Public Interest Disclosure Protocol

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1.0 Purpose

The Department of Regional Development, Manufacturing and Water (the department) is committed to maintaining public confidence in the integrity, accountability, honesty and impartiality of departmental operations and decisions. The intent of this protocol is to ensure effective processes are in place for employees and members of the public to report serious wrongdoing by employees, as required by the *Public Interest Disclosure Act 2010* (PID Act). The department is committed to complying with the PID Act and PID Standard No. 1 with respect to the receipt, assessment and management of public interest disclosures (PIDs), with a goal of improving the integrity of the department.

2.0 Scope

This protocol provides information about:

- matters that may be disclosed as a PID under the PID Act
- the procedure and proper authority to whom disclosers may make a PID to receive protection under the PID Act
- the support and protection available to persons making a PID and to employees who are the subject of a PID
- responsibilities in relation to confidentiality and fair treatment of persons who make a PID, or employees who are the subject of a PID
- the responsibility of employees to report suspected wrongdoing under the Code of Conduct for the Queensland Public Service.

3.0 Procedure

3.1 What is a Public Interest Disclosure and who can make a PID?

A PID is a report or complaint about a reasonable suspicion of serious wrongdoing in the public sector and can be reported by an employee or a member of the public. A PID needs to be reported to a proper authority in order for the discloser to be eligible for the legal protections available under the PID Act.

A PID may be reported either voluntarily or under a legal requirement (involuntary disclosure). Employees must report suspected wrongdoing when they become aware of it or suspect it is occurring, as it is an obligation under the Code of Conduct. Our individual obligation to comply with this requirement is taken seriously, and failure to comply with this requirement may result in disciplinary action.

Whilst no onus of proof is necessary to make a disclosure, an employee must honestly suspect that wrongdoing has occurred. Given that no onus of proof is necessary, neither management nor an employee should conduct their own investigation locally without prior consultation with the PID Coordinator as it may jeopardise the departmental investigation process. As PIDs are confidential, it is essential that the matter only be discussed with authorised employees.

Under the PID Act, an appropriate disclosure is where:

- the discloser has an honest belief, on reasonable grounds, that the information they have tends to show the conduct or other matter 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.

3.1.1 Departmental employees can make a PID about:

- conduct of another person that could be corrupt; examples may include theft of employer's property or accepting money or gifts in return for favourable valuation or audit
- conduct of another person that could be maladministration that adversely affects a person's interests in a substantial and specific way; examples may include unreasonable decisions regarding a person's eligibility for a licence/permit or grant
- a substantial misuse of public resources (other than an alleged misuse based on mere disagreement over policy that may properly be adopted about amounts, purposes or priorities of expenditure); examples may include not following proper procedure for use of corporate cards and reporting of expenditure resulting in wasted funds
- substantial and specific danger to the public health or safety, for example selling contaminated products to the public
- substantial and specific danger to the environment; examples may include asbestos not appropriately managed or ground water contamination
- substantial and specific danger to the health or safety of a person with a disability; examples may include physical, sexual or emotional abuse of clients by carers
- a reprisal because of a belief that a person has made, or intends to make a PID; examples may include harassing or threatening a discloser or those close to them, or discriminating against a discloser in higher duties opportunities or job applications.

3.1.2 Any person, including a member of the public or an employee, may make a PID:

- if the commissioning of the offence is or would be a substantial and specific danger to the environment
- about a substantial and specific danger to the health or safety of a person with a disability
- a reprisal because of a belief that a person has made or intends to make a PID.

3.1.3 For a person to be afforded protection under the PID Act, the allegation must be:

- public interest information about substantial and specific wrongdoing or danger
- an appropriate disclosure

  and
- made to a proper authority.

3.2 How to Make a PID

The PID Act requires the Director-General to establish a procedure for making a PID. Therefore, when reporting PIDs to this department the following procedure must be used. In s. 1 of the Code of Conduct, it is an ethical obligation for public officials to report suspected wrongdoing when they become aware of it or suspect it is occurring.

The department is the proper authority to receive a PID. A disclosure may be made in any way (orally or in writing and/or anonymously) and ideally include, where known:

- the name and job title of the person who is subject of the disclosure
- information about relevant events, dates and places
- the names of persons who may be able to provide additional information

- your contact details, or, if anonymously, an alias and contact point (such as email or mobile phone number) so as to gather further information as necessary and to provide communication about the PID assessment and outcome.

