

# Making a Public Interest Disclosure Policy

HR 09/11

Developed by **Human Resources**, Corporate Services  
Department of Employment, Economic Development and Innovation

## 1. PURPOSE

- To provide employees with information on their responsibilities to report serious misconduct and other matters affecting the public interest.
- To provide employees with information on how to make a public interest disclosure, what happens when an employee makes a public interest disclosure and the rights of disclosers under the [Public Interest Disclosure Act 2010](#).

## 2. SCOPE

This policy applies to all employees of the Department of Employment, Economic Development and Innovation (DEEDI), including a person working for the department under a contract of service.

This policy should be read in conjunction with the DEEDI Complaints Management Framework.

## 3. DEFINITIONS

|                              |   |
|------------------------------|---|
| <b>Administrative Action</b> | Any action about a matter of administration, for example — <ul style="list-style-type: none"><li>• a decision and an act</li><li>• a failure to make a decision or do an act, including a failure to provide a written statement of reasons for a decision</li><li>• the formulation of a proposal or intention</li><li>• the making of a recommendation, including a recommendation made to a Minister and</li><li>• an action taken because of a recommendation made to a Minister.</li></ul> |
| <b>Detriment</b>             | Includes: <ul style="list-style-type: none"><li>• personal injury or prejudice to safety</li><li>• property damage or loss</li><li>• intimidation or harassment</li><li>• adverse discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business</li><li>• financial loss and</li><li>• damage to reputation, for example, personal, professional or business reputation.</li></ul>  |
| <b>Disability</b>            | A person's condition which is attributable to - <ul style="list-style-type: none"><li>• an intellectual, psychiatric, cognitive, neurological, sensory or physical impairment; or</li><li>• a combination of these impairments; and</li><li>• results in –</li><li>• a substantial reduction of the person's capacity for communication, social interaction, learning, mobility or self care or management and</li></ul>  |

|   |   |
|---|---|
|   | <ul style="list-style-type: none"> <li>the person needing support.</li> </ul>   |
| <b>Environment</b>                      | <p>Includes –</p> <ul style="list-style-type: none"> <li>ecosystems and their constituent parts, including people and communities</li> <li>all natural and physical resources</li> <li>the qualities and characteristics of locations, places and areas, however large or small, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony and sense of community, and</li> <li>the social, economic, aesthetic and cultural conditions that affect, or are affected by, things mentioned in the above paragraphs.</li> </ul>   |
| <b>Journalist</b>                       | <p>A person engaged in the occupation of writing or editing material intended for publication in the print or electronic news media.</p>  |
| <b>Maladministration</b>                | <p>Action which —</p> <ul style="list-style-type: none"> <li>was taken contrary to law</li> <li>was unreasonable, unjust, oppressive, or improperly discriminatory</li> <li>was 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</li> <li>for an improper purpose</li> <li>on irrelevant grounds or</li> <li>having regard to irrelevant considerations</li> <li>was an action for which reasons should have been given, but were not given</li> <li>was based wholly or partly on a mistake of law or fact or</li> <li>was wrong.</li> </ul> |
| <b>Official Misconduct</b>              | <p>Relating to the performance of a person's duties which:</p> <ul style="list-style-type: none"> <li>is dishonest or lacks impartiality</li> <li>involves a breach of the trust placed in an officer by virtue of their position or</li> <li>is a misuse of officially obtained information.</li> </ul> <p>The conduct must be a criminal offence or serious enough to justify dismissal.</p>  |
| <b>Public Health or Safety</b>          | <p>Includes the health or safety of persons:</p> <ul style="list-style-type: none"> <li>under lawful care or control</li> <li>using community facilities and services provided by the public or private sector or</li> <li>in employment workplaces.</li> </ul>   |
| <b>Public Interest Disclosure (PID)</b> | <p>A disclosure under Chapter 2 of the <a href="#">Public Interest Disclosure Act 2010</a> and includes all information and help given by the discloser to a proper authority for the disclosure.</p>   |

