

Prevention and management of corrupt conduct and public interest disclosure procedure

Version	Date	Comments
1	Dec 2016	Procedure updated. Previous reference: ISU:PR:2015:14
	Dec 2016	Procedure approved

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1 Associated policy

[Prevention and management of corrupt conduct and public interest disclosure policy](#)

2 Procedure

2.1 Corrupt Conduct

Note: For the department's procedure for complaints which involve or may involve corrupt conduct of the Director-General, please refer to section 2.2 of this procedure.

2.1.1 Definition of corrupt conduct

For a detailed definition of corrupt conduct, refer to Attachment 2 (Definitions) of the [Prevention and management of corrupt conduct and public interest disclosure policy](#).

2.1.2 Making a Complaint

Within the department, the Assistant Director-General, Corporate Services, has been delegated the responsibility to deal with a complaint about, or information or matter involving, corrupt conduct in the way the Assistant Director-General considers most appropriate, subject to the monitoring role of the Crime and Corruption Commission (CCC). This position is also the department's nominated CCC Liaison Officer.

Responsibility to deal with a complaint about, or information or matter involving, corrupt conduct is sub-delegated to the Manager and the Principal Integrity Officers, Integrity Services Unit, during the absence or unavailability of the Assistant Director-General, Corporate Services.

Complaints may be made in any manner: in writing, in person or over the telephone.

Any person may complain about, or give information involving suspected corrupt conduct directly to:

- the CCC or
- the Director-General or
- the Assistant Director-General, Corporate Services or
- the Integrity Services Unit or
- a supervisor/manager within the department.

Employees may also complain about, or give information involving suspected corrupt conduct directly to a Member of the Legislative Assembly or the Minister for Housing and Public Works.

Where a complaint alleging corrupt conduct is made to a departmental employee other than the Director-General, the Assistant Director-General, Corporate Services or the Integrity Services Unit, that person must forthwith and without commencing any inquiry into the matter which is the subject of the complaint, refer the complaint – IN CONFIDENCE – to the Director-General, the Assistant Director-General, Corporate Services or the Integrity Services Unit.

If a complaint discloses a risk to the health or safety of any person, it is incumbent upon the person in receipt of the complaint to also immediately take all necessary and appropriate steps to protect the health and safety of the person at risk while preserving the confidentiality of the complaint to the maximum extent possible in the circumstances.

If there is some suspicion of corrupt conduct which has a basis of 'reasonable grounds' then it is reportable.

A person does not have to have sufficient evidence to prove the corrupt conduct allegation, but the available facts, evidence or other information must suggest that the allegation, if proven, would amount to corrupt conduct. The suspicion may be relevant even if it is based on hearsay and/or other inadmissible material.

If in any doubt whatsoever, report the matter or seek advice from the Assistant Director-General, Corporate Services, the Integrity Services Unit or raise the matter directly with the CCC. [It should be remembered that a suspicion of corrupt conduct may arise through processes other than a person making a complaint. For example, a suspicion of corrupt conduct may arise through the ordinary review of management reports or a grievance investigation or internal audit reports].

In making a complaint, the complainant should provide as much relevant information or documentation as possible to enable the matter to be assessed expediently. If possible, it is useful for a complainant to provide the following information:

- what happened
- when it happened
- where it happened
- who said what to whom
- whether anyone saw what happened (including contact details for any witnesses)
- whether the complainant has reported the matter to any other agency and
- what outcome the complainant seeks from the complaint (for example, an apology).

If documents are included with a complaint, it is useful for the complainant to explain the relevance of these to the complaint.

A complainant is encouraged to provide contact details for follow up action; however complaints can be made anonymously. A complainant who does not wish to provide his or her name may provide an alias and contact point instead.

Subject to disclosures required or authorised by or under law (including the law of natural justice), the CCC has advised that the following should be kept confidential:

- the fact that a complaint has been made
- the identity of a person who has made the complaint
- the identity of the person the subject of the complaint and
- the fact that a complaint is under investigation.

