

Overlap of public interest disclosures and complaints and other matters under the *Health Ombudsman Act 2013*

Purpose

To explain how the Health Ombudsman will deal with health complaints and other matters which may also meet the tests of a public interest disclosure under the *Public Interest Disclosure Act 2010*.

What this guideline is about

This guideline sets out how the Health Ombudsman deals with:

- public interest disclosures made about the conduct of other agencies or employees of other agencies
- health service complaints that involve conduct about which a public interest disclosure could be made
- public interest disclosures made about employees of the Office of the Health Ombudsman.

What is a public interest disclosure?

A public interest disclosure is a disclosure about suspected wrongdoing in the public sector. Allegations about wrongdoing in the public sector help to uncover corruption and other misuses of public resources.

The *Public Interest Disclosure Act 2010* encourages the disclosure of information about suspected wrongdoing in the public sector so that it can be properly assessed and, where necessary, appropriately investigated.

Any person can make a public interest disclosure 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 reprisal¹.

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

- corrupt conduct²
- maladministration³ 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 or the environment.

¹ Reprisal, grounds for reprisal, offence and damages associated with reprisal are provided for in chapter 4, part 1 of the *Public Interest Disclosure Act 2010*.

² Corrupt conduct is defined in part 4, division 2 of the *Crime and Corruption Act 2001*.

³ Maladministration is defined in schedule 4 of the *Public Interest Disclosure Act 2010*.

What will the Health Ombudsman deal with?

The Health Ombudsman will deal with:

- health service complaints or other matters that are within the jurisdiction of the *Health Ombudsman Act 2013*
- public interest disclosures made about the conduct of other agencies or employees of other agencies that are within the jurisdiction of the *Health Ombudsman Act 2013*
- public interest disclosures about the conduct of its officers.

What won't the Health Ombudsman deal with?

The Health Ombudsman will not deal with public interest disclosures about the conduct of other agencies and their officers if the conduct falls outside the jurisdiction of the *Health Ombudsman Act 2013*.

Public interest disclosures about the conduct of other agencies or their employees

The primary function of the Health Ombudsman is to administer the provisions of the *Health Ombudsman Act 2013*.

Section 17(5) of the *Public Interest Disclosure Act 2010* states if a public interest disclosure is properly made to a proper authority, the proper authority is taken to have received the disclosure for the purposes of the Act.

The Office of the Health Ombudsman is a proper authority under section 15(1)(a)(ii) of the *Public Interest Disclosure Act 2010* as a public sector entity with the power to investigate or remedy health service complaints or other matters.

If a public interest disclosure is made to the Health Ombudsman and the matter falls within the jurisdiction of the *Health Ombudsman Act 2013*, the Health Ombudsman will deal with the public interest disclosure, but will deal with it as a health service complaint or other matter according to the provisions of the *Health Ombudsman Act 2013*. The *Health Ombudsman Act 2013* will be the primary statutory protection regime. The provisions of the *Health Ombudsman Act 2013* provide protections comparable with those provided by the *Public Interest Disclosure Act 2010*.

For example:

- A complaint about a health examination undertaken without consent might also be corrupt conduct where it constitutes an assault, rape or unlawful carnal knowledge, and disclosure of the information may amount to a public interest disclosure.
- Discrimination in an administrative decision or act involving delivery of a *health service*—as defined by the *Health Ombudsman Act 2013*—which adversely affects a person's interests in a substantial and specific way might also be maladministration and amount to a public interest disclosure.

Where the complaint is accepted as being a health service complaint within the Health Ombudsman's jurisdiction, the Health Ombudsman will:

- advise the complainant that the matter may also be a public interest disclosure, but that a specific assessment in this regard will not be undertaken
- advise the complainant about the corresponding protections provided in the *Health Ombudsman Act 2013*.

Where the complaint is determined not to be a health service complaint or other matter and not within the Health Ombudsman's jurisdiction, the Health Ombudsman will direct the complainant to the proper authority.