|                                     |  |
|-------------------------------------|--|
| <b>Public Officer</b>               | A person who is an employee, member or officer of the department and includes a person engaged under a contract of service.  |
| <b>Reasonable management action</b> | Any of the following action taken by a manager/supervisor — <ul style="list-style-type: none"> <li>• a reasonable appraisal of the employee's work performance</li> <li>• a reasonable requirement that the employee undertake counselling</li> <li>• a reasonable suspension of the employee from the employment workplace</li> <li>• a reasonable disciplinary action</li> <li>• a reasonable action to transfer or deploy the employee</li> <li>• a reasonable action to end the employee's employment by way of redundancy or retrenchment</li> <li>• a reasonable action in relation to an action mentioned above and</li> <li>• a reasonable action in relation to the employee's failure to obtain a promotion, reclassification, transfer or benefit, or to retain a benefit, in relation to the employee's employment.</li> </ul> |
| <b>Reprisal</b>                     | Causing, attempting or conspiring to cause detriment to any person because, or in the belief, anybody has made, or may make, a PID or because the other person or someone else is, has been or intends to be involved in a proceeding under the <a href="#">Public Interest Disclosure Act 2010</a> .  |

## 4. DELEGATIONS

Delegations must be exercised in accordance with the [DEEDI Human Resource Delegations Manual](#). Delegation Schedules are reviewed on a regular basis to ensure they remain current and relevant to the operational needs of the department. Please confirm delegate authority levels prior to exercising any powers.

## 5. POLICY

DEEDI encourages any employee who believes they have witnessed any wrongdoing or have any information about wrongdoing to come forward and make a disclosure.

When an employee comes forward with information about wrongdoing, DEEDI is committed to –

- Protecting the dignity, wellbeing, career interests and good name of all persons involved.
- Protecting the discloser from any adverse action taken as a result of making the disclosure.
- Treating any bullying, harassment, unfair treatment, victimisation or discrimination that results from a disclosure being made as a breach of the [Applying the Code of Conduct in DEEDI](#).

- Responding to the disclosure thoroughly and impartially.
- Taking appropriate action where some form of wrongdoing has been found.
- Keeping the discloser informed of the progress and outcome.

DEEDI believes that employees who come forward with disclosures of wrongdoing are acting as exemplary organisational citizens by assisting the department in promoting openness, accountability and good management.

### 6. RESPONSIBILITIES

#### Employees are to –

- Disclose fraud, corruption, maladministration and official misconduct in accordance with this policy and [Applying the Code of Conduct](#) in DEEDI.
- Not unlawfully record or disclose confidential information gained through the receipt or management of a PID.
- Not engage in a reprisal because of a belief that a person has made, or intends to make a PID.

#### Managers/Supervisors are to –

- Ensure their employees are aware of and have easy access to this policy.
- Know how to recognise a PID and what action to take when they receive a PID or other information about wrongdoing
- Ensure the confidentiality of PIDs and that the identity of disclosers is maintained in accordance with this policy and the Act.
- Take action where necessary to ensure that disclosers are treated fairly, and protected against reprisals.
- Ensure disclosers are aware of the department's [Employee Assistance Service](#).

#### Director Human Resources will –

- Ensure that all PIDs are handled with due process, and in accordance with relevant legislation and principles of natural justice.
- Ensure that procedures are implemented to give support and fair and just treatment to disclosers and to protect disclosers from reprisals.
- Ensure that a communication strategy is developed for raising employee awareness about PIDs and the department's policy and procedure.

#### Human Resources will –

- In conjunction with management assess all PIDs and make a decision on how to best deal with any disclosures.
- provide the discloser with an explanation (e.g. if they were not aware of all the circumstances surrounding an action which appeared to be improper)
- provide counselling or training of the wrongdoer
- provide mediation or conciliation
- conduct an internal audit
- review an issue or the operations of a particular unit

- implement or change policies, procedures or practices
- conduct a formal investigation of the allegations
- refer to another appropriate entity.

It may be that Human Resources undertakes initial inquiries and decides not to take the matter any further. If so, they will inform the employee of this. Where the disclosure is referred for investigation or other action, or to an external entity such as the CMC, Human Resources will also inform the discloser of this.

### 7. SUBJECT MATTER OF A PUBLIC INTEREST DISCLOSURE

While we encourage employees to report wrongdoing, for the discloser to receive the unique protections of the [Public Interest Disclosure Act 2010](#), it must concern any of the following –

#### 7.1 Official misconduct

A public officer can make a PID about official misconduct; this is certain conduct in the course of an officer's role which is either a criminal offence or could provide grounds for dismissal.