2.1.3 Duty to Disclose

Subject to a [direction](#) issued by the CCC to the Director-General pursuant to section 40 of the [Crime and Corruption Act 2001 \(Qld\)](#) (CC Act), the Director-General has a duty to refer to the CCC a complaint, information or matter which the Director-General reasonably suspects involves, or may involve, corrupt conduct.

The Assistant Director-General, Corporate Services, has been delegated the duty to notify the CCC of a complaint about, or information or matter involving, corrupt conduct. This duty is also sub-delegated to the Manager and the Principal Integrity Officers, Integrity Services Unit, during the absence or unavailability of the Assistant Director-General, Corporate Services.

The duty is an obligation (not a discretion) and must be observed irrespective of any provision to the contrary in any other legislation (except section 7.2(3) of the [Police Service Administration Act 1990 \(Qld\)](#)) or any obligation to maintain confidentiality.

2.1.4 Action Following Receipt of Complaint

For certain matters (set out in a direction issued by the CCC to the Director-General pursuant to section 40 of the CC Act) the Director-General or delegate is not required to refer the matter to the CCC without unreasonable delay and can proceed to investigate or deal with the complaint. In general terms, the complaints that are dealt with in this manner are less serious matters and are either notifiable to the CCC by monthly schedule, or not notifiable but subject to the CCC's auditing program.

Subject to the section 40 direction, the following usually occurs after the receipt of a complaint, information or matter (referred to as a 'complaint'):

- if the Director-General or delegate is satisfied that:
 - a complaint which has been reported to the Director-General or delegate is frivolous or vexatious or lacks substance or credibility or
 - dealing with a complaint which has been referred to the Director-General or delegate would be an unjustifiable use of resources
 the Director-General or delegate may take no action or discontinue action taken to deal with the complaint.
- if the Director-General or delegate reasonably suspects that a complaint involves, or may involve, corrupt conduct, the complaint is referred to the CCC by the Director-General or delegate. The employee the subject of such a referral is not advised of the referral so as not to jeopardise the conduct of any investigation or risk the destruction of any evidence.
- the CCC assesses the complaint and forms a preliminary view as to whether corrupt conduct is or may be involved and, if so, determines whether it will investigate the matter itself or refer it back to the department or another Queensland Government agency (for example, the Queensland Police Service) for investigation and report. In some cases, the CCC will jointly investigate a complaint with another Queensland Government agency.
- if the CCC forms the view that corrupt conduct is not involved, it will refer the matter back to the department to deal with (generally with the proviso that if the investigation subsequently reveals suspected corrupt conduct then the matter should be referred again to the CCC).

- if the CCC investigates a matter itself, liaison between the CCC and the Assistant Director-General, Corporate Services or the Integrity Services Unit occurs as necessary.
- if the CCC refers the matter back to the department for an investigation and report, it will normally follow that the Assistant Director-General, Corporate Services or the Integrity Services Unit coordinates the necessary investigation and preparation of a report and outcome advice to the CCC.
- the complainant and the subject officer (in circumstances where they have been required to respond to allegations) are notified of the investigation findings pertaining to them by the agency that carried out the investigation (usually the CCC or the department).

If a complaint is dealt with by the department, the complainant is to be given a response stating:

- if no action is taken on the complaint or action to deal with the complaint is discontinued, the reason for not taking action or discontinuing the action or
- if action is taken on the complaint, the action taken, the reason the action is considered to be appropriate in the circumstances and any results of the action that are known at the time of the response.

However, the complainant need not be given a response if:

- the complainant has not given his or her name and address or does not require a response or
- the response would disclose information the disclosure of which would be contrary to the public interest.

If a complaint is dealt with by the CCC or another Queensland Government agency, then the CCC or the agency will respond to the complainant.

2.1.5 False or Misleading Statements and Documents

It is an offence for a person to provide information to the CCC that the person knows is false or misleading in a material particular. It is also an offence to provide false or misleading information to another entity (such as the department) who is obliged to provide that information to the CCC, whether or not the person who provided the information intended that it be provided to the CCC.

