

# Enquiry, disclosure and referral policy and procedure

**Effective Date: 1 October 2021**

**Version: 1.0**

## Introduction

The Public Advocate is an independent statutory position whose role is to undertake systemic advocacy on behalf of adults with impaired decision-making capacity. More specifically, the functions of the Public Advocate are to:

- Promote and protect the rights of adults with impaired capacity (the adults) for a matter;
- Promote the protection of the adults from neglect, exploitation or abuse;
- Encourage the development of programs to help the adults to reach the greatest practicable degree of autonomy;
- Promote the provision of services and facilities for the adults; and
- Monitor and review the delivery of services and facilities to the adults.

The Office of the Public Advocate (OPA) receives general enquiries from people that range from seeking general information, requesting specific advice or information on a particular systems issue, to seeking assistance with making a complaint to an agency or organisation.

All enquiries received by OPA need to be recorded and addressed consistently, to meet staff obligations under relevant legislation and to ensure that the office maintains accurate and complete records of each contact, any referrals made and/or action taken. Contact records maintained by OPA provide valuable input into the identification of systemic issues for people with impaired decision-making capacity, contributing to the priorities of the Public Advocate and providing evidence of lived experience to assist in achieving change.

This policy and procedure provides a framework to guide the determination of appropriate responses and courses of action for various types of enquiries received by OPA, within the context of the Public Advocate's role, responsibilities and legislative framework.

It provides a structured and consistent approach to the receipt, collection and management of information received through enquiry channels. This includes, where relevant, identifying the most appropriate point of referral/s to be recommended where an enquiry falls outside scope of the Public Advocate.

## Scope

This policy and procedure applies to the Public Advocate and all staff employed by the Office of the Public Advocate.

## Queensland legislation

- *Guardianship and Administration Act 2000*
- *Human Rights Act 2019*
- *Disability Services Act 2006*

- *Ombudsman Act 2001*
- *Crime and Misconduct Act 2001*
- *Information Privacy Act 2009*
- *Public Interest Disclosure Act 2010*
- *Public Sector Ethics Act 1994*
- *Public Service Act 2008*
- *Public Records Act 2002*

## Process

All enquiries received by OPA will progress through three stages:

1. Receipt and recording
2. Assessment and action
3. Reporting and review

### 1. Receipt and recording

Receipt and recording involves receiving, recording and clarifying the nature of the enquiry.

All enquiries are to be received courteously and dealt with sensitively and professionally. If needed, and as soon as practicable, the person must be made aware of the roles and responsibilities of the Public Advocate, including the possibility that the Public Advocate may not be able to take direct action in relation to the enquiry due to the systemic nature of the position.

Information will be requested from the enquirer only to the extent necessary to sufficiently understand the nature of the enquiry and to determine the most appropriate course of action. The enquirer's preferred contact details (including name and phone or email address) will only be sought to make further contact if that is deemed necessary.

Many different types of enquiries can inform systemic issues, regardless of whether the issue/s raised by the enquirer are within the role of the Public Advocate. Therefore, summary information about each enquiry is recorded in the Enquiries Register. The personal information of an enquirer will only be recorded if it is voluntarily provided.

#### **Enquiries of an abusive, aggressive or threatening nature**

The Public Advocate and staff understand and acknowledge that many enquirers who contact the office may be in a stressed, frustrated or emotional state due to either their individual circumstances or following repeated interactions with systems where they have been unable to have their needs met. Some people with impaired decision-making capacity can experience difficulty expressing themselves or regulating their behaviour.

In the interests of staff wellbeing, OPA will not tolerate persistent abusive, aggressive or threatening behaviour from enquirers. When behaviour is considered inappropriate, the officer will advise the person that the current contact will cease until such time that the person behaves in an appropriate manner. This may involve terminating a telephone call, ending an email conversation, or concluding a meeting. If the person contacts OPA on numerous occasions and inappropriate behaviour continues, the situation will be escalated to the Public Advocate for resolution.

### 2. Assessment and action

Assessment involves gathering and evaluating information to assist in determining the nature or topic involved and its category, which includes:

- An enquiry for information and/or assistance, and can be addressed by OPA either with a direct response or referral to another agency/organisation for assistance

- A complaint about OPA or the Public Advocate
- A Public Interest Disclosure under the *Public Interest Disclosure Act*.

Each of the contact/enquiry categories above are defined and responded to differently. This is explained below.