The proper authority may be one of the following:

- the agency concerned
- for corrupt conduct and reprisal—Crime and Corruption Commission
- for maladministration—Queensland Ombudsman
- for waste of public funds—Queensland Audit Office
- for danger to the health and safety of a person with a disability
 - Department of Communities, Child Safety and Disability Services
 - Office of the Public Guardian
 - Department of Health or relevant Hospital and Health Service
- for danger to the environment
 - Department of Environment and Heritage Protection
 - Department of Natural Resources and Mines
 - relevant local council.

Making a public interest disclosure of reprisal

A public interest disclosure about reprisal should only be made to the Health Ombudsman if the conduct relates to the actions of the Health Ombudsman or staff of the Office of the Health Ombudsman.

Alternatively, a complaint may be made to the Crime and Corruption Commission.

More detailed information about public interest disclosures is available from the [Queensland Ombudsman](#).

	Public Interest Disclosure Act 2010	Health Ombudsman Act 2013
Scope		
Person protected and subject matter of protection	<p>Section 12(1)—Disclosure by any person. This section applies if a person (whether or not a public officer) has information about:</p> <ul style="list-style-type: none"> a. a substantial and specific danger to the health and safety of a person with a disability ... d. conduct of another person that could, if proved, be a reprisal ... 	<p>Section 261—Reprisal and grounds for reprisal. Reprisal protections are available for any person who makes a health service complaint or provides information or other assistance to the health ombudsman, a staff member of the Office of the Health Ombudsman or an authorised person. It is immaterial whether they are a public officer or a member of the public.</p> <p>Section 7—Meaning of health service. A health service is a service that is, or purports to be, a service for maintaining, improving, restoring, or managing people’s health and wellbeing...</p> <p>Section 31—Meaning of health service complaint. A health service complaint is a complaint about a health service or other service provided by a health service provider.</p> <p>Definition of a health service and health service complaint are very broad definitions. Section 261 therefore establishes a broad scope of protection, which extends beyond that of the <i>Public Interest Disclosure Act 2010</i>.</p>
	<p>Section 13(1)—Disclosure by a public officer. This section applies if a person who is a public officer has information about:</p> <ul style="list-style-type: none"> a. the conduct of another person that could, if proved, be <ul style="list-style-type: none"> (i) corrupt conduct; or (ii) maladministration that adversely affects a person’s interests in a substantial and specific way; or b. a substantial misuse of public resources (...); or c. a substantial and specific danger to public health or safety ... 	

	Public Interest Disclosure Act 2010	Health Ombudsman Act 2013
To whom the disclosure may be made	<p>Chapter 2, part 2, division 2—To whom disclosure may be made:</p> <ul style="list-style-type: none"> ▪ Member of the Legislative Assembly is a proper authority (section 14) ▪ Public sector entity as the employer of the person complained about, or as the entity with power to investigate or remedy is a proper authority (section 15) <p>Part 4—when disclosure may be made to a journalist.</p>	<p>Section 11—Health Ombudsman. The Health Ombudsman is responsible for receiving and dealing with health service complaints (i.e. an entity with power to investigate or remedy).</p> <p>Section 32—Who may make a complaint. Any person may make a health service complaint [to the Health Ombudsman]</p> <p>Section 36—Notifications under the National Law. A notification made to the Health Ombudsman under the National Law, part 8, division 2 or 3, is dealt with by the <i>Health Ombudsman Act 2013</i> as if it were a complaint made under the Act.</p> <p>Section 37(2) matters referred by national boards or government entities may, with a person’s agreement, be dealt with as if it were a complaint and the person were the complainant.</p> <p>Provisions are comparable to section 15 <i>Public Interest Disclosure Act 2010</i>, but section 37(2) allows for a referral from another entity to also be dealt with as a complaint, thereby providing a broader scope. For example, a health service complaint may be made to the Minister for Health who may refer the complaint to the Health Ombudsman. The complainant who raised their concerns with the Minister may, with their agreement, be dealt with as the complainant in the matter.</p> <p>However, if a complaint is made to, and subsequently referred by, an MP, section 37(2) does not provide for the original complainant to be dealt with as the complainant in the matter. But protections would extend to them as a person providing information or other assistance to the Health Ombudsman etc.</p>