3.2.1 For Employees

An employee who decides to report wrongdoing internally is encouraged to report to their direct manager in the first instance. However, if the discloser believes their manager is involved in the wrongdoing or would otherwise prefer not to discuss the matter with their manager, the discloser may contact:

- a line manager or supervisor of the discloser
- the Director General, Deputy Director General
- a divisional head (e.g. Executive Director)
- Chief Human Resources Officer (PID Coordinator)
- Principal HR Consultant, Workplace Relations
- the Crime and Corruption Commission (CCC)
- a member of the Legislative Assembly
- a Chief Judicial Officer of the relevant court or tribunal (if the disclosure relates to a judicial officer)
- the workplace relations inbox workplacerelations@rdmw.qld.gov.au

3.2.2 For members of the public

A member of the public may make a disclosure at any time direct to the Director-General, the Minister, the Chief Human Resources Officer (as PID Coordinator), or to any employee of the department who has the function of receiving the type of information being disclosed.

A disclosure to the department's PID Coordinator can be made by way of:

Email: workplacerelations@rdmw.qld.gov.au

Letter: ATTN: PID Coordinator
Chief Human Resources Officer
PO Box 15216
City East QLD 4002

Phone: **0460 007 291**

In person: 1 William Street, Brisbane ***- Please phone 0460 007 291 first for an appointment***

3.2.3 Anonymous Disclosures

A person making the disclosures may remain anonymous. However, a successful investigation may require further information from the discloser. This can be difficult when the discloser is anonymous. An anonymous disclosure will also mean that the department cannot reasonably assess what support and protections it could provide to the discloser.

3.2.4 Disclosures to Journalists

Disclosures to journalists is an **avenue of last resort**. An employee may only make a disclosure to a journalist when they have made a PID using the appropriate process and the entity to which the disclosure was made or, if the disclosure was referred to another department, the entity to which the disclosure was referred:

- decided not to investigate or manage the disclosure
- investigated the disclosure but did not recommend taking any action
- did not notify the person within 6 months of the disclosure being made whether or not the disclosure was to be investigated or dealt with.

In these circumstances only, the disclosing employee will be entitled to protections under the PID Act.

Individuals considering making a PID should refer to the resources on the Queensland Ombudsman's website.

The Code of Conduct requires employees to report suspected wrongdoing when they become aware of it or suspect it occurring. If the disclosure is not a PID matter, it may still be an important and/or serious issue that requires reporting.

3.3 Determining if a disclosure is a PID

3.3.1 Initial Action and Referral

All PIDs received must be referred as soon as possible to the department's PID Coordinator (Chief Human Resources Officer) to determine the action to be taken. If there is any doubt whether a disclosure is a PID, it should be assumed that it is protected by the PID Act and managed as if it is a PID. The person making the disclosure does not have to identify the matter as a PID; the PID Coordinator will make that determination. At this time a risk assessment will be made for the safety of the discloser and appropriate action will be taken to reduce the risk of reprisal. The discloser will be kept informed through all stages of this risk assessment process and any changes that will need to be made to ensure their safety.

The department has a statutory obligation under the *Crime and Corruption Act 2001* to refer suspected corrupt conduct to the CCC. If the matter is assessed and found to meet the corrupt conduct criteria it is referred to the CCC for direction on action to be taken. If the disclosure is not assessed as suspected corrupt conduct, the matter is referred to Human Resources for action as suspected misconduct.

3.3.2 Investigation

The Director-General or delegated officer of the department will determine whether an investigation is required based on the seriousness of the allegation and any CCC recommendations. When a decision to investigate has been made, an appropriate person will be engaged to undertake the investigation. During this process, all relevant parties will be contacted for an interview where they may provide their version of events.

At the conclusion of the interview stage, the investigating officer collates the information they have gathered and prepares a report for the department, making a determination as to whether on the balance of probabilities the complaint (or each allegation) has been substantiated.

Upon completion of the investigation report the delegate will consider the evidence and findings gathered by the investigator and form their own decision regarding the outcome of the investigation and any necessary action.

An investigation may result in one or more of the following outcomes:

- disciplinary action being commenced
- a recommendation that there be administrative changes
- a recommendation that corruption prevention strategies be developed
- a criminal charge
- the complaint being dismissed as unsubstantiated
- further training or a review of the protocol.

