

Practice Direction	Responding to Public Interest Disclosures – substantial and specific danger to the health and safety of a person with disability (section 12(1)(a))	
Approved by:	Deputy Public Guardian	
Date Effective	November 2022	Version 1
Application	All Office of the Public Guardian (OPG) staff	
Related	Complaints management practice direction Complaints assessment checklist Human rights assessment checklist PID assessment PID section 12 risk assessment	

A. Key Messages

- A1. The *Public Interest Disclosure Act 2010* (PID Act) provides a way for people to disclose information about serious wrongdoing in the public sector, and to ensure that they are appropriately protected when they do.
- A2. The Public Guardian is committed to nurturing and maintaining a positive, ethical and transparent culture in line with government values.
- A3. The Office of the Public Guardian (OPG) values the disclosure of suspected wrongdoing in the public sector and will ensure it is properly assessed and, if necessary, appropriately investigated or otherwise dealt with in accordance with the PID Act.
- A4. OPG's role as a proper authority for receiving public interest disclosures (PIDs) concerning the **substantial and specific danger to the health or safety of a person with a disability** is limited to disclosures about **adults** with **impaired decision-making capacity** which allege that an adult:
 - i. is being or has been neglected, exploited or abused; or
 - ii. has inappropriate or inadequate decision-making arrangements.

OPG's role is limited to delivering a protective function with the purpose of promoting and protecting the adult's rights and interests.

B. Purpose

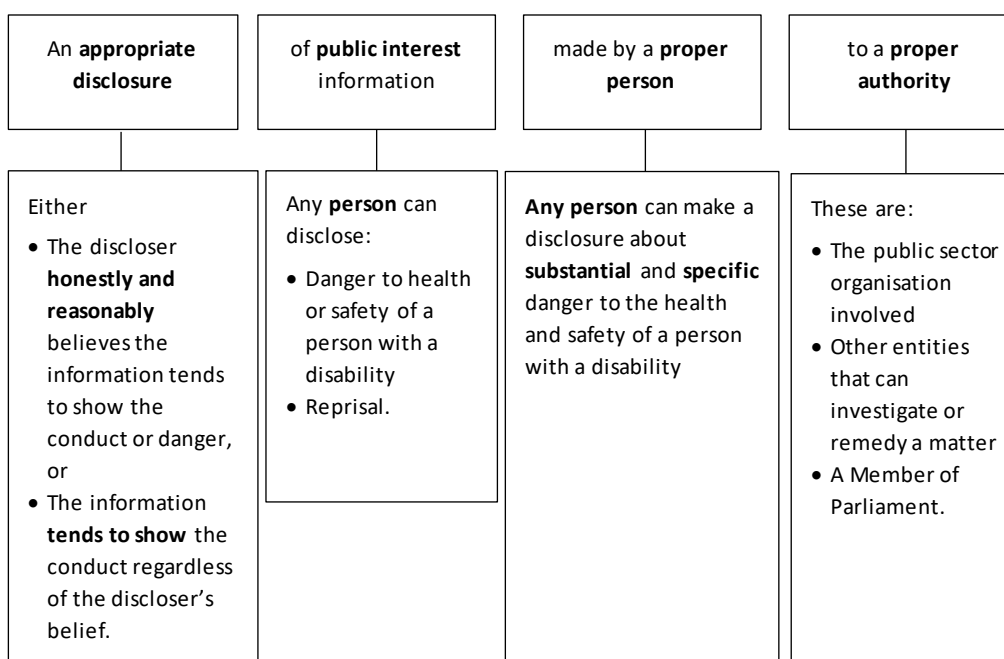
- B1. This practice direction deals with PIDs about a substantial and specific danger to the health or safety of an adult with disability, who has impaired decision-making capacity, and provides targeted guidance for the management of section 12(1)(a) PIDs, which are managed by OPG. [For guidance about managing all other public interest disclosures see the Department of Justice and Attorney General (DJAG) Public Interest Disclosure Policy.¹]
- B2. A PID can be made by any person:
 - i. Section 12(1)(a) PIDs can be made by **any person** (including a public officer or member of the public) about substantial and specific danger to the health and safety of a person with disability...or a reprisal.
- B3. The substantial and specific danger identified must relate to wrongdoing in the public sector i.e. the action or inaction of a public officer or public sector entity.