### **General enquiries and contact**

General enquiries and contact made with the Public Advocate or staff can be actioned either directly or via a referral to another organisation, depending on the subject or issue involved.

When responding directly to an enquiry or contact, the following need to be considered:

- the appropriate response to address the issue/s of the enquirer;
- whether departmental or office policy and procedures apply (for example enquiries from the media or a complaint against the business area);
- whether consultation with third parties is required (either within DoJ or with other government or non-government agencies);
- whether there is any internal approval process required; and
- the timeframe for the action to be completed.

When receiving enquiries by telephone, staff should respond directly to the caller only when they are confident that the issues above do not apply or can be addressed appropriately during the call. If the inquiry requires further consideration in relation to the above, or consultation is required with other team members, then the staff member should always inform the caller and conclude the initial call noting that they will either call them back (at an agreed time), email or prepare other appropriate material and/or correspondence.

Enquiries or contact received by email or letter allow time for the proper consideration of the issues above if required.

If the enquiry or contact is not related to OPA activities, an appropriate referral point/s is to be identified where possible. The referral point is to be provided as a suggestion to the enquirer. It is at the person's discretion to take further action.<sup>1</sup> OPA may take direct referral action where the Public Advocate considers there are exceptional circumstances warranting this course of action. Before OPA takes direct action, appropriate permissions will be obtained from the enquirer prior to a referral being made, unless there are circumstances where legislation requires the mandatory referral of the information provided (as detailed below).

### **Complaints about OPA and the Public Advocate**

Complaints can be defined as contact with the Public Advocate or OPA where a person expresses dissatisfaction with staff conduct, customer service, internal policy or procedures and practices.

When a complaint is received, every effort will be made to resolve it on an informal basis and at the initial point of contact. However, if the complaint cannot be resolved informally, it will then be managed as a formal complaint in accordance with the Department of Justice (DoJ) *Client Complaint Management Policy 2019*.

A formal complaint may relate to OPA's internal policies, procedures, customer service, practices or staff conduct. This may include a complaint relating to a breach of the Information Privacy Principles under the *Information Privacy Act* or a complaint relating to the *Human Rights Act*, if an individual feels that their human rights have been breached by the Public Advocate or OPA staff. A potential breach of human rights may be noted directly by a

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<sup>1</sup> This includes where the person making the enquiry is acting on behalf of the person who requires assistance.

complainant or assessed to involve a breach by an OPA staff member or the Public Advocate.

Formal complaints will be managed in accordance with the key requirements of the DoJ *Client Complaint Management Policy 2019*.

When an enquiry is considered a formal complaint, the enquirer is to be advised of this status and the processes involved, including the investigation of the complaint. A formal response must be provided to the complainant about the outcome of the complaint investigation. In some cases, it may be determined that an investigation is not justified.

In line with the DoJ *Client Complaint Management Policy 2019*, all formal complaints relating to a breach of the Information Privacy Principles under *the Information Privacy Act* will be forwarded to the Director, Information and Privacy Unit for investigation.<sup>2</sup>

A formal complaint is recorded separately in the DoJ Complaints Register and reported in the departmental annual report.

### **Complaints about external agencies**

The Public Advocate does not have a complaint investigation function. Further, it is not practicable for OPA to become directly involved in enquiries identified as complaints of individuals (i.e. not systems level) about the policies, procedures, services, practices or staff conduct of other agencies.

OPA will assist by providing the enquirer with a suggestion about a suitable referral contact where possible. OPA cannot act as an intermediary in these matters unless the Public Advocate considers there are exceptional circumstances which warrant direct involvement.

This includes public interest disclosures, which are addressed in greater detail below.

### **Mandatory reporting of misconduct, official misconduct or public interest disclosures**

#### *Public Interest Disclosures (PIDs)*

The *Public Interest Disclosure Act 2010* 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<sup>3</sup>.

A PID can be made;

- by a public officer about official misconduct; maladministration; substantial misuse of public resources; and substantial danger to public health or safety or the environment; or
- by any person (including a public officer and members of the public) about substantial danger to a person with a disability, danger to the environment, and reprisal.

PIDs are handled differently depending on whether they involve the actions of someone employed by DoJ (i.e., an OPA staff member) or relate to other agencies.

### **Internal issues**

If an OPA staff member or the Public Advocate receives information about a **DoJ officer or other employee of the agency (including OPA staff members and the Public Advocate)** that they reasonably consider to be a PID, it will be addressed in accordance with the DoJ Public Interest Disclosure Policy.

