

 **Procedure**

# Making and managing a public interest disclosure

Implementation Date: 18/06/2018  
Version: 3.0

## Audience

Department-wide

## Purpose

To outline the process under which a public interest disclosure (disclosure) can be made, ensuring that information disclosed is properly assessed and dealt with, and that all parties involved in a disclosure are supported and offered appropriate protections.

## Overview

The Department of Education has an obligation to serve the public interest by providing appropriate avenues for reporting allegations of wrongdoing or danger in accordance with the [Public Interest Disclosure Act 2010 \(Qld\)](#) (the Act).

## Management commitment

The department aspires to an organisational climate where all staff feel confident and comfortable about making a disclosure of wrongdoing.

When a discloser comes forward with information about wrongdoing, we commit to:

- protect the dignity, wellbeing, career interests and good name of all persons involved;
- protect the discloser from any adverse treatment taken as a result of making the disclosure;
- respond to the disclosure thoroughly and impartially;
- take appropriate action to deal with any wrongdoing or danger (if substantiated); and
- keep the discloser informed of the progress and outcome.

## Responsibilities

### Employees

- Report alleged wrongdoing or danger in accordance with this procedure.
- Maintain confidentiality to ensure process integrity and reduce the risk of reprisal.
- Assist in an investigation of a disclosure by providing all relevant information if requested.

## Managers, principals and supervisors

- Report information or complaints for disclosure assessment.
- Maintain confidentiality about a potential disclosure and consider the risk of reprisal.
- Provide or facilitate support to a person who has made a disclosure.
- Provide or facilitate support for a person who is the subject of a disclosure and afford them natural justice.
- Monitor the workplace for signs of reprisal against a discloser, or any other person.
- Escalate any disclosure to the Integrity and employee relations unit for assessment, management and possible investigation.

## Integrity and Employee relations unit

- Manage all disclosures in accordance with the Act, independently of any investigation and the resultant decision-making process.
- Properly assess, and where appropriate investigate or deal with disclosures.
- Effectively manage the risk of reprisal against disclosers or third parties.
- Provide appropriate information to disclosers and oversee the coordination of support and protection offered.
- Implement a secure and confidential reporting system to record and manage disclosures.
- Meet reporting requirements to the Office of the Queensland Ombudsman.
- Monitor, review and provide advice on legislative obligations relevant to disclosures.
- Provide training on disclosures for employees, supervisors and managers as part of the department's ethics-related training.
- Lead regular reviews of this procedure at two-yearly intervals or more frequently if required.

## Director-General

- Communicate the expectation that all employees are required to conduct their duties to high professional and ethical standards and always act in the public interest in accordance with the [Code of Conduct for the Queensland public service](#) and the department's [Standard of Practice](#).
- Ensure clear procedures for reporting disclosures are in place and readily accessible to staff and the general public.
- Ensure appropriate communication and awareness strategies are in place to educate employees about disclosures.

## Process

### 1. Make a disclosure

Under the Act, any person can make a disclosure about a:

- substantial and specific danger to the health or safety of a person with a disability
- substantial and specific danger to the environment, and/or
- reprisal because of a belief that a person has made, or intends to make a disclosure.

In addition, public sector officers can make a disclosure about the following public interest matters:

- corrupt conduct
- maladministration

- a substantial misuse of public resources, and/or
- a substantial and specific danger to public health or safety or the environment.

A disclosure can be made:

- anonymously. When a disclosure is made anonymously, it can be difficult to seek clarification or more information, to inform the discloser of progress, or to advise the discloser about action taken or to be taken to deal with the disclosure verbally. The department may request the information in writing.
- in writing.

To enable further investigation, all disclosures must:

- be clear and factual
- avoid speculation, emotive language, embellishment, and
- avoid the provision of only vague details.

The person making the disclosure does not need to state that the information, or complaint, is a disclosure for the matter to be assessed under the Act.

### False or misleading information

Under section 66 of the Act, a person who gives information to a proper authority, knowing that it is false or misleading, and intending that it be acted upon as a disclosure, commits a criminal offence with a maximum penalty of two years' imprisonment.