	Public Interest Disclosure Act 2010	Health Ombudsman Act 2013
How disclosure may be made	<p>Section 17—How disclosure to be made</p> <p>Disclosure may be made to a proper authority in any way, including anonymously</p>	<p>Section 33—How to make a complaint. A person may make a complaint to the Health Ombudsman ... orally, including by telephone, or in writing, including by email or other electronic means ...</p> <p>On request, the Health Ombudsman must give a person reasonable assistance to make a complaint.</p> <p>The <i>Health Ombudsman Act 2013</i> is silent regarding anonymous complaints. However, section 34 provides that the Health Ombudsman may ask the complainant for their name and address. The Health Ombudsman is not required to deal further with a complaint until the complainant complies (section 34(5)).</p> <p>Given the nature of health service complaints, it is generally impractical to deal with anonymous complaints from recipients of health services. However, a judgment and risk analysis is made on a case-by-case basis and complainants are advised if it is possible to deal with the complaint on an anonymous basis, and if it is, if there are limitations to what may be achieved.</p> <p>For example, a serious complaint about the health, conduct or performance of a registered practitioner made anonymously may be dealt with if the evidence does not rely on the identity of the complainant being known (i.e. may be proven by reference to records only).</p>
Protections		
Immunity for liability	<p>Section 36—Immunity from liability.</p> <p>A person who makes a public interest disclosure is not subject to any civil or criminal liability or any liability arising</p>	<p>Section 275(1)—Information given to Health Ombudsman and others.</p> <p>Provides protection for a person who gives information to the Health Ombudsman, a staff member of the Office of the</p>

	Public Interest Disclosure Act 2010	Health Ombudsman Act 2013
	by way of administrative process, including disciplinary action, for making the disclosure.	Health Ombudsman or an authorised person for the purposes of a health service complaint, investigation under part 8, inquiry under part 12, or otherwise under the <i>Health Ombudsman Act 2013</i> . A person is not subject to any liability for giving the information and no action, claim or demand may be taken or made of, or against, the person provided the person gave the information, honestly and on reasonable grounds. Section 237 National Law (Qld)—protection for a person making a notification or otherwise providing information for a purpose or function under the National Law. Person is not liable civilly, criminally or under an administrative process, where a notification is made or information is provided in good faith.
Confidentially provisions do not apply	Section 37—Confidentiality provisions do not apply. Without limiting section 36 [Immunity from liability], a person who makes a public interest disclosure does not by doing so: <ul style="list-style-type: none"> a. commit an offence under any Act that imposes a duty to maintain confidentiality in relation to a matter or any other restriction on the disclosure of information b. breach an obligation by way of oath or rule of law or practice or under an agreement requiring the person to maintain confidentiality or otherwise restricting the disclosure of information in relation to a matter. 	Section 275(4)(b)—Information given to health ombudsman and others. ... <ul style="list-style-type: none"> b. if the person would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the person <ul style="list-style-type: none"> (i) does not contravene the Act, oath or rule of law or practice by giving the information; and (ii) is not liable to disciplinary action for giving the information ...
Protection from defamation action	Section 38—Protection from defamation action. Without limiting section 36 [no liability], in a proceeding for defamation, a person who makes a public interest	Section 275(4)—Information given to health ombudsman and others.