2.2 Complaints about the Director-General: section 48A of the *Crime and Corruption Act 2001*

2.2.1 Complaint involving a reasonable suspicion of corrupt conduct involving the Director-General

The [Prevention and management of corrupt conduct and public interest disclosure policy](#) nominates the Assistant Director-General, Corporate Services, or – in the absence or unavailability of the Assistant Director-General, the Manager, Integrity Services Unit – as the nominated person to notify the CCC of the complaint and to deal with the complaint under the CC Act.

If the nominated person reasonably suspects the complaint may involve corrupt conduct of the Director-General, they are to:

- notify the CCC of the complaint under section 38 of the CC Act and
- deal with the complaint under section 44 of the CC Act, subject to the CCC's monitoring role when:
 - directions issued under section 40 of the CC Act apply, or
 - pursuant to section 46, the CCC refers the complaint to the nominated person to deal with.

If the Director-General reasonably suspects that the complaint may involve corrupt conduct on their part, the Director-General must:

- report the complaint to the nominated person, as soon as practicable, and may also notify the CCC, and
- take no further action to deal with the complaint unless requested to do so by the nominated person, in consultation with the Minister for Housing and Public Works.

If there is uncertainty about whether or not a complaint should be reported, it is best to report it.

2.2.2 Resourcing

If, pursuant to sections 40 or 46 of the CC Act, the nominated person has responsibility to deal with the complaint:

- the department will ensure that sufficient resources are available to the nominated person to enable them to deal with the complaint appropriately and
- the nominated person is to ensure that consultations, if any, for the purpose of securing resources sufficient to deal with the complaint appropriately are confidential and are not disclosed, other than to the CCC, without:
 - authorisation under a law of the Commonwealth or the State or
 - the consent of the nominated person responsible for dealing with the complaint.
- the nominated person must, at all times, use their best endeavours to act independently, impartially and fairly having regard to the:
 - purposes of the CC Act
 - the importance of promoting public confidence in the way suspected corrupt conduct in the department is dealt with and
 - the department's statutory, policy and procedural framework.

If the nominated person has responsibility to deal with the complaint, they:

- are delegated the same authority, functions and powers as the Director-General to direct and control staff of the department as if the nominated person is the Director-General of the department for the purpose of dealing with the complaint only.
- are delegated the same authority, functions and powers as the Director-General to enter into contracts on behalf of the department for the purpose of dealing with the complaint.
- do not have any authority, function or power that cannot – under the law of the Commonwealth or the State – be delegated by either the Minister or the Director-General to the nominated person.

2.3 Public Interest Disclosures

2.3.1 Making a Public Interest Disclosure

In general terms, a public interest disclosure (PID) means a disclosure of information by an employee to a Proper Authority about certain wrongdoing i.e. suspected corrupt conduct, maladministration, a substantial misuse of public resources, or a substantial and specific danger to public health or safety or the environment. Any person may also disclose to a Proper Authority a substantial and specific danger to the health or safety of a person with a disability, certain substantial and specific dangers to the environment or a reprisal.

For a more detailed definition of a PID and other terms mentioned above, refer to Attachment 2 (Definitions) of the [Prevention and management of corrupt conduct and public interest disclosure policy](#).

In broad terms the [Public Interest Disclosure Act 2010 \(Qld\)](#) (PID Act) protects employees who make PIDs to a Proper Authority. The PID Act also protects persons other than employees who make certain PIDs.

A Proper Authority for PIDs involving the conduct of the department or any of the department's public officers includes:

- the Director-General or
- the Assistant Director-General, Corporate Services (the Department's PID Contact Officer) or
- the Integrity Services Unit or
- a supervisor/manager within the department or
- the Minister for Housing and Public Works or
- a Member of the Legislative Assembly.

