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**AD02-02**

**PUBLIC INTEREST DISCLOSURE POLICY**

**September 2014**

APPROVED

Kevin Cocks

Commissioner

1 September 2014

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# PURPOSE

This policy aims to assist employees and other people to understand their obligations in reporting fraudulent or corrupt behaviour, or maladministration, and outlines the legislative provisions and procedures in place to protect people who make public interest disclosures under the *Public Interest Disclosure Act 2010* (PID Act).

# PRINCIPLES

The *Public Interest Disclosure Act 2010* came into effect on 1 January 2011, replacing the *Whistleblowers Protection Act 1994*.

The main objects of the *Public Interest Disclosure Act 2010* are to:

* promote the public interest by facilitating public interest disclosures of wrongdoing in the public sector;
* ensure that public interest disclosures are properly assessed and, when appropriate, properly investigated and dealt with;
* ensure that appropriate consideration is given to the interests of persons who are the subject of a public interest disclosure; and
* afford protection from reprisals to persons making public interest disclosures.

# AUTHORITY

This policy is based on the following legislation:

* *Public Interest Disclosure Act 2010* – facilitates the disclosure of public interest information about wrongdoing and provides protection against reprisals for disclosures
* *Public Sector Ethics Act 1994* – provides the ethical framework for the public sector
* *Crime and Corruption Act 2001* – provides an external reporting mechanism and an independent investigative and enforcement body

This policy is to be read in conjunction with:

* *Public Interest Disclosure Standard No. 1*
* *Code of Conduct for the Queensland Public Service*

# COMMITMENT

The Anti-Discrimination Commission is committed to creating and sustaining an ethical work environment. The Anti-Discrimination Commission commits to:

* eliminating unlawful, negligent or improper conduct from the workplace;
* promoting the public interest by facilitating complaints and public interest disclosures (PIDs) that relate to the Commission;
* encouraging employees and others to disclose information about suspected wrongdoing through employee awareness and training initiatives and appropriate governance measures including risk management;
* ensuring that complaints and PIDs made to the Anti-Discrimination Commission, including those made anonymously, are properly assessed and dealt with appropriately;
* affording support and protection from any adverse action taken as a result of making the disclosure (reprisal);
* treating any bullying, harassment, unfair treatment, victimisation or discrimination that results from a disclosure as a breach of discipline;
* keeping the discloser informed of the progress and outcome; and
* taking appropriate action to deal with any wrongdoing found to have occurred.

# SCOPE OF POLICY

This policy applies to:

* all employees of the Anti-Discrimination Commission, whether full-time, part-time, temporary or casual; and
* any external person who is making a public interest disclosure to the Anti-Discrimination Commission, in accordance with the PID Act.

If you are aware of any activity or incident that you consider is wrongdoing or would impact adversely on the operation of the Anti-Discrimination Commission, we encourage you to speak up and let someone know.

If the issue an employee is considering disclosing involves activity that is primarily aimed at the employee, such as harassment or bullying, these types of issues are employee complaints. This does not mean that you should not report them, as they are contrary to the policies of the Anti-Discrimination Commission. These types of issues should be reported to the manager or supervisor or a member of the Executive Leadership Team in the first instance.

# DEFINITIONS

|  |  |
| --- | --- |
| ***corrupt conduct:*** | see the Schedule to the policy. |
| ***detriment:*** | includes – personal injury or prejudice to safety; property damage or loss; intimidation or harassment; adverse discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business; financial loss; damage to reputation, including for example personal, professional or business reputation. |
| ***discloser:*** | a person who makes a public interest discloser |
| ***journalist:*** | a person engaged in the occupation of writing or editing material intended for publication in the print or electronic news media. |
| ***maladministration:*** | see the Schedule to this policy. |
| ***PID Co-ordinator:*** | the person responsible for receiving and dealing with PIDs made to the Anti-Discrimination Commission, is the Principal Lawyer. |
| ***proper authority:*** | a public sector entity or a member of the Legislative Assembly. |
| ***public officer*** | an employee or officer of a public sector entity. |
| ***public sector entity:*** | includes - Queensland government departments and agencies; a local government; a university, college or TAFE; a court or tribunal; a committee of the Legislative Assembly; and the Executive Council (for the full definition see section 6 of the PID Act). |
| ***reprisal:*** | causing, or attempting or conspiring to cause, detriment to a person because the person has been or might be involved in a proceeding under the PID Act. |
| ***subject officer:*** | an officer about whom a disclosure is made. |

# WHAT IS A PUBLIC INTEREST DISCLOSURE (PID)?

What constitutes a PID depends on who is making the disclosure. The PID Act distinguishes between disclosures made by a public officer and those made by any person.