¹ <https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/9e1f7f16-0749-4d10-b05f-e8857956a063/djag-public-interest-disclosure-policy.pdf?ETag=8cefa908ddd9c800800d429e600c9646>

C. Context

- C1. The PID Act encourages the disclosure of information about suspected wrongdoing in the public sector so that:
 - i. public sector organisations can better identify wrongdoing
 - ii. suspected wrongdoing can be properly evaluated and investigated
 - iii. action can be taken to fix problems
 - iv. systems that can reduce the risk of wrongdoing can be implemented.
- C2. The OPG may be a 'proper authority' for certain disclosures, which can be investigated or remedied by OPG, otherwise OPG does not consider it is a proper authority.
- C3. Information per se is not a PID and should not be referred to as such, unless and until all elements have been met, including being made to a proper authority. If OPG is not the proper authority, the disclosure is not a PID and should not be referred to as such by staff. If the information is later received by the proper authority (another agency), it may then be assessed by the proper authority (the other agency) as a PID.
- C4. Where the information does not relate to OPG activities, OPG may suggest an appropriate **referral** pathway for the individual to take further action, at their discretion and where:
 - i. the information received relates to the conduct of another public sector entity
 - ii. another entity has the necessary jurisdiction, expertise and technical knowledge to investigate or remedy (and OPG does not).
- C5. OPG may refer a complainant to the Department of Children, Youth Justice and Multicultural Affairs (Child Safety) or to the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (Disability Services), Queensland Police Service (QPS) or the Crime and Corruption Commission (CCC) where these other agencies are best placed to be the proper authority to investigate or remedy disclosures. Scripting is available at Appendix A.
- C6. OPG may receive a direct referral from other agencies under section 31 of the PIDA where it is clear that OPG has legislative authority to investigate or remedy the matter.
- C7. All staff are responsible for assessing complaints, identifying PIDs and taking actions.
- C8. Each of the elements which **must** be satisfied for a complaint to constitute a s 12(1)(a) PID are provided below.

Elements of a s 12(1)(a) PID



D. Definitions and interpretation

- D1. A **public interest disclosure** is a disclosure of information or help given, involving wrongdoing in the public sector, which serves the public interest. (section 11 PID Act 2010.²)
- D2. A **public officer of a public sector entity**, is an employee or officer of the entity (section 7 PID Act). This includes OPG staff who are permanent, temporary or casual, and a person engaged by OPG under a contract of service.
- D3. A **public sector entity** includes members of parliament; courts and tribunals; Departments (e.g. Department of Justice and Attorney General, Queensland Police Service (QPS), Queensland Ambulance Service); Local Government; Universities and TAFEs; entities established under an Act or local government authorisation for a public, state or local government purpose (section 6 PID Act).
- D4. **Disability** - defined at section 11 of the [Disability Services Act 2006](#).
- D5. Any **person** - whether or not a public officer. May be a member of the public (section 12(1))

Ordinary meaning definitions

- D6. 'Has **information**' - knowledge concerning some fact or circumstance, however acquired
- D7. **Substantial** - ample or considerable amount; of significant or considerable degree. It must be more than trivial or minimal and have some weight or importance.³
- D8. **Specific** - specified, precise, or particular. This includes conduct or danger that is able to be identified or particularized as opposed to broad or general concerns or criticisms.⁴
- D9. **Danger** - exposure to harm or injury, peril, including exposure to loss, or destruction
- D10. **Health** - the general condition of the body or mind with reference to soundness and vigour
- D11. **Safety** - the state of being safe; freedom from injury or danger.

E. Responsibilities

- E1. All OPG staff must:
- encourage the reporting of wrongdoing
 - take appropriate action to deal with any wrongdoing
 - act to protect disclosers from reprisal for making a PID
 - provide appropriate support to, and not reprise against those who make a PID (the discloser)
 - ensure PIDs are properly identified, assessed and appropriately dealt with.
- E2. The Complaints Coordinator is the **PID Coordinator for section 12(1)(a) PIDs** and is responsible for managing these PIDs, providing advice, referring to the relevant business unit for direct action and ensuring compliance with PID legislative obligations and standards.
- E3. The **Complaints Officer** is responsible for recording and reporting the PID appropriately, and supporting all parties involved in the PID.

² See also <https://www.ombudsman.qld.gov.au/improve-public-administration/public-interest-disclosures/what-is-a-public-interest-disclosure>

³ DJAG Public Interest Disclosure Policy.

⁴ As above.

F. Identifying and actioning a Public Interest Disclosure

- F1. Every time a staff member receives a complaint, the information must be assessed to determine if it is a PID, by using the [PID assessment tool](#).
- F2. Where the information is considered to constitute a PID [including OPG is the proper authority], a risk assessment is required using the tools provided.
- F3. As the PID Act has strict confidentiality provisions PID information and risk assessments should not be stored in Resolve, where all staff have access. Contact the Complaints team who will advise where this information can be saved in eDocs.