Examples may include –

- Stealing your employer's property
- Accepting money or another benefit in return for selecting a specific supplier of goods or services.

#### 7.2 Maladministration

A public officer can make a PID about a person's conduct if the conduct is maladministration that adversely affects someone's interest in a substantial and specific way. Examples may include unreasonable decisions about –

- A person's eligibility for a licence/permit.
- A person's eligibility for a grant.

#### 7.3 Misuse of Public Resources

A public officer can make a PID about misuse of public resources; it must be a substantial misuse of public resources. It cannot arise from alleged misuse based on mere disagreement over policy that may properly be adopted about amounts, purposes or priorities of expenditure.

For example –

- Not following proper procedures for assessing eligibility for payments under a project resulting in a large waste of money.

#### 7.4 Danger to public health or safety or environment

A public officer can make a PID about a substantial and specific danger to public health or safety of the environment. Examples may include –

- A company sells contaminated products to the public.

#### 7.5 Danger to the health or safety of a person with a disability

Anyone person can make a PID about a substantial and specific danger to the health or safety of a person with a disability. For example –

- Carers physically or sexually abusing clients

### 7.6 Danger to the environment

Any person can make a PID about conduct that is an offence, or the contravention of a condition imposed, under Queensland environmental legislation, as listed in Schedule 2 of the [Public Interest Disclosure Act 2010](#), where there is a substantial and specific danger to the environment. Examples may include –

- A shipping company discharging oil into the coastal waters of Queensland
- Any person or business clearing trees without a permit/license.

### 7.7 Reprisal

Any person can make a PID about someone's conduct if the conduct is a reprisal. Examples may include -

- Threatening or harassing a discloser or those close to them
- Discriminating against a discloser in subsequent job applications.

## 8. PUBLIC INTEREST DISCLOSURES

DEEDI is required to take action to protect employees from retribution or reprisal, such as bullying or harassment for making a PID. In addition, the *Act* provides disclosers with the following protections -

- The discloser's identity will be protected where possible.
- For making a PID, the discloser has immunity from -
  - Civil liability (e.g. for defamation)
  - Criminal liability (e.g. for breaching statutory confidentiality provisions)
  - Disciplinary action, termination of employment, or any other workplace or administrative sanctions.
- It is a criminal offence to cause detriment to a person because it is believed that somebody has made or will make a PID or intends to be involved in a proceeding under the *PID Act* against any person.
- Disclosers have the right to apply for an injunction in the Industrial Commission or Supreme Court to prevent a reprisal.
- Disclosers have the right to make a civil claim for damages for a reprisal. Proceedings can be brought against the person causing the reprisal or the department.
- Disclosers have a right of review for a reprisal under the *Public Service Act 2008*
- Disclosers have a right to apply for relocation if it is likely there will be a reprisal and the only practical way to deal with it is relocation.

### 8.1 Eligibility for protection

To be eligible for protection under the *Act*, a PID should -

- Be made with an honest belief on reasonable grounds that the information to be disclosed tends to show the conduct or other matter, or
- Show the conduct or other matter regardless of whether the discloser honestly believes that the information tends to show the conduct or other matter, and

- Be disclosed as required by the *Act* and this policy.

Intentionally giving false or misleading information as a PID, or in the course of making a PID, is an offence with a maximum penalty of \$16,700 or two years in jail. Employees may also face disciplinary action.

### 8.2 Referring PIDs to other organisations

The *Act* allows the department to refer PIDs to another appropriate entity in certain circumstances. This may happen -

- when the PID received relates to the conduct of another public sector entity
- if another entity has the necessary jurisdiction, expertise and technical knowledge to investigate or take other action (and the department does not).

Referral should only take place following consultation with the discloser about their risk of reprisal (if their identity is known). If, after consideration, it is determined there is an unacceptable level of risk, the PID must not be referred.

This obligation does not affect other legal obligations of organisations to refer a report, complaint, information or evidence to another entity such as notifying the CMC of suspected official misconduct in accordance with section 38 or section 40 of the [Crime and Misconduct Act 2001](#).

## 9. PROCEDURE

### 9.1 Making a public interest disclosure

When making a PID you are encouraged to do so internally. Disclosures may be made to -

- your manager/supervisor
- any other person in a management role within DEEDI
- the Director-General
- the Director Human Resources, or Manager, Case Management, in Human Resources or any other employee in Human Resources.

