary to law;
2. unreasonable, unjust, oppressive, or improperly discriminatory;
3. 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 improperly discriminatory in the particular circumstances;
4. taken -
   1. for an improper purpose;
   2. on irrelevant grounds; or
   3. having regard to irrelevant considerations.
5. an action for which reasons should have been given, but were not given;
6. based wholly or partly on a mistake of law or fact; or
7. wrong.

**What is a reprisal?**

Reprisal is causing detriment, or trying to cause detriment, to a person because it is believed that the person has made a public interest disclosure.

People who make a public interest disclosure (whistle-blowers) who suffer a detriment because of making the disclosure (reprisal) have the option to make a complaint to the Commission OR to bring an action for damages in a Court.

**Making a public interest disclosure (PID) of reprisal**

A public interest disclosure of reprisal should only be made to the Commission if the conduct relates to the actions of the Commission or any of its officers.

Further more detailed information about public interest disclosures is available from the Queensland Ombudsman - http://www.ombudsman.qld.gov.au/PublicationsandReports/PublicInterestDisclosures/tabid/339/Default.aspx