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<sup>2</sup> Under departmental requirements, privacy complaints must be in writing and provide the complainant's address and details of the complaint.

<sup>3</sup> Queensland Ombudsman, *How to make a public interest disclosure*, 16 March 2021, <<https://www.ombudsman.qld.gov.au/how-to-complain/how-to-make-a-public-interest-disclosure>>

This policy requires that the disclosure be referred to the Executive Director, Ethical Standards Unit for investigation and remedy where required.

Normally, a referral will be made by email to the Executive Director, Ethical Standards Unit, and if the matter involves a critical incident with a threat to a person's safety or wellbeing, a follow up telephone call. Where a matter involves an immediate threat to a person's safety or wellbeing, OPA may seek the assistance of the Queensland Police Service or Ambulance Service.

The Executive Director, Ethical Standards Unit will provide confirmation of the referral. They will then be responsible for the management and resolution of the issue. The Ethical Standards Unit will also ensure that the matter is reported in line with annual report requirements for the department.

Other allegations that may be misconduct under the *Public Sector Ethics Act 1994*; *Public Service Act 2008*, the *Code of Conduct 2011* or the *Crime and Misconduct Act 2001* will also be referred as per the Public Interest Disclosure Policy.

### External Issues

If an OPA staff member receives information that is related to an **agency person or organisation external to DoJ** that they reasonably consider to be a PID, a different procedure is required.

In most circumstances OPA and the Public Advocate will not be considered the 'proper authority' for this type of PID as OPA does not provide services directly to the community. A 'proper authority' is a person and/or organisation authorised under the PID Act to receive and action PIDs. Examples of proper authorities include;

- the public sector agency responsible for the alleged wrongdoing
- an agency that has the authority to investigate the matter (like for example the Crime and Corruption Commission)
- the Chief Judicial Officer of a court or tribunal when the report is about suspected corrupt conduct or reprisal by a judicial officer or any member of Parliament.<sup>4</sup>

When this type of PID is received by a staff member or the Public Advocate, liaison with the Executive Director, Ethical Standards Unit may be required to help identify the most appropriate course of action and referral to the proper authority.

This liaison will include consideration of any risk of reprisal that may result from the matter being referred to another agency/entity. An appropriate course of action will then be taken to minimise this risk, and the referral completed by either OPA or the Executive Director, Ethical Standards Unit. Records of the actioned referral and any responses received will be retained.

Letter templates have been prepared and will be maintained by the OPA Manager to facilitate the referral of PIDs to the proper authority. The letters have been developed for two scenarios;

1. a disclosure being referred to a proper authority and no additional action being undertaken by the Public Advocate.
2. the matter being referred to the proper authority with the Public Advocate continuing to take an active interest in the disclosure due to the potential for systemic issues to be involved.

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<sup>4</sup> Queensland Ombudsman, *What is a public interest disclosure?*, 13 October 2020, <<https://www.ombudsman.qld.gov.au/improve-public-administration/public-interest-disclosures/what-is-a-public-interest-disclosure>>.

Each letter template has been developed in consultation with the Ethical Standards Unit and finalised for use by the Public Advocate.

### **Mandatory reporting of child safety concerns**

If any information received raises a suspicion about the safety of a child or young person (under 18 years of age), OPA will follow the requirements under the DoJ *Child Protection Reporting Policy 2016*.

## 3. Reporting and Review

All enquiries received by OPA and covered in this policy and procedure (including PIDs and mandatory reporting items) will be recorded in the OPA Enquiries Register. A range of information will be recorded in relation to the enquiry, including the context, subject area, and any action taken, such as the details of any referrals.

Supplementary information may also be maintained separate to the Enquiries Register and linked to the enquiry via hyperlinks and other unique identifiers. This may include related documentation such as correspondence, emails, or file notes.

The content of the register will be assessed regularly by the OPA team and reported to the Public Advocate, for the purposes of:

- identifying potential systems issues and how to address these;
- fulfilling reporting requirements; and
- identifying opportunities for improvement to internal policy, practices, and customer service.

## Annual reporting requirements

Formal complaint and any PIDs made by OPA and related to DoJ staff will be compiled with information from other DoJ business units and reported in the DoJ Annual Report.

## Protection of personal information

The Enquiries Register will only be accessible to OPA staff.

A person's contact details may be exchanged with a relevant agency if this is supported by the *Information Privacy Act* and the exchange of information is necessary to resolve or manage the enquiry. Personal information may also be exchanged where there is a mandatory policy or legal requirement.