If there is information which involves the conduct of a public sector entity (other than the Department of Housing and Public Works), or any of its public officers, it will **not** be a PID if it is made to the Department of Housing and Public Works as the Department of Housing and Public Works is not a Proper Authority to receive such a disclosure. In this situation the disclosure may be made to the chief executive of the other department, a person within the other department who has the function of receiving or acting upon PIDs, the Minister responsible for the other department or a Member of the Legislative Assembly.

If a PID involves suspected corrupt conduct, it may also be made to the CCC.

PIDs can also be reported to a public sector entity which has the power to investigate or remedy the thing to which the information relates. For example if a PID involves a significant public safety matter it can be made to Workplace Health and Safety Queensland. If a PID involves suspected corrupt conduct, it may also be made to the CCC.

In certain circumstances a PID may be made to a journalist. A PID may only be made to a journalist if:

- a person (including an employee) has already made a PID, and
- the department or other entity to which the PID was made or referred:
 - decided not to investigate or deal with the PID or
 - investigated the PID but did not recommend any action be taken, or
 - did not notify the discloser within six months whether or not the PID would be dealt with or investigated.

PIDs may be made in any manner (in writing, over the telephone or in person).

When PIDs are made to a departmental employee other than the Director-General, the Assistant Director-General, Corporate Services, the Integrity Services Unit or a Member of the Legislative Assembly, that person must forthwith and without commencing any inquiry into the matter which is the subject of the PID, refer the PID – IN CONFIDENCE – to the Director-General, the Assistant Director-General, Corporate Services or the Integrity Services Unit.

If a PID exposes a risk to the health or safety of any person, it is incumbent on the person in receipt of the PID to also immediately take all necessary and appropriate steps to protect the health and safety of the person at risk while preserving the confidentiality of the PID to the maximum extent possible in the circumstances.

The threshold for making a PID is low. Either the discloser honestly believes on reasonable grounds that the information tends to show wrongdoing or the information tends to show wrongdoing regardless of whether the person honestly believes the information tends to show wrongdoing.

The evidence does not have to be to a standard that is admissible in court. A PID does not have to identify a particular person. A PID may also be about a matter that occurred before the commencement of the PID Act, events that are or may be happening or events that will or may happen.

In making a PID, the discloser should provide as much relevant information and documentation as possible to enable the matter to be dealt with expediently. The discloser is encouraged to provide contact details for follow up action; however PIDs can be made anonymously. A person who wishes to remain anonymous may provide an alias and contact point instead.

It is the department's policy that employees are required to report wrongdoing of which they become aware. This includes wrongdoing in another public sector entity.

2.3.2 False or Misleading Information

It is an indictable (criminal) offence for a person to intentionally give false or misleading information intending it to be treated as a PID.

2.3.3 Public Interest Disclosure Contact Officer

The department's PID contact officer is the Assistant Director-General, Corporate Services. The Assistant Director-General, Corporate Services has been delegated responsibility to assess and deal with PIDs, as well as establish reasonable procedures to protect employees who make PIDs from reprisals. This responsibility is also sub-delegated to the Manager and to the Principal Integrity Officers, Integrity Services Unit, during the absence or unavailability of the Assistant Director-General, Corporate Services.

The Assistant Director-General, Corporate Services will also provide information and assistance to any person seeking to make a PID.

2.3.4 Action Following Receipt of a Public Interest Disclosure

The action taken by the department in dealing with a PID may vary having regard to the circumstances of the PID. However in general terms, upon receipt of a PID the department (through the Director-General, the Assistant Director-General, Corporate Services or the Integrity Services Unit) will take the following actions:

- Receive the PID if it is the Proper Authority to do so.
- Not investigate or deal with a PID if:
 - the PID does not raise a reasonable suspicion of wrongdoing
 - the substance of the PID has already been investigated or dealt with by another appropriate process
 - the department reasonably considers that the PID should be dealt with by another appropriate process
 - the age of the information the subject of the PID makes it impracticable to investigate
 - the department reasonably considers that the PID is too trivial to warrant investigation and that dealing with the PID would substantially and unreasonably divert departmental resources, or
 - another entity that has jurisdiction to investigate the PID has notified the department that investigation of the PID is not warranted.

