

Public Interest Disclosure Policy January 2011

Statement of commitment

The reporting of suspected misconduct within the Queensland public sector is fundamental to its ongoing integrity and health. (Brown et al. 2004)

The most effective protection for a person making a public interest disclosure is the right organisational culture. The department, in line with its values, is committed to creating and sustaining a positive ethical climate with accountable behaviour. This comes from leadership that openly recognises the significant contribution staff make to our success and strongly encourages disclosure of unethical and fraudulent behaviour.

The department aims to provide clear guidance to staff on how to handle and deal with the complex issues associated with an ethical dilemma and when faced with potential wrongdoing.

Principles:

- Every employee of the Queensland public service has an ethical responsibility to report suspected misconduct, maladministration, wasting of public funds, substantial and specific danger to public health and safety, the environment or a person with a disability, and reprisal action.
- The principle of natural justice (procedural fairness) will apply to all investigations of matters the subject of public interest disclosures (PID's). The department is committed to treating the PID appropriately and making the process fair for both the discloser and the person who is subject to the disclosure.
- The rights of any person who is subject to, or is in some way associated with, a disclosure will be safeguarded.
- Managers and supervisors are to ensure employees are aware of their responsibilities in making a PID and are able to advise other persons of the appropriate reporting process.

Legislation:

- *Public Interest Disclosure Act 2010*
- *Public Sector Ethics Act 1994*
- *Crime and Misconduct Act 2001*
- *Disability Services Act 1992*

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

What constitutes a public interest disclosure (PID)?

What constitutes a PID depends on who is making the disclosure, with the *Public Interest Disclosure Act 2010* distinguishing between disclosures made by a public officer and those made by anyone else.

PIDs made by public officers

- Official misconduct, as defined in the *Crime and Misconduct Act 2001*
- Maladministration that adversely affects anyone's interest in a substantial and specific way
- Negligent or improper management by a public officer, public sector entity or a government contractor resulting or likely to result in a substantial waste of public funds; or
- Conduct by another person causing a substantial and specific danger to public health or safety or to the environment.

PIDs made by any person

- A substantial and specific danger to the health or safety of a person with a 'disability' as defined in the *Disability Services Act 1992*
- A substantial and specific danger to the environment.
- A reprisal taken against anybody as a result of a PID.

A person has information about the conduct of another person or another matter if the person honestly believes on reasonable grounds that the information tends to show the conduct or other matter (subjective test) or the information tends to show the conduct or other matter regardless of whether the person honestly believes the information tends to show the conduct or other matter (objective test). The disclosure is still a PID and covered by the *Public Interest Disclosure Act 2010* even if it proves not to contain this type of information

Some disclosures are not protected by the *Public Interest Disclosure Act 2010*, including disclosures made to the media (except in special circumstances outlined in Part 4 section 20); those made frivolously or vexatiously; those which primarily question the relative merits of government or agency policy; and those that are made substantially to avoid disciplinary action. Disclosures that are wilfully false constitute an offence under the *Public Interest Disclosure Act 2010*.

The disclosure cannot be based on a mere disagreement over policy that may properly be adopted about amounts, purposes and priorities of expenditure.

Who should I make the disclosure to?

If you wish to make a PID or anyone makes a PID to you, the department's preferred approach is that you contact the Director, Ethical Standards Unit immediately. Alternately, you can make your disclosure to the Crime and Misconduct Commission if it concerns misconduct, the Ombudsman if it concerns maladministration or a waste of public funds or a member of Parliament.

You should disclose anything you think may be a PID. You do not need proof, as long as you have reasonable grounds to believe that it has occurred. If in any doubt, ask the Director, Ethical Standards Unit for advice.

Where possible, be prepared to give information on:

- the name, job title and workplace address of the person the subject of your disclosure
- details of relevant events, dates and places
- the names of people who may be able to back up what you say
- any other evidence that supports your view.

How do I make a disclosure?

Your disclosure can be made in writing or orally and anonymously if you desire.

Where an employee receives an oral PID they should request the discloser to put the details in writing. If they are unable or unwilling to do so the employee receiving the PID should document it and ask the discloser to confirm the contents before signing it. If circumstances (eg telephone caller who remains anonymous) prevent this occurring, the officer receiving the PID should record the date, time and circumstances of the PID. It should then be forwarded to the Director, Ethical Standards Unit.

Where do I make a disclosure?

If you wish to make a disclosure to the **department** please use the following details:

By email: ethicalstandards@justice.qld.gov.au

By letter: Director, Ethical Standards Unit
Department of Justice and Attorney - General
GPO Box 69
Brisbane Qld 4001
Australia

By phone: 07 3225 2045

In person: Ethical Standards Unit

If you wish to make a complaint in person, please phone first for an appointment

If you wish to make a disclosure to the **CMC direct**, please use the following details.

By email: mailbox@cmc.qld.gov.au

By letter: Director, Complaints Section
Crime and Misconduct Commission
GPO Box 3123
Brisbane Qld 4001
Australia

By phone: 07 3360 6060
1800 061 611 (toll free outside Brisbane)

In person: Level 2, North Tower Green Square
515 St Pauls Terrace
Fortitude Valley
Brisbane

If you wish to make a complaint in person, please phone first for an appointment

What support and protection is available to me if I make a public interest disclosure?