The discloser will be advised at the conclusion of the investigation process of what action (if any) in general terms has been taken.

3.4 The right of internal and external review

3.4.1 Internal Review

The department may, upon written application by an affected employee or discloser, conduct a review of the decision made or action taken at the conclusion of the PID investigation, or otherwise take action to respond to the applicant. Reviews are to be conducted in accordance with the department's complaints management process.

3.4.2 External Review

If the affected employee or other discloser is still dissatisfied after completion of the internal review option, they may seek an external review by the Queensland Ombudsman. There may also be a right to apply to the Industrial Registry (of the Queensland Industrial Relations Commission (QIRC)) or the Supreme Court for an injunction about reprisal in certain circumstances (ss. 48-49 of the PID Act).

3.5 Actions Alternative to Departmental investigation

3.5.1 No Further Action

The department may decide to take no further action on a PID if:

- the subject of the PID has already been dealt with by another appropriate process
- the matter raised should be dealt with by another appropriate process
- the matter cannot be productively pursued due to the passage of time
- the information is considered too trivial to warrant investigation
- the entity that has jurisdiction to investigate the matter has notified the department that investigation is not warranted.

Written reasons for not taking any further action must be provided to the person making the disclosure. Once received, if the person making the disclosure is not satisfied they may apply to the department for internal review of the decision.

3.5.2 Referral to another agency

If the PID relates to suspected wrongdoing by employees of another Queensland Government agency, the matter will be referred to the relevant agency. The department must assess the risk of reprisal before referring the disclosure to another agency.

3.6 Support

When a disclosure has been made, the department must provide the discloser reasonable information in line with the PID Act (s. 32) and Standard ss. 6.5-6.6, including:

- to provide the discloser with confirmation of the receipt of the PID
- to describe the action taken, or proposed to be taken, in respect of the PID
- if the department believes no further action is required, the reasons must be provided and/or
- inform the discloser of the results of any action that is taken in relation to the PID.

PIDs can often take some time to resolve and regular communication with the discloser during the process is a way of reassuring a discloser that the PID is being taken seriously.

The PID Act requires the department to establish procedures to support and protect its employees from reprisals that are, or may be, taken against them as a result of making a PID and to support them through the process.

Information about the discloser's identify or personal affairs, the information disclosed in the PID and the fact that a PID has been made will be kept confidential. Only departmental employees directly involved in dealing with matter will be advised of the details of the PID.

In circumstances where it is not possible to maintain confidentiality surrounding the identity, personal affairs or other identifying information in order for the person or person's subject of the disclosure to sufficiently respond, the discloser will be consulted about the risk of reprisal and will receive protection and support. The subject officer will be advised that the department has a zero tolerance of reprisal action and to maintain confidentiality.

However, the PID Act does not provide protection for persons who:

- fail to follow the correct disclosure process
- intentionally give false or misleading information
- make a PID directly to or through the media rather than thought the appropriate process.

Employees and their families are able to seek free, professional and confidential counselling through the department's Employee Assistance Provider.

3.6.1 Risk Assessment & Protections against Reprisals

Under s. 41 of the PID Act, it is a criminal offence for reprisal action to be taken against a discloser. Additionally:

- Disclosers incur no criminal or civil liability (e.g. for defamation) for PIDs made appropriately
- the CCC can investigate suspected reprisals against public sector employees
- an employee can ask the department for relocation if they suffer from or risk reprisal.

The department will undertake an assessment of the risk of reprisal to the discloser and others associated with the discloser. This will be undertaken as soon as possible after the PID has been made. Steps include:

- asking the discloser who is aware of the matter, who they have already told, and how they believe those involved might respond to the allegation
- consulting with management or heads of the local business area which are best placed to provide information about perceived risks of reprisals
- determining the likelihood of confidentiality being maintained
- determining the likelihood of reprisal or the opportunity to commit reprisal
- considering any previous business unit reactions to disclosures were applicable
- informing the disclosure of the above findings and conclusions in making a decision.

The department is committed to ensuring that no reprisal action occurs as a result of an employee making a disclosure in accordance with the PID Act.