**PIDs made by any person**

Any person can make a 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 (refer Schedule 2 of the PID Act); and
* a reprisal against anybody as a result of a PID.

**PIDs made by public officers**

In addition to the above, public officers can make a disclosure about:

* corrupt conduct, as defined in the *Crime and Corruption Act 2011* (for definition, see the Schedule to this policy)*;*
* maladministration that adversely affects a person’s interests in a substantial and specific way (for definition of maladministration, see the Schedule to this policy);
* a substantial misuse of public resources;
* a substantial and specific danger to public health or safety;
* a substantial and specific danger to the environment.

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 PID Act even if it subsequently proves not to contain this type of information.

Some disclosures are not protected by the PID Act, including disclosures:

* made to the media (except in special circumstances outlined in section 20 of the PID Act – see below); or
* made frivolously or vexatiously; or
* which primarily question the relative merits of government or agency policy; or
* made substantially to avoid disciplinary action.

If you are dissatisfied with how a PID has been managed you may request a review, either internally or externally.

## When a disclosure can be made to a journalist

You can make a disclosure to a journalist if you have made the disclosure to an appropriate entity under the PID Act, and the entity (if it was referred to another entity, that entity):

* decided not to investigate or deal with the disclosure; or
* investigated the disclosure but did not recommend any action in relation to the disclosure; or
* did not notify you, within 6 months of making the disclosure, whether or not the disclosure was to be investigated or dealt with.

## PID Co-ordinator

The Anti-Discrimination Commission’s PID Co-ordinator is the Principal Lawyer.

Responsibility for the PID framework rests with the Deputy Commissioner, and the PID Co-ordinator will report directly to the Deputy Commissioner. The Deputy Commissioner and the PID Co-ordinator will meet formally in January of each year to evaluate and monitor the effectiveness of the PID framework.

# HOW TO MAKE A DISCLOSURE

## To Whom

The Anti-Discrimination Commission’s preferred approach is that external disclosures are made to the PID Co-ordinator (Principal Lawyer). Alternatively, disclosures can be made to an external entity (see *External reporting options* below).

Staff wishing to make a disclosure are encouraged to do so internally. Disclosures may be made to:

* your manager or supervisor;
* any other person in a management position in the Anti-Discrimination Commission

Staff should consider who will be the best person to receive your disclosure. If it is a matter that can be resolved by your manager, make your disclosure to them. However, if you think that your manager or senior people may be involved, consider disclosing to the Commissioner or an external body.

## External reporting options

You may choose to make a disclosure to someone external to the Anti-Discrimination Commission. You can do this as a first step, or if you are not satisfied with our response to your disclosure.

Disclosures may be made to a Member of Parliament, or the appropriate entity for the conduct referred to in the table below:

| **Conduct** | **Appropriate Entity** |
| --- | --- |
| Corrupt conduct | Crime and Corruption Commission |
| Maladministration | Queensland Ombudsman |
| Danger to public health or safety | Office of the Health Ombudsman |
| Danger to health or safety of a person with a disability | Department of Communities, Child Safety and Disability ServicesAdult GuardianQueensland Health |
| Danger to environment | Department of Environment and Heritage ProtectionRelevant local council |
| Waste of public funds | Queensland Audit Office |
| Reprisal | Crime and Corruption Commission |

When you disclose to an external entity, it is very likely that the entity will discuss your case with the Anti-Discrimination Commission. We will make every effort to assist and co-operate with any entity dealing with a disclosure about the Anti-Discrimination Commission to work towards a satisfactory outcome.

Be aware that if you make a disclosure to a person or an organisation other than one that can investigate and deal with the matter, you may not receive the protections provided under the PID Act.

## How

Disclosures can be made in any way, including:

* in person
* in writing (by letter, email or memo)
* by telephone.

All disclosures of wrongdoing will be recorded and allocated to the appropriate part of the Anti-Discrimination Commission to be dealt with.

If a disclosure is received orally, the person receiving the disclosure should immediately record it in writing, and the record dated and signed, and forwarded to the Principal Lawyer. Referral of a matter will be done in accordance with legislative and administrative requirements of the Act.