The department will treat all PID's appropriately. The Director, Ethical Standards Unit will take your concerns seriously and ensure your privacy and confidentiality (as far as possible) throughout the appropriate process. You can also be confident of protection against reprisal and bullying and that you will be provided with assistance in contacting the Employee Assistance Service if you wish to do so.

The Crime and Misconduct Commission operates a support program for people who are considering making, or have made a PID about official misconduct or for people experiencing difficulties as a result of making a PID about official misconduct. The services include provision of confidential counselling, advice and referral information. Consultative advice and education seminars on making a PID are also offered upon request. For more information on how to make a public interest disclosure read [Thinking About Blowing the Whistle](#): a guide for individuals working in the public sector. Which is available on the Department's intranet as well as the CMC, QLD Ombudsman and Public Service Commission websites.

For those making a PID, Section 36 of the *Public Interest Disclosure Act 2010* states that a person is not liable civilly, criminally or under an administrative process for making a PID. Under Section 73 (2)(f) of the *Industrial Relations Act 1999*, it constitutes an unfair dismissal if an employee is dismissed on the basis of making a PID or because of a belief that an employee has made or may make a PID in accordance with the *Public Interest Disclosure Act 2010*.

If you make a disclosure, you are reminded that the matters surrounding the investigation will be confidential and you are requested to maintain the integrity of the process by not discussing it with your work colleagues or others unconnected with this matter. All statements and correspondence in regard to the matter should be regarded as strictly confidential. Please note that the confidentiality provision will not preclude you from sharing this information with your Union representative/support person.

Where required, interpreters or other assistance will be provided to employees or other persons wanting to report misconduct, official misconduct or make a PID.

What support and protection is available to me if someone makes a public interest disclosure against me?

The department is determined to treat disclosures appropriately. The rights of any person who is the subject of, or is in some way associated with a disclosure are important, and as a person against whom a PID is made, you are entitled to confidentiality and the presumption of innocence.

Employees who are the subject of an allegation may seek assistance from their legal representative or union and may utilise the services of the Employee Assistance Service for advice and counselling (phone 07 3225 2172 or toll free 1800 808 374). This service provides confidential counselling and support to staff through stressful times.

Protection exists for those against whom an intentionally false PID is made. It is an offence under Section 66 of the *Public Interest Disclosure Act 2010*, punishable by up to two years imprisonment, to intentionally make a false or misleading statement intending it to be acted upon as a PID.

However, you are also reminded of your responsibilities under the Queensland Public Service Code of Conduct, 'we will support employees who report genuine concerns of wrongdoing and manage any reports of suspected wrongdoing in a fair, transparent and consistent manner.' You are requested to remember that staff will have performed their duty by participating in the investigation. They should not be treated adversely because of their involvement in this process and any substantiated allegations of adverse treatment on these grounds may result in disciplinary action being taken against you.

The assessment and investigation process

1. The PID is made to the Director, Ethical Standards Unit who will make an assessment as to whether it is to be referred to the CMC or another agency for review or investigation or whether the department is able to investigate the matter or deal with it in some other manner.
2. If the matter is required to be investigated by the department, the Director, Ethical Standards Unit will be responsible for the investigation which will usually be completed by an independent investigator.
3. Once the investigation is completed and relevant agencies consulted, corrective or disciplinary action will be taken by the department where necessary.
4. The person making the PID will be informed of progress and the outcome by the Director, Ethical Standards Unit.

Staff and management responsibilities

All staff, especially managers and supervisors should make themselves familiar with this policy and their obligations under the Code of Conduct. They must provide clear guidance to staff on how to handle the complex issues and how to deal with an ethical dilemma when faced with potential wrongdoing.

Managers must ensure staff are provided with information about making a disclosure and are familiar with the process of making a public interest disclosure. All staff should also be able to identify potential situations where behaviour may be unethical or fraudulent and know how to report it.

Agencies must resolve the apparently conflicting demands of disclosure and confidentiality through management and supervisors being forthright in stating that they want people to denounce unethical and fraudulent behaviour.

Confidentiality

Section 65 of the *Public Interest Disclosure Act 2010* makes it an offence for a person to make a record of, or intentionally or recklessly disclose confidential information received in the administration of the Act to anyone, except where authorised to do so by the Act.

Strict confidentiality is to be maintained at all times in relation to reporting and investigation of PIDs. All departmental records of PIDs will be held and securely filed by the Ethical Standards Unit.

Reprisal

If a person making a PID has concerns about reprisal being taken against them because of the disclosure, under the *Public Interest Disclosure Act 2010*, the person can be given special protection to prevent this occurring.

If you feel as though you have been disadvantaged or subjected to a reprisal for making a disclosure, you should raise the issue with the Director, Ethical Standards Unit.

Section 40 of the *Public Interest Disclosure Act 2010* makes it an offence for an employee to take a reprisal because of a belief that another person has made, or intends to make a Public Interest Disclosure.

Responsibilities for this policy

The Director, Ethical Standards Unit is responsible for the preparation, review and maintenance of the policy.