Step 1: Assess whether the information constitutes a PID

- F4. The entity allegedly creating the circumstance of substantial and specific danger to the health and safety of a person with a disability must be a public sector entity. Note that this can be by an act or an omission.
- F5. Staff are encouraged to speak with the Complaints Officer or PID Coordinator if unsure of whether a matter constitutes a PID.
- F6. In some circumstances OPG may not be considered the 'proper authority' for the information as OPG is unable to investigate or remedy the matter. Consider if the matter is in jurisdiction or if it should be referred elsewhere for consideration of action. Discuss this with the PID coordinator

Practice Tip: when assessing whether information constitutes a public interest disclosure, consider:

- Just because the person states that the information is a PID does not mean per se it is a PID. An assessment still needs to be made about whether the information meets the definition.
- Is there any evidence to suggest the information is intentionally false or misleading? If so, it may not meet the element of '*discloser honestly believes*', or it may not be appropriate to assess that the information constitutes a PID on reasonable grounds.
- Is there enough evidence, particularly of a 'substantial' and 'specific' nature? If there is not enough information to properly assess the matter as a PID, further information may be needed. If no further information is available, it may not be a PID.

Practice Tip: Does the information indicate *substantial and specific* danger to a person with disability?

- See definitions section in D above.

Step 2: obtain further information (if necessary)

- F7. If the staff member believes the matter should be considered a PID the following information should be obtained (in writing where possible, but note PIDs can be provided verbally):
 - i. Who was involved
 - ii. What happened
 - iii. When it happened
 - iv. Where it happened
 - v. Whether there were witnesses, and if so, who they are

- vi. Any evidence that supports the PID, and where the evidence is located
- vii. Any further information that could help investigate the PID.
- F8. The staff member should explain to the discloser that the information may be considered a PID, and that the information may be provided to OPG's PID Coordinator for assessment and if required, further action.
- F9. If the matter is likely to be a PID, for confidentiality reasons contact the Complaints team who will save records into a secure PID folder in eDocs before being reported to the Queensland Ombudsman using *RaPID* (the Ombudsman's PID database).

Step 3: Refer the PID to the OPG PID Coordinator (section 12(1)(a))

- F10. The staff member must immediately advise the OPG PID Coordinator. Staff should also advise their supervisor to ensure they receive support and guidance. As above (F8) any material/emails/records or information related to a PID must not be stored in Resolve—contact the Complaints team who will save the material into eDocs.
- F11. Consider whether immediate action is required to remedy the matter. This may include contacting QPS or Queensland Ambulance Service, or making a decision to ensure the health and safety of the client.

Step 4: Continue performing statutory functions in relation to the client

- F12. Where an OPG statutory function is undertaken for a client named in a PID matter, the OPG Complaints Officer is to report to the OPG Coordinator any risks identified to the client, discloser or OPG as a result of the intersection between the performance of that function and management of the PID.
- F13. The PID Coordinator is responsible for ensuring appropriate strategies are implemented to manage those risks.

G. Managing the PID (OPG PID Coordinator)

- G1. If a s.12(1)(a) PID is passed to the PID Coordinator by OPG staff, the PID Coordinator will:
 - i. review all the available information (contacting the discloser for more information if required)
 - ii. assess whether the disclosure is a PID
 - iii. review and sign the risk assessment as soon as practicable after assessing the disclosure. The risk assessment should be reviewed on a regular basis, and amended as required, until the management of the PID is finalised.
 - iv. record and report the PID appropriately.
 - v. Unless an alternative person is nominated, will provide regular, and no less than monthly, updates to the discloser on how the matter is being progressed.
 - vi. Manage any concerns about management of the PID including concerns about reprisal.
 - vii. Advise the discloser of the actions taken and communicate with the discloser in writing, including ensuring a written final outcome letter is provided.
- G2. The PID Coordinator will perform these responsibilities in collaboration with the relevant business unit Director (or delegated staff member/s) who may nominate additional supports.

H. Supporting the Discloser

- H1. PIDs, including PIDs that include an allegation of reprisal must be taken seriously. Disclosers should be encouraged to use their own support network including family, friends, general practitioner or legal advisor. The discloser may also have access to an employee assistance program and the Ombudsman can provide information and advice for people who are considering making a PID, or who have made a PID.

- H2. A discloser who is external to OPG should be provided with contact details of a person who can provide them with updates and answer any ongoing questions.
- H3. Where a discloser is concerned for their personal safety or believes a criminal offence has occurred, they should be advised to report the matter to QPS.
- H4. Protections available to a discloser under the PIDA include:
 - i. Immunity from liability for making the disclosure.
 - ii. Protections from breach of professional or legislative confidentiality obligations.
 - iii. Protection from reprisal and entitlement to damages if they suffer detriment as a result of reprisal.

I. Recording and Reporting the PID

- I1. The OPG Complaints Officer must ensure all information relating to the PID is saved to the locked eDocs folder, and relevant information is recorded in RaPID.

J. Relevant Legislation

- J1. The *Public Sector Ethics Act 1994* and the *Public Interest Disclosure Act 2010* provide the ethical framework and set out the protection principles. The *Crime and Corruption Act 2001* provides an external reporting mechanism and an independent investigative and enforcement body.

Version #	Approved By and Role	Date	Changes from Last Version	E-docs #
3				
2				
1	Deputy Public Guardian	01/11/2022		