Remember, you do not need proof, as long as you have reasonable grounds to believe that the wrongdoing has occurred. Where possible, please provide information on:

* the name and job title of the person who is the subject of your disclosure
* details of relevant events, dates and places
* the names of people who may be able to support what you say
* any other information that supports what you say.

## Where

Disclosures to the Anti-Discrimination Commission can be made:

|  |  |
| --- | --- |
| **By email:** | info@adcq.qld.gov.au  |
| **By letter:** | Principal LawyerAnti-Discrimination Commission QueenslandPO Box 15565CITY EAST QLD 4002 |
| **By phone:** | 1300 130 670 or 3247 0900 |
| **In person:** | Level 1753 Albert StreetBrisbane |

## Anonymous disclosures

The likelihood of a successful outcome is increased greatly if, when making a disclosure, you make your identity known. Nonetheless, 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 us to come back to you for clarification or more information. Also, it will not be possible for us to keep you informed on the progress in handling your disclosure and you could experience difficulties in relying upon the protections afforded by the PID Act.

If you have reported anonymously and provided enough information for us to act, we are committed to acting upon your disclosure.

## False or misleading information

It is an offence under the PID Act to intentionally make a false or misleading statement intending it be acted upon as a public interest disclosure.

This is an indictable offence which carries a maximum penalty of 2 years imprisonment or $19,012 fine (167 penalty units). Any employees who make a false or misleading statement will be subject to disciplinary action.

## What we will do after you make a disclosure

We will make a decision on how to best deal with your disclosure. It may be that the person who receives your disclosure undertakes initial inquiries and decides not to take the matter any further. We will advise you of this.

No action is required if:

* the substance of the disclosure has already been investigated or dealt with by another appropriate process;
* we reasonably consider the disclosure should be dealt with by another appropriate process;
* the age of the information makes it impracticable to investigate;
* we reasonably consider the disclosure is too trivial to investigate and dealing with the disclosure would substantially and unreasonably divert our resources for the performance of our functions; or
* another entity that has jurisdiction to investigate the disclosure has notified us that investigation is not warranted.

Where your disclosure is referred to another area of the Anti-Discrimination Commission for investigation or other action, or to an external entity such as the Crime and Corruption Commission, we will also inform you of this.

A disclosure may be referred to another agency:

* when the disclosure relates to the conduct of another public sector entity; or
* if another agency has the necessary jurisdiction, expertise and technical knowledge to investigate or take other action.

If you have made a disclosure, we undertake to provide you with advice and assistance on the process and to inform you of the outcome. This will include information on the action taken or proposed to be taken as a result of your disclosure, and the reasons for this decision.

Your notification will not contain any information likely to adversely affect any person’s safety or their personal privacy.

## Conflict of interest

If there is any actual or perceived conflict of interest in the PID Co-ordinator (Principal Lawyer) dealing with the disclosure, the disclosure and the conflict will be referred to the Commissioner. The Commissioner will decide how to deal with the disclosure.

# SUPPORT FOR DISCLOSERS

We will initiate and coordinate action to support you if you make a disclosure, particularly if you are suffering detriment as a result. Actions may include:

* providing moral and emotional support;
* advising you about the resources available 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;
* ensuring that any suspicions of reprisal, victimisation or harassment are dealt with;
* maintaining contact with you;
* negotiating with you and your relevant support officer and case manager a formal end to your involvement with the support program, when it is agreed that you no longer need assistance;

and for employees:

* referring you to our Employee Assistance Program or arranging for other professional counselling; and
* generating support for you in your work unit (if appropriate).

The PID Co-ordinator (Principal Lawyer) will consult with the Commissioner to determine whether a support officer ought be appointed, and if so, to determine who the support officer might be (e.g. the discloser’s line manager or another Commission officer such as an Equity Contact Officer). The nominated support officer will be briefed about the role of the support officer and about the disclosure.

If you feel that you may need support as a result of making a disclosure, you are urged to contact the PID Co-ordinator (Principal Lawyer).

All managers in the Anti-Discrimination Commission are under an obligation to notify the Commissioner if they believe any staff member is suffering detriment as a result of reporting a wrongdoing.

## Protection of disclosers

You should not suffer any form of detrimental action as a result of making a disclosure, including:

* unfair treatment;
* harassment;
* intimidation;
* victimisation; or
* unlawful discrimination.