Disclosures can be made either -

- in person
- in writing, by letter or email
- by telephone

All disclosures of wrongdoing will be recorded and sent immediately to the appropriate area of the department to be dealt with. Managers will liaise with Case Management HR in the management of PIDs.

#### Disclosing to an external body

An employee may choose to make a disclosure to a person external to DEEDI. You can do this as a first step, or if you are not satisfied with the department's response to a disclosure. While we urge you to disclose to someone in department, we will respect and support you if you disclose to an appropriate external entity.

When you disclose to an external body, it is very likely that it will discuss your case with DEEDI. We will make every effort to assist and cooperate with any entity dealing with a PID about this organisation to work towards a satisfactory outcome.

| When the disclosure relates to                                  | The appropriate external entity is                                      |
|---|---|
| Official misconduct   | Crime and Misconduct Commission   |
| Maladministration   | Queensland Ombudsman  |
| Waste of public resources                                       | Queensland Audit Office   |
| Danger to public health or safety                               | Health Quality and Complaints Commission                                |
| Danger to public health or safety of a person with a disability | Department of Communities<br>Adult Guardian                             |
| Danger to the environment                                       | Environmental Protection Agency   |
| Reprisal  | Crime and Misconduct Commission (if it constitutes official misconduct) |

## Disclosure to a Member of Parliament

You can also make a PID to a Member of Parliament (MP). MPs do not have any authority to investigate PIDs, so they need to decide which public sector entity they believe can appropriately deal with the matter.

If you are concerned about a reprisal if details of your PID are made public it is essential you raise the matter when you make the disclosure. MPs are required to keep the matter confidential. However, MPs do have the discretion to raise the matter in Parliament and your identity may then become public.

## Disclosure to a journalist

The *Act* enables an employee to make a PID to a journalist but only as a last resort.

An employee can make a PID under the *Act* to a journalist only where -

- the department decided not to investigate or deal with the disclosure or
- the department investigated it but did not recommend the taking of any action in relation to the PID or
- the department did not notify you within six months after the disclosure was made whether or not the disclosure was to be investigated or dealt with.

When an employee makes a disclosure to a journalist, they are not bound by any obligations under the *Act*. They are however bound by the normal rules concerning defamation.

## Disclosure to organisations that cannot receive a PID

An employee wishing to make a PID should be aware that if they make a disclosure to a person or an organisation other than one that can investigate and deal with the matter or they will not receive the protections provided under the *Act*.

## 9.2 Information to be provided

When considering making a PID, in many cases the first step will simply be having a conversation with your manager/supervisor.

However, depending on your circumstances, you may wish to mention -

- your name and contact details (desirable)
- the nature of the wrongdoing
- who you think did the wrongdoing (if possible)
- when and where the wrongdoing occurred
- events surrounding the issue
- if you did anything in response to the wrongdoing
- others who know about the wrongdoing and have allowed it to continue
- if you believe your information is a PID under the Act
- if you are concerned about possible reprisal as a result of making your PID.

You should not investigate a matter yourself before disclosing. In fact by doing so, you may hinder any future investigation.

### 9.3 Anonymous Complaints

The likelihood of a successful outcome is increased greatly if, when making a disclosure, you make your identity known. However, you are able to make a disclosure anonymously either in writing or by telephone.

If you do decide to disclose anonymously, you will need to provide sufficient information for the matter to be investigated, as it will not be possible for the department to come back to you for clarification or more information. Also, it will not be possible to keep you informed on the progress in handling your disclosure and you could experience difficulties in relying upon the protections afforded by the *Act*.

If you have reported anonymously and provided enough information for the department to act, DEEDI is committed to acting upon your request.

### 9.4 Being kept informed

An employee who makes a PID is required to be provided with reasonable information under section 32 of the *Act* as follows -

- confirmation the PID was received
- a description of the action proposed to be taken
- if action has been taken in relation to the PID, a description of the results of the action
- the likely timeframes
- your involvement in the investigation process
- the importance of maintaining confidentiality
- the protections under the PID Act that will apply
- That the entity will keep the information disclosed, including the discloser's identity confidential, except as allowed under the PID Act
- How you will be advised of progress and outcomes and
- Who to contact if you want further information or are concerned about reprisals.