	Public Interest Disclosure Act 2010	Health Ombudsman Act 2013
	disclosure has a defence of absolute privilege for publishing the information disclosed.	Without limiting subsections (2) and (3) [no liability], in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information. Section 276—Reports and other published information privileged. A person has a defence of absolute privilege for the publication of any defamatory statement made in good faith: <ul style="list-style-type: none"> a. for the purpose of the preparation of a report authorised or required to be made under this Act; or b. in a report authorised or required to be made under this Act; or c. in information that the Health Ombudsman is authorised or required to publish on a website or publish to the public in another way.
Reprisal	Section 40—Reprisal and grounds for reprisal. <ol style="list-style-type: none"> 1. A person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that <ul style="list-style-type: none"> a. the other person or someone else has made, or intends to make, a public interest disclosure; or b. the other person or someone else is, has been, or intends to be, involved in a proceeding under the Act against any person. 	Section 261—Reprisal and grounds for reprisal. <ol style="list-style-type: none"> 1. A person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that, any person <ul style="list-style-type: none"> a. has made or may make a health service complaint; or b. has provided or may provide information or other assistance to the Health Ombudsman, a staff member of the Office of the Health Ombudsman or an authorised person.

	Public Interest Disclosure Act 2010	Health Ombudsman Act 2013
	<p>2. An attempt to cause detriment includes an attempt to induce a person to cause detriment.</p> <p>3. A contravention of subsection (1) is a reprisal or the taking of a reprisal.</p> <p>Detriment includes:</p> <ul style="list-style-type: none"> a. personal injury or prejudice to safety; and b. property damage or loss; and c. intimidation or harassment; and d. adverse discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business; and e. financial loss; and f. damage to reputation, including, for example, personal, professional or business reputation. 	<p>2. An attempt to cause detriment includes an attempt to induce a person to cause detriment.</p> <p>3. A contravention of subsection (1) is a reprisal or the taking of a reprisal.</p> <p><i>Detriment</i> is not defined.</p>
	<p>Section 41—Offence of taking reprisal.</p> <p>1. A person must not take a reprisal.</p> <p>Maximum penalty—167 penalty units or 2 years imprisonment.</p> <p>2. An offence against subsection (1) is an indictable offence.</p>	<p>Section 262—Offence of taking reprisal.</p> <p>1. A person who takes a reprisal commits an offence.</p> <p>Maximum penalty—200 penalty units or 2 years imprisonment.</p> <p>2. The offence is an indictable offence that is a misdemeanour.</p>
	<p>Section 42—Damages entitlement for reprisal.</p> <p>1. A reprisal is a tort and a person who takes a reprisal is liable in damages to any person who suffers detriment as a result.</p>	<p>Section 263—Damages entitlement for reprisal</p> <p>1. A reprisal is a tort and a person who takes a reprisal is liable in damages to any person who suffers detriment as a result.</p>

	Public Interest Disclosure Act 2010	Health Ombudsman Act 2013
	<p>2. Any appropriate remedy that may be granted by a court for a tort, including exemplary damages, may be granted by a court for the taking of a reprisal.</p> <p>3. If the claim for damages goes to trial in the Supreme Court or the District Court, it must be decided by a judge sitting without a jury.</p> <p>...</p>	<p>2. Any appropriate remedy that may be granted by a court for a tort may be granted by a court for the taking of a reprisal.</p> <p>3. If the claim for damages goes to trial in the Supreme Court or the District Court, it must be decided by a judge sitting without a jury.</p>
Vicarious liability of public sector entity	<p>Section 43(1)—Vicarious liability of public sector entity. If any of a public sector entity’s employees contravenes section 40 in the course of employment, both the public sector entity and the employee, as the case may be, are jointly and severally civilly liable for the contravention, and a proceeding under section 42 may be taken against either or both.</p>	<p>No comparable provision. There is the potential for a health service complaint not to amount to a public interest disclosure.</p> <p>Complainant/notifier will be protected, but there is no liability for the employer if complainant is reprised against (part 17 <i>Health Ombudsman Act 2013</i>). As the legislative scheme is not restricted to health service provision in the public sector, application of section 43(1) would create inconsistent treatment of notifiers in public and private health service delivery, and would not be appropriate.</p>
Relocation of a public service employee	<p>Section 47—Relocation of public service employee. Application for relocation by a public service employee on the basis it is likely a reprisal will be taken against the employee and relocation is the only practical way to remove or substantially remove the danger of reprisal.</p>	<p>Not available in <i>Health Ombudsman Act 2013</i>. See comments above regarding necessary consistency between management of complaints and notifications about matters relevant to public and private health service delivery.</p>
Injunctions	<p>Chapter 4, part 3—Injunctions regarding reprisal.</p>	<p>No injunction provisions available.</p>
Obligations of entity managing complaint		
	<p>Section 28—Reasonable procedures to deal with PIDS Section 29—Record of disclosure Section 30—When no action required</p>	<p>The <i>Health Ombudsman Act 2013</i> establishes certain processes that must be undertaken, which are comparable with chapter 3, part 2 <i>Public Interest Disclosure Act 2010</i>:</p>