The Anti-Discrimination Commission is committed to ensuring that no disciplinary or adverse action, including workplace reprisals by managers, occurs as a result of you making a disclosure.

If any of the above does occur, you have the right to request that we take positive action to protect you. Tell the person who is handling your disclosure immediately. All managers must notify the Commissioner of any allegations of reprisal action against a discloser, or if they themselves suspect that reprisal action against a discloser is occurring.

## Confidentiality

Maintaining confidentiality is very important in the handling of a disclosure. Confidentiality not only protects you, the discloser, against reprisals, but any other people affected by your disclosure.

When we talk about confidential information, what we mean is:

* the fact a disclosure has been made;
* any information that may identify you or any person who may be the subject of a disclosure;
* the actual information that has been disclosed; and
* information relating to the disclosure that, if known, may cause detriment.

In protecting your confidentiality, we will ensure that the details of your disclosure, the investigation and related decisions will be kept secure.

Be aware that, while every attempt to protect confidentiality will be made, there will be occasions when disclosure of your identity may be necessary. These include:

* providing natural justice to the subject officer;
* responding to a court order or legal directive (e.g. subpoena, notice to produce, direction by a parliamentary committee);
* in court proceedings; and
* complying with this policy (e.g. consulting Commissioner about support person; reporting to the Commissioner; informing the Commissioner or business unit manager to improve systems and procedures; reporting conflicts of interest)

We will advise you if your identity needs to be revealed for any reason listed above and seek your consent, if possible. We will attempt as far as possible to avoid a situation where your identity will need to be revealed even though you have not given consent.

While we are prepared to take all steps necessary to protect the confidentiality of the information that you have provided, you also have some obligations. The fewer people who know about your disclosure – both before and after you make it – the more likely it is that we will be able to keep your identity confidential and protect you from any detrimental action in reprisal. We encourage you not to talk about your disclosure to your work colleagues or any other unauthorised person.

We will ensure that all record keeping and reporting will be done in accordance with legislative and administrative requirements of the Act.

# RESPONDING TO REPRISALS

If we become aware of reprisal action against you, we will take immediate steps to ensure a senior and experienced officer who has not been involved in dealing with your initial disclosure will investigate your concerns of reprisal. You will be kept informed of the progress of the investigation and outcome.

Where we establish that reprisal action is occurring, we will take all steps possible to stop that activity and protect you. The nature of the action that we will take is dependent upon the circumstances and seriousness of the reprisals that you are likely to suffer.

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

Making a PID does not protect you from any management, disciplinary or criminal action if you have been involved in improper conduct or your performance is unsatisfactory.

## What if a PID is made about me?

We are committed to treating disclosures fairly. The rights of any person who is the subject of, or is associated with a disclosure, are important. If a PID is made against you, you are entitled to confidentiality and the presumption of innocence.

Employees who are the subject of a PID may seek assistance from their legal representative or union and may also wish to contact the Employee Assistance Service for advice and support.

All employees should remember their responsibilities under the Code of Conduct. Employees who participate in any investigation are performing their duty as required under the Code. They should not be treated adversely because of their involvement, and any employees found to have engaged in reprisals will be the subject of disciplinary action.

# REPORTING

The Public Interest Disclosure Standard No. 1 places an obligation on the Commission to have in place and utilise a secure and confidential reporting system to receive and manage a disclosure of information.

An authorised officer will record particular details of public interest disclosures in accordance with section 7.2 of the Public Interest Disclosure Standard No. 1, and may request certain information in relation to a disclosure of information from relevant parties involved in the PID.

The Commission will provide relevant information to the oversight agency through completion of the Public Interest Disclosure database which is managed by the Queensland Ombudsman. The following information will be reported to the oversight agency, as well as to the Commissioner, on a case by case basis:

* date of receipt of disclosure and from where it was received;
* status of the discloser;
* gender and status of the subject officer;
* relationship between the discloser and the subject officer;
* location of the subject officer;
* summary of the allegation / information received;
* any involvement of an external agency;
* any action taken to minimise the risk of reprisal;
* dates the inquiry / investigation commenced and completed;
* outcome of assessment, inquiry / investigation;
* date PID resolved or closed;
* when the outcome was advised to the discloser;
* if no action was taken, the reason for the decision;
* any other legal processes associated with the disclosure.

The PID Co-ordinator will also report to the Commissioner:

* any systemic issues identified;
* the time take to deal with disclosures / allegations;
* any significant issues to inform improvements to service delivery, business processes and internal controls.