The information must be given in writing. DEEDI will not supply information if it is likely to have an adverse affect on –

- Anybody's safety

- The investigation of an offence or possible offence or
- Confidentiality about an informant's existence or identity.

### 9.5 Managing Reprisals

DEEDI is committed to ensuring that no disciplinary or adverse action, including workplace reprisals by managers/supervisors occurs as a result of an employee making a disclosure. If any of the following occurs the employee has the right to request the department to take positive action to protect the employee.

- Unfair treatment
- Harassment
- Intimidation
- Victimisation
- Unlawful discrimination.

An employee who experiences any form of reprisal should notify Workforce Integrity immediately. All managers/supervisors must notify Workforce Integrity if they suspect an employee is experiencing reprisal action as a result of PID.

Where DEEDI becomes aware of reprisal action against an employee, the department will take immediate steps to ensure an experienced senior officer who has not been involved in the initial disclosure will investigate any reports of reprisal.

Where it is established that reprisal action is occurring, DEEDI will take action to stop that activity and protect the employee. The nature of the action taken will be dependent on the circumstances and seriousness of the reprisals.

Any employees found to have engaged in reprisals will be the subject of disciplinary action.

### 9.6 When no action is required

DEEDI can decide not to investigate or deal with a PID if -

- the substance of the disclosure has already been investigated or dealt with
- the department reasonably considers it should be dealt with by another process
- the age of the disclosure makes it impracticable to investigate
- the matter is too trivial to warrant investigation and dealing with it would divert resources, or
- another entity has jurisdiction to investigate and has notified the department that an investigation is not warranted.

If DEEDI chooses not to investigate the matter because of one of these reasons, a written explanation will be provided based on the decision made. A person receiving written reasons for such a decision may appeal to the Director-General for a review of the decision within 28 days after receiving the notice. Internal review of the decision will be carried in accordance with the processes for internal review under the Complaints Management Framework.

### 10. SUPPORT TO THE DISCLOSER

DEEDI will provide an appropriate level of support to disclosers. Case Management HR will initiate and coordinate action to support employees who make a PID, particularly if they are suffering detriment as a result. Actions may include -

- providing moral and emotional support
- advising you about the resources available in our organisation to handle any concerns you may have as a result of making a disclosure
- appointing a mentor, confidante or other support officer to assist you throughout the process
- referring you to our Employee Assistance Program or arranging for other professional counselling
- generating support for you in your work unit (if appropriate)
- ensuring that any suspicions of victimisation or harassment are dealt with
- maintaining contact with you if that is acceptable.

If you feel that you may need support as a result of making a disclosure, you are urged to contact the Manager, Case Management, HR.

All managers/supervisors in the organisation are under an obligation to notify the Director HR (Governance) or the Manager, Case Management, if they believe an employee is suffering detriment as a result of reporting any wrongdoing

### 11. REFERENCES

- [Public Interest Disclosure Act 2010](#)
- [Public Sector Ethics Act 1994](#)
- [Crime and Misconduct Act 2001](#)
- [Industrial Relations Act 1999](#)
- [Financial Accountability Act 2009](#)
- [Applying the Code of Conduct in DEEDI](#)
- [Blowing the whistle in Queensland](#) – CMC Guide
- [Making a public interest disclosure: a guide for individuals working in the public sector](#) – CMC Guide
- [Handling a public interest disclosure: a guide for public sector managers and supervisors](#) – CMC Guide
- [Exposing wrongdoing: a CMC guide to whistle blowing in Queensland](#) – CMC Guide

### 12. CONSULTATION

In accordance with established HR policy development processes, review and formal consultation with respect to this policy has been undertaken with the following –

- Internal stakeholders – All Human Resource employees (including former agency HR client account managers); HR representatives from the nine former agencies (or parts of agencies) that now make up the department; and DEEDI Senior Executives.

- External stakeholders – QPSU, SSA Personnel and Payroll.

### 13. FURTHER INFORMATION

Should you require further advice regarding this policy, please contact your [HR Account Manager](#) as detailed on the DEEDI intranet, your local [HR Network Contact](#), or Case Management HR.

### APPROVAL DETAILS

**Endorsed by** – Director Human Resources

**Approved by** – Executive Director Human Resources

**Issue/approval date** – 28/06/2011