Note: The department will provide a discloser with reasons, in writing, for its decision not to investigate or deal with a PID. The discloser may apply to the Director-General for a review of this decision within 28 days of receiving such reasons.

- If the PID does raise a reasonable suspicion of wrongdoing, the Director-General or delegate will decide whether it should arrange for the PID to be dealt with by the department or whether it is more appropriate to refer it to another public sector entity which has the power to investigate or remedy the matter that is the subject of the PID (for example, the CCC in cases involving corrupt conduct). The department may refer the PID to another public sector entity if the PID is about the conduct of another public sector entity, a public officer of that entity or the conduct of an entity (including the department), or another matter, that another public sector entity has the power to investigate or remedy.

- Before referring a PID to another public sector entity, the Director-General or delegate will consider whether there is an unacceptable risk that a reprisal would happen because of the referral. In considering whether there would be an unacceptable risk, the Director-General or delegate must, if practicable, consult with the discloser. The Director-General or delegate will not refer a PID to another public sector entity if it considers there is an unacceptable risk.
- Consider (by conducting a risk assessment) whether any action should be taken to protect persons from Reprisals that are, or may be taken against them (for more details see section 2.3.5).
- Take appropriate action to deal with the PID.
- Keep in regular contact with the discloser and advise the following in writing:
 - that the PID has been received by the department
 - a description of the action proposed to be taken, or taken, by the department in relation to the PID
 - the likely timeframes for dealing with the PID
 - the discloser's involvement in departmental enquiries
 - the protections under the PID Act that will apply to the discloser
 - the importance of maintaining confidentiality (except when seeking support from the nominated PID Support Officer)
 - that the department will keep the discloser's information confidential, except where disclosure is permitted under the PID Act
 - how the discloser will be updated on progress and outcomes
 - who to contact if they want further information or are concerned about reprisals
 - if action has been taken by the department in relation to the PID, a description of the results of the action.

Note: Information need not be given if the information would be likely to adversely affect anybody's safety; the investigation of an offence or possible offence; or necessary confidentiality about an informant's existence or identity.

- Keep records of all PIDs made, specifically:
 - the name of the person making the PID, if known
 - the information disclosed
 - the name of the Member of the Legislative Assembly who referred the PID, if applicable
 - any action taken on the PID
 - any other information required under the [Public Interest Disclosure Standard \(Queensland Ombudsman\)](#).
- Provide advice and support to any person who wants to make or who makes a PID (for more details see sections 2.3.3 and 2.3.7 of this procedure).
- Provide statistical information on PIDs to the Queensland Ombudsman (the oversight agency).

2.3.5 Risk Assessment

As soon as possible after receiving a PID, the Integrity Services Unit will determine the level of protection and support appropriate for a discloser by conducting a risk assessment of a reprisal to the discloser and others associated with the discloser (including those who may wrongly be suspected of being a discloser). The potential consequences of reprisals will also be considered.

Relevant protective measures will be put in place that are proportionate to the risk of reprisal, and the potential consequences of a reprisal. If the risk is assessed as sufficiently high, a protection plan will be developed (in consultation with the discloser and other stakeholders as appropriate). When assessing the risk, an assessment of the discloser's need for support will also be conducted.

If it is determined that a discloser will require support, the discloser will be provided with information regarding the support and protections available.

2.3.6 Protection Afforded to Disclosers

A person is not liable, civilly, criminally or under an administrative process (including disciplinary action), for making a PID. In particular:

- in a proceeding for defamation the person has a defence of absolute privilege for publishing the disclosed information and
- if the person would otherwise be required to maintain confidentiality about the disclosed information under an Act, oath, rule of law or practice, the person does not contravene the Act, oath, rule of law or practice for making a PID.

However, a person's liability for his/her own conduct is not affected only because the person discloses it as a PID.