The employee has the right to request that the department take positive action to protect the employee if any of the following occurs: personal injury or prejudice to safety, property damage or loss, financial loss, damage to reputation, unfair treatment, harassment, intimidation and/or unlawful discrimination. The risk of reprisal and effectiveness of mitigation strategies will be regularly monitored during the process of dealing with a PID. This will include proactive risk assessment and monitoring by the relevant manager.

In the event that reprisal action is taken, disclosers may lodge a complaint with the Anti-Discrimination Commission (*Anti-Discrimination Act 1991* Chapter 6 & 7), or apply for an injunction through the QIRC or the Supreme Court. If an application is lodged with the Anti-Discrimination Commission, the discloser cannot also apply to the QIRC or the Supreme Court, as only one of these options is available (s. 50 of the PID Act).

3.6.2 Reasonable Management Action

Making a PID does not preclude or prevent reasonable management action. Reasonable management action is not a reprisal and may be taken, when it is reasonable and appropriate, against an employee who has made a PID. However, the manager's reasons for taking the action must not be simply due to the employee being a discloser and must be in accordance with departmental policies and processes including procedural fairness principles. Reasonable management action includes a fair appraisal of work performance, a requirement to undertake counselling, suspension from the workplace or a disciplinary action that is appropriate or relevant to the circumstances.

If unsure, managers should seek advice from the Principal HR Consultant, Workplace Relations before commencing reasonable management action.

Examples of reasonable management action:

Scenario 1: The employment contract of an employee who made a PID three months ago and who was granted protected status is due to expire. The project on which the employee was working on is now complete and there is no further work in the area to commence. In this instance, the decision not to offer another employment contract to the employee is *not* reprisal action but reasonable management action unrelated to the fact that the employee made a PID.

Scenario 2: The supervisor of an employee who made a PID six months ago has spoken to the employee on numerous occasions in relation to their work performance, start and finish times, and long lunches. After being reminded of their obligations the employee has continued to engage in such practices which is having a negative impact on the team and the ability for the team to provide the customer service necessary in their roles. As a result the supervisor has placed the employee on standard hours and commenced a Performance Improve Plan. The decision to implement this action was based on the supervisor's assessment of the employee's attendance and performance and was NOT influenced by the employee having made a PID. Therefore, it was reasonable management action.

3.6.3 Case Management Support for Disclosers

Disclosers will be offered and provided appropriate support and advice by a suitable case manager. The selection of a case manager must be in consultation with the PID Coordinator. It is important that the case manager is impartial and has no involvement in the complaint matter, either as a witness or potential subject officer.

The discloser and case manager will be in regular contact through a mutually agreed method and schedule. The case manager will also have access to resources (available on the Ombudsman website) that provide guidance on their responsibilities and available support.

Monitoring of the situation must include regular appraisal of risk during the investigation phase to reduce the possibility of reprisal action against the discloser. Risk appraisals must include consultation with the discloser as to their perceptions of risk and any information provided will be considered.

The department will also provide reasonable support to members of the public who make PIDs through providing regular contact and advice throughout the process.

The discloser or the entity that referred the disclosure will be provided with reasonable information under s. 32 of the PID Act:

- confirmation the PID was received
- a description of the action proposed to be taken
- if action has been taken, a description of the results of the action.

The discloser must be informed in writing:

- of likely timeframes
- of their involvement in the investigation process
- of the importance of maintaining confidentiality
- that protections under the PID Act that may apply in their circumstances
- that the entity will keep the information disclosed, including the discloser identify confidential, except as permitted under the PID Act
- the method in which they will be advised of progress and outcomes i.e. post or email
- who to contact if they want further information or hold concerns about reprisal.

The department is not obligated to provide information to the discloser if it would be likely to adversely impact:

- the safety of any party
- the investigation of an offence or possible offence
- necessary confidentiality about an informant's existence or identity.

3.6.4 Case Management Support of Subject Officers

Procedural fairness (natural justice) will be afforded to all employees who are the subject of a PID. Employees will be given the opportunity to respond to an allegation before a final decision is made on the outcome of the investigation.

The requirement to maintain confidentiality should not affect the obligation to provide natural justice to the subject officer if their rights would otherwise be detrimentally affected (s. 65(4) of the PID Act). However, the information given to the subject officer must not reveal, or be likely to reveal, the identity of the discloser unless it is:

- essential to afford natural justice

  and
- unlikely a reprisal will be taken against the discloser (s. 65(5) PID Act).