The PID Co-ordinator will also inform the manager of the relevant business unit of any identified deficit in service delivery, business processes and internal controls.

# COMMITMENT TO REGULAR REVIEW

The Anti-Discrimination Commission welcomes comments that can improve this policy. Feedback should be addressed to the Commissioner.

# FURTHER INFORMATION

[The](http://The) Queensland Ombudsman has a range of PID resources available, including fact sheets and guides for both disclosers and entities, as well as the *Public Interest Disclosure Act 2010* and the *Public Interest Disclosure Standard No. 1,* on its website at www.ombudsman.qld.gov.au

# POLICY ADMINISTRATION

|  |  |
| --- | --- |
| **Policy Name** | Public Interest Disclosure |
| **File Number** | BNE0143709 |
| **Responsible Officer** | Deputy Commissioner |
| **Approving Officer** | Commissioner |
| **Effective Date** | 1 September 2014 |
| **Date Approved** | 1 September 2014 |
| **Next Review** | 1 September 2017 |
| **Review version approved by** | Commissioner |
| **Relevant Legislation or Prescription** | *Public Interest Disclosure Act 2010**Public Sector Ethics Act 1994**Crime and Corruption Act 2001**Public Interest Disclosure Standard No. 1**Code of Conduct for the Queensland Public Service* |
| **Network location** | G:\SUPPORT SERVICES\Corporate Governance/Policies/Current/AD 02-02 Public Interest Disclosure Policy |

**File Number**

All policies must have an associated official file on which previous and current versions are maintained, along with relevant correspondence. Previous versions of a policy need to be on file so that the version applying at a particular period can be identified.

**Responsible Officer**

All policies are allocated to a member of the Executive Leadership Team (ELT) responsible for ensuring that they are communicated appropriately to commission staff, implemented and reviewed. This officer would also be the point of contact for major questions of principle and application of the policy.

**Relevant Legislation or Prescription**

Policies will generally be made under State legislation, regulations, directives or government policy. The source of authority and prescription for the policy should be specified.

**Effective Date**

The date the new or revised version of the policy came into effect.

**Next Review**

Revision dates are normally 3 years after approval of policies. A schedule of rolling reviews is maintained by the Manager, Corporate Services.

# SCHEDULE

**What is *Corrupt conduct*?**

*Corrupt conduct* is defined in the *Crime and Corruption Act 2001*.

*Corrupt conduct* (in the public sector) is conduct of a person, regardless of whether the person holds or held an appointment that:

1. adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of -
	1. a unit of public administration; or
	2. a person holding an appointment; and
2. 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 –
	1. is not honest or is not impartial; or
	2. involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or
	3. involves 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
3. is engaged in for the purpose of providing a benefit to the person or another person or causing a detriment to another person; and
4. would, if proved, be –
	1. a criminal offence; or
	2. a disciplinary breach providing reasonable grounds for terminating the person’s services, if the person is or were the holder of an appointment.

Examples of *corrupt conduct* include:

* abuse of public office;
* bribery, including bribery relating to an election;
* extortion;
* obtaining or offering a secret commission;
* fraud;
* stealing;
* forgery;
* perverting the course of justice;
* an offence relating to an electoral donation;
* loss of revenue of the State;
* sedition;
* homicide, serious assault or assault occasioning bodily harm or grievous bodily harm;
* obtaining a financial benefit from procuring prostitution or from unlawful prostitution engaged in by another person;
* illegal drug trafficking;
* illegal gambling.

**What is *Maladministration*?**

*Maladministration* is defined in the *Public Interest Disclosure Act 2010*.

It means administrative action that was:

1. taken contrary to law;
2. unreasonable, unjust, oppressive, or improperly discriminatory;
3. 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;
4. taken -
	1. for an improper purpose;
	2. on irrelevant grounds; or
	3. having regard to irrelevant considerations
5. an action for which reasons should have been given, but were not given;
6. based wholly or partly on a mistake of law or fact; or
7. wrong.

*Administrative action*:

1. means any action about a matter of administration, including, for example:
	1. a decision and an act;
	2. a failure to make a decision or do an act, including a failure to provide a written statement of reasons for a decision;
	3. the formulation of a proposal or intention;
	4. the making of a recommendation, including a recommendation made to a Minister;
	5. an action taken because of a recommendation made to a Minister; and
2. does not include an operational action of a police officer or of an officer of the Crime and Corruption Commission.