	Public Interest Disclosure Act 2010	Health Ombudsman Act 2013
	<p>Section 31—Referral of disclosure</p> <p>Section 32—Person who made disclosure, or referring entity, to be informed</p>	<p>Section 33—How to make a complaint. Requires a record to be made of oral complaints. Records are created of all complaints to enable case management and transparent reporting of Office of the Health Ombudsman activities to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee.</p> <p>Section 38—Meaning of relevant action. Provides for the different relevant actions that may be taken on a complaint, which include referral to the Australian Health Practitioner Regulation Agency or to another government entity. This includes state and commonwealth entities. A receiving entity that is an entity of the state must provide the Health Ombudsman with the results of any action taken about the referral.</p> <p>Section 44—Provides for circumstances when the Health Ombudsman may decide to take no further action on a complaint.</p> <p>Section 278—Notice of decision relating to complaint. This provision requires notice of decision to be provided to the parties within 7 days of the decision being made.</p> <p>This relates to whether the Health Ombudsman has decided to take no further action or a relevant action, and if a relevant action has been taken, what action was taken. Reasons for decision must also be provided.</p>
Miscellaneous		
Protection from liability	<p>Section 64—Protection from liability.</p> <p>A person responsible for discharging a function or part of a function under the <i>Public Interest Disclosure Act 2010</i> is not</p>	<p>Section 287—Protection of officials from liability.</p> <p>An official is not civilly liable to someone for an act done or omission made honestly and without negligence.</p>

	Public Interest Disclosure Act 2010	Health Ombudsman Act 2013
	civilly liable to someone for an act done or omission made honestly and without negligence.	
Confidentiality	<p>Section 65—Preservation of confidentiality.</p> <p>A person who gains information because of their involvement in the administration of the <i>Public Interest Disclosure Act 2010</i> must not make a record or intentionally or recklessly disclose the information to anyone, except for specified circumstances provided in section 65(3).</p> <p>Maximum penalty for breach 84 penalty units.</p>	<p>Section 272—Confidentiality.</p> <p>A person must not disclose confidential information to anyone else except to the extent the disclosure is permitted under this section.</p> <p>The provision relates to Health Ombudsman, staff member, inquiry member, member of committee or panel, authorised person, person engaged by the Health Ombudsman to help in the performance of the health ombudsman’s functions.</p> <p>Maximum penalty for breach 100 penalty units.</p>
False or misleading information	<p>Section 66—False or misleading information.</p> <p>A person must not make a statement intending it to be acted on as a public interest disclosure that intentionally contains false or misleading information in a material particular.</p> <p>Maximum penalty—167 penalty units or 2 years imprisonment.</p>	<p>Section 264—False or misleading information.</p> <p>A person must not, in relation to the administration of the <i>Health Ombudsman Act 2013</i>, give information that the person knows is false or misleading in a material particular to the Health Ombudsman, a staff member of the Office of the Health Ombudsman or an authorised person.</p> <p>Maximum penalty—100 penalty units.</p>