Employees who are subject officers in a PID have the right to:

- be informed of the alleged wrongdoing at a time considered appropriate
- make a response
- be treated fairly
- have the matter handled confidentially
- have the matter investigated and decided upon by an impartial person.

Subject officers and their families are able to seek free, professional and confidential counselling through the department's employee assistance provider.

3.7 Action on false or misleading information

The Act does not provide protection for a person who:

- fails to follow the correct disclosure process
- intentionally gives false or misleading information
- makes a PID directly to or through the media rather than the approved process.

It is an offence under s. 66 of the PID Act to intentionally give false or misleading information intending it to be acted on as a PID.

Employees who make false declarations may be in breach of the Code of Conduct. Where it is established that the discloser is not acting in good faith, or has intentionally made a false report (including when the allegation has been made maliciously, vexatiously or without any basis), they may be subject to disciplinary process. False or misleading information provided within the intention of the PID Act may be investigated by the CCC.

3.8 Confidentiality & Natural Justice

The subject officer(s) of any PID must be afforded natural justice.

Affording natural justice does not mean that the department must advise the subject officer(s) of the allegation as soon as it is received or an investigation is commenced. Furthermore, there is no obligation to informed of the allegation if it is found not substantiated. Each case will be assessed on its own merits.

Section 65(4) of the PID Act provides that confidential information may be disclosed in order to meet natural justice obligations. However, before information can be released, two conditions must be met:

- It must be essential to release the information to provide natural justice. In instances when it is possible for subject officer(s) to respond to allegations without the source of the allegation being identified, the release of information is therefore not essential or required.
- It is unlikely reprisal will be taken against the discloser.

Managers/supervisors should notify the discloser before revealing any information regarding the disclosers identity for any reason.

3.9 Education and Awareness

Employees are able to access education and awareness on PIDs including identifying wrongdoing, how to make a PID, the support and protection afforded to disclosers, and how PIDs are managed within the department.

Specialist training and awareness support is accessible to managers and supervisors who may receive or manage PIDs, disclosers or workplace issues relating to PIDs. Please contact the Chief Human Resources Officer (department's PID Coordinator) for more information on training and support.

4.0 Delegations

Human Resources Management Delegations and Authorisation.

5.0 Responsibilities

Every employee of the Queensland Public Service has a responsibility to report suspected corrupt conduct, 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.

Managers will promote an environment in which the reporting of wrongdoing and danger is encouraged and appropriate support and protection is provided to an employee who makes a PID or is subject to a PID. Managers are to ensure their employees are aware of their responsibilities in relation to PIDs. All managers can receive a PID, however must progress it confidentially to the Chief Human Resources Officer.

The Chief Human Resources Officer is the nominated officer with overall responsibility for issues related to the management of PIDs within the department as the PID Coordinator. They will:

- develop, maintain and communicate the PID HR Protocol
- coordinate PIDs including assessment, management and investigations on behalf of the delegate
- provide advice to disclosers
- provide reports to the Queensland Ombudsman
- provide reports to the Director-General, relevant senior executives and the Audit and Risk Committee regarding PIDs as required
- refer any corrupt conduct matters to the CCC liaison officer
- arrange PID resources and training
- monitor the effectiveness of the department's protocol
- maintain records for PIDs on behalf of the department.

The Director-General must ensure effective procedures are in place to receive a PID and to monitor a discloser's workplace for signs of reprisal action. The department is committed to evaluate the outcomes of PIDs to identify improvements in service delivery, process and procedures and will regularly review the PID protocol and related documents.

6.0 Related documents

This protocol should be read in conjunction with:

- Code of Conduct for the Queensland Public Service

- Queensland Ombudsman PID Resources Page
- Complaints Management Framework

7.0 Further information

Should you require any further information regarding this protocol, please contact your supervisor, manager, or the Chief Human Resources Officer (department's PID Coordinator) by phone 0460 007 291 or email workplacerelations@rdmw.qld.gov.au.

8.0 Review

This protocol shall be reviewed within two years from the effective dates.

9.0 Approval

Signed: 

Name: Jarrod Cowley-Grimmond

Position: A/Head of Corporate and Office of the Director-General

Department: Regional Development, Manufacturing and Water

Date: 03 / 09 / 2021

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