The PID Act does not protect a person who makes a PID to someone or some entity other than to a Proper Authority. For example:

- disclosure to a journalist prior to making a PID to a Proper Authority would mean that the person would not receive protection and
- a person who makes a PID to the department about the conduct of an employee of a different department would not receive protection.

A person must not take a reprisal. An employee who takes a reprisal commits an indictable (criminal) offence. A person who takes a reprisal is liable in damages to any person who suffers detriment as a result. Any person who suffers Detriment may commence proceedings in a court for damages. The [Workers' Compensation and Rehabilitation Act 2003 \(Qld\)](#) does not apply to proceedings for damages in relation to the taking of a reprisal.

The department may be vicariously liable for reprisal action taken by an employee, and proceedings in a court for damages may be taken against an employee who takes reprisal action and/or the department. It is a defence to a proceeding for damages if the department can demonstrate, on the balance of probabilities, that it took reasonable steps to prevent the employee from taking a reprisal.

A person who suffers a reprisal may make a complaint under the [Anti-Discrimination Act 1991 \(Qld\)](#) about a reprisal as an alternative to commencing proceedings in a court for damages.

Proceedings for damages or a complaint under the *Anti-Discrimination Act 1991 (Qld)* about a reprisal may be made even if a prosecution in relation to the reprisal has not been brought, or cannot be brought.

2.3.7 Public Interest Disclosure Support Officer

The department will provide support and assistance as appropriate to people who make a PID through the department's PID Support Officer who is the Executive Director, Human Resources. Any employee who has made, or wishes to make, a PID and alleges or suspects a reprisal is encouraged to contact the PID Support Officer.

2.3.8 Reasonable Management Action

Nothing in the PID Act is intended to prevent a manager from taking reasonable management action in relation to an employee who has made a PID. However, a manager may take reasonable management action in relation to an employee who has made a PID only if the manager's reasons for taking the action do not include the fact that the person has made the PID.

2.3.9 Rights of employees who are the subject of a Public Interest Disclosure

An employee, in respect of whom a complaint has been made, is entitled to:

- the presumption of innocence
- the right to advice and support
- the application of the principles of procedural fairness, including
 - the provision of the particulars of the complaint/allegation
 - the opportunity to be "heard" by an unbiased decision-maker.

2.3.10 Support for employees who are the subject of a Public Interest Disclosure

Employees who are the subject of a PID may seek assistance from their employee association (i.e. union, if a member) or may engage their own private legal representation. An employee may also utilise the free professional counselling services of the department's Employee Assistance Service.

The State will accept responsibility for claims against State employees who have diligently and conscientiously endeavoured to carry out their duties pursuant to section 26C of the *Public Service Act 2008*. Refer to the Human Resources Directorate for further information.

2.3.11 Confidentiality

An employee who gains confidential information because he or she receives a PID or is involved in dealing with a PID must not make a record of the information, or intentionally or recklessly disclose the information to anyone, other than:

- for the PID Act
- to discharge a function under another Act including, for example, to investigate something disclosed by a PID
- for a proceeding in a court or tribunal
- if the person to whom the confidential information relates consents in writing to the making of the record or disclosure of the information

- if the employee cannot reasonably obtain the consent of the person to whom the confidential information relates and making the record or disclosing the information is unlikely to harm the interests of the person to whom the confidential information relates and is reasonable in all the circumstances
- if the person reasonably believes that making the record or disclosing the information is necessary to provide for the safety or welfare of a person or
- if authorised under a regulation or another Act.

In certain circumstances, natural justice may require a person to disclose information to a person whose rights would otherwise be detrimentally affected. The identity of the discloser may only be disclosed if it is essential to do so under the principles of natural justice and it is unlikely that a reprisal will be taken against the discloser because of the PID.

Making a record of confidential information or disclosing information to anyone (other than for the reasons noted above) is an offence.

4 Approval

Robyn Turbit

Assistant Director-General, Corporate Services
Delegate of the Director-General

Date: 16 December 2016