Personal information will not be released publicly about the identity of the enquirer or any other persons involved in the matter. Personal information may be used, de-identified and/or aggregated, in OPA publications or for systemic advocacy.

## Accountabilities

The DoJ Director-General is the Chief Executive of the Department has responsibility to:

- report official misconduct to the Crime and Misconduct Commission (*Crime and Misconduct Act 2001*);
- discipline or dismiss departmental staff for misconduct (*Public Service Act 2008*);
- maintain a complaints management system that deals effectively with complaints received (*Office of the Public Service Commissioner Complaints Management Directive*); and
- develop, implement, and maintain a PID management program.

The Public Advocate is accountable for this policy and procedure which applies to the position and the OPA.

OPA staff are accountable for applying this policy and procedure when handling and managing enquiries. Staff are expected to be aware of the procedure requirements and protocols to ensure a responsive, consistent, and sensitive approach to public or organisational enquires.

## Training

All OPA staff and the Public Advocate are expected to complete the annual Ethical Standards training course available in Evolve, which includes information related to many of the tasks required in this procedure.

This course provides staff with an understanding of expectations regarding behaviour, accountabilities and the information required to meet these expectations. The course includes training in the Code of Conduct for the Queensland Public Service, the Department's Workplace Policy, corrupt conduct and misconduct, and education on other important ethical issues.

## Related policies and procedures

- *Code of Conduct for the Queensland Public Service 2011*
- *Public Interest Disclosure Policy 2019, DoJ*
- *Complaints Management Policy 2019, DoJ*
- *Child Protection Reporting Policy, 2016, DoJ*

## Contact

Manager, Office of the Public Advocate

## Approval

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Name	Date
John Chesterman, Public Advocate	1 October 2021

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## Review

A review of this procedure is to be conducted at the discretion of the OPA Manager and/or the Public Advocate.

A mandatory review will coincide with the appointment of a new Public Advocate or any changes in legislation related to this procedure.

## Definitions

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<b>Complaint</b>	An expression of dissatisfaction about staff conduct, a service, procedure, practice, or departmental policy that is not resolved at the point of initial contact (based on DoJ Complaint Management Policy 2019 (Client Complaints)).
<b>Corrupt conduct</b>	As defined in section 15 of the <i>Crime and Corruption Act 2001</i>

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- (1) **Corrupt conduct** means 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; or
    - (ii) involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or
    - (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) would, if proved, 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.
- (2) **Corrupt conduct** also means conduct of a person, regardless of whether the person holds or held an appointment, that—
- (a) impairs, or could impair, public confidence in public administration; and
  - (b) involves, or could involve, any of the following—
    - (i) collusive tendering;
    - (ii) 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)—
      - (A) protecting health or safety of persons;
      - (B) protecting the environment;
      - (C) protecting or managing the use of the State's natural, cultural, mining or energy resources;

## Disability

As defined in section 11 of the *Disability Services Act 2006*, for the purposes of this procedure:

- (1) A disability is a person's condition that—
- (a) is attributable to—
    - (i) an intellectual, psychiatric, cognitive, neurological, sensory or physical impairment; or
    - (ii) a combination of impairments mentioned in subparagraph (i); and
  - (b) results in—
    - (i) a substantial reduction of the person's capacity for communication, social interaction, learning, mobility or self-care or management; and
    - (ii) the person needing support.
- (2) For subsection (1), the impairment may result from an acquired brain injury.
- (3) The disability must be permanent or likely to be permanent.
- (4) The disability may be, but need not be, of a chronic episodic nature.
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<b>DoJ</b>	Department of Justice
<b>Impaired decision-making capacity</b>	<p>Under the <i>Guardianship and Administration Act 2000</i>, <b>impaired capacity</b> for a person for a matter means the person is not capable of -</p> <ul style="list-style-type: none"> <li>(a) understanding the nature and effect of decisions about the matter; and</li> <li>(b) freely and voluntarily making decisions about the matter; and</li> <li>(c) communicating the decisions in some way.</li> </ul> <p>The person must be an adult (18 years old and over).</p>
<b>Enquirer</b>	<p>The person who contacts OPA seeking information, advice or other action. This person can be a member of the community, from another government agency or another organisation. An enquirer may contact OPA on behalf of either themselves or another person or group of people.</p>
<b>Misconduct</b>	<p>Under section 187 (4) of the ) <i>Public Service Act 2008</i>, "<b>misconduct</b> means–</p> <ul style="list-style-type: none"> <li>(a) inappropriate or improper conduct in an official capacity; <u>or</u></li> <li>(b) inappropriate or improper conduct in a private capacity that reflects seriously and adversely on the public service." <p><b>Examples:</b></p> <ul style="list-style-type: none"> <li>• A Queensland public service employee while performing their duties verbally abuses a member of the public (includes services users, those in their support network or other interested parties)</li> <li>• A public service employee in the human services area commits elder abuse against their parent (i.e. breaches position of trust and community expectations).</li> </ul> </li></ul>
<b>Official misconduct</b>	<p>Under section 15 of the <i>Crime and Misconduct Act 2001</i>, <b>official misconduct</b> is "conduct that could, if proved be–</p> <ul style="list-style-type: none"> <li>(a) a criminal offence; or</li> <li>(b) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or was the holder of an appointment." <p>Official misconduct involves wrongdoing by a public sector official (including police) in carrying out their official duties or exercising their powers in a unit of public administration.</p> <p>The conduct must involve one of the following (s.14):</p> <ul style="list-style-type: none"> <li>(a) dishonesty or lack of impartiality; or</li> <li>(b) a breach of the trust placed in the person as the holder of the appointment; or</li> <li>(c) a misuse of officially obtained information</li> </ul> <p><b>Examples:</b></p> <ul style="list-style-type: none"> <li>• A public sector employee while performing their duties physically assaults a person or steals property or cash from a person.</li> <li>• A public sector employee while performing their duties receives a material benefit by not revealing a conflict of interest</li> </ul> </li></ul>

<b>OPA</b>	Office of the Public Advocate
<b>Public Interest Disclosure (PID)</b>	<p>A PID can relate to:</p> <p>By public officers:</p> <ul style="list-style-type: none"> <li>• <b>Corrupt conduct</b> including fraud and corruption</li> <li>• <b>Maladministration</b> that adversely affects anybody's interests in a substantial and specific way</li> <li>• A substantial misuse of public resources (including funds, but not based on a mere disagreement over policy that may properly be adopted about amounts, purposes and priorities of expenditure)</li> <li>• A <b>substantial and specific</b> danger to public health or safety or the environment</li> </ul> <p>By any person:</p> <ul style="list-style-type: none"> <li>• <b>Reprisal</b> as a result of a PID</li> <li>• Specific offences presenting a substantial and specific danger to the environment</li> </ul> <p>A substantial and specific danger to the health or safety of a <b>person with disability</b></p>
<b>Public service employee / officer</b>	<p>Under section 9 of the <i>Public Service Act 2008</i>, "a person is a <b>public service employee</b> if the person is employed under the Act as:</p> <ol style="list-style-type: none"> <li>a) a public service officer; or</li> <li>b) a general employed; or</li> <li>c) a temporary employee" <p>A public service officer includes Chief Executives, Senior Executives or an officer of another type (s. 8).</p> </li></ol>
<b>Reprisal</b>	<p>The term 'reprisal' is defined under the <i>Public Interest Disclosure Act 2010</i> as causing, attempting to cause or conspiring to cause detriment to another person in the belief that they or someone else:</p> <ul style="list-style-type: none"> <li>• has made or intends to make a disclosure; or</li> <li>• has been or intends to be involved in a proceeding under the disclosure Act against any person</li> </ul> <p>Reprisal under the <i>Public Interest Disclosure Act 2010</i> is a criminal offence and investigations may be undertaken by the Queensland Police Service</p>
<b>Substantial and specific</b>	<p>Substantial means 'of a significant or considerable degree'. It must be more than trivial or minimal and have some weight or importance.</p> <p>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.</p>
<b>Unit of public administration</b>	<p>Section 20 of the <i>Crime and Misconduct Act 2001</i> lists the following as units of public administration:</p> <ul style="list-style-type: none"> <li>• the Legislative Assembly and parliamentary service</li> <li>• the Executive Council</li> <li>• a department</li> <li>• the police service</li> <li>• a local government</li> </ul>

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- a corporate entity established by an Act or that is of a description of a corporate entity provided for by an Act which, in either case, collects revenues or raises funds under the authority of an Act
  - a non-corporate entity, established or maintained under an Act, that is (i) funded to any extent with State moneys; or (ii) is financially assisted by the State
  - a State court, of whatever jurisdiction, and its registry and other administrative officers
  - another entity prescribed under a regulation
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