In addition, the protections under the Act are not extended to disclosers who intentionally make a disclosure they know is false.

## 2. Determine the appropriate reporting avenue

Disclosure must be made to a proper authority. A proper authority is a person or organisation authorised to receive disclosures.

### Internal authorities

Any person (including non-government employees) can make a **disclosure** to:

- the Integrity and Employee relations unit
- any person in a supervisory or management position within the department
- the human resources unit within a region or work unit
- the Director-General, or
- the Minister for the department.

In addition, departmental employees may disclose information directly to their own supervisor or manager.

### External authorities

Disclosures can be made to an agency that has a responsibility for investigating the information disclosed:

- Crime and Corruption Commission (CCC) for disclosures concerning corrupt conduct – including reprisal
- Queensland Ombudsman for disclosures concerning maladministration
- Queensland Audit Office for disclosures concerning a substantial misuse of resources
- Department of Communities, Child Safety and Disability Services and the Office of the Public Guardian for danger to the health and safety of a person with a disability
- Department of Environment and Heritage

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|  | Protection for danger to the environment <ul style="list-style-type: none"> <li>• a Member of the Legislative Assembly (MP) for any wrongdoing or danger.</li> </ul> |
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A disclosure can also be made to a journalist if the following conditions have been met:

- the disclosure was initially made to a proper authority and the information was determined to be a disclosure under the Act, and
- the proper authority:
  - decided not to investigate or deal with the disclosure, or
  - investigated the disclosure but did not recommend taking any action, or
  - failed to notify the discloser within six months of them making the disclosure whether or not the disclosure was to be investigated or otherwise dealt with.

A person who makes a disclosure to a journalist in compliance with these requirements receives the protections of the Act. However, disclosers should be aware that journalists are not bound under the confidentiality provisions of section 65 of the Act.

### 3. Receiving the disclosure

The department must receive and assess disclosures in accordance with the [Public interest disclosure – Standard No.1](#).

Upon receipt of the disclosure, the receiving officer must notify the Integrity and Employee relations unit as soon as practicable and forward all material and evidence relevant to the disclosure.

The material or evidence could include:

- the discloser's name and contact details (for communication about assessment, action and outcome), unless the discloser prefers to remain anonymous,
- the name (and position) of the person who is the subject of the disclosure,
- information about the wrongdoing or danger, relevant events, dates and places,
- the names of people who may be able to provide additional information (e.g. any witnesses)
- correspondence or other supporting documents such as a diary of events and conversations, or file notes, where relevant, and
- advice about whether anything was done in response to the wrongdoing.

#### Organisational support

##### **Disclosers**

The department will initiate and coordinate organisational support for disclosers, particularly if they suffer detriment as a result of their disclosure. In order to retain their impartiality, investigators will not be involved in the provision of organisational support.

##### **Officers who are the subject of a disclosure**

The department acknowledges that the employee/s about whom disclosures are made are likely to find the experience stressful.

The department will protect their rights by:

- reassuring them that the disclosure will be dealt with impartially, fairly and reasonably, and/or

- confirming that the disclosure is only an allegation until evidence collected shows otherwise, and/or
- providing them with information about their rights and the progress and outcome of any investigation.

Information and support will be provided to the discloser, the employee about whom the disclosure was made and relevant staff until the matter is finalised.

### Confidentiality

The department will ensure that communication with all parties involved will be arranged discreetly to avoid identifying the discloser.

While the department will make every attempt to protect confidentiality, a discloser's identity may need to be disclosed to:

- provide natural justice to the person subject to allegations, or
- respond to a court order, legal directive, or as part of court proceedings.

Disclosers should also be aware that while the department will make every effort to keep their name confidential, it cannot guarantee that others will not try to deduce their identity.

Details about disclosures, investigations and related decisions will be kept secure and accessible only to people involved in the management of the disclosure.

## 4. Assessing the disclosure

All incoming complaint information will be assessed by Integrity and Employee relations unit to determine whether it meets the requirements of the Act.

In conjunction with their assessment of complaint information, assessors will apply the tests set out in sections 12(3) and 13(3) of the Act respectively to determine the appropriateness of that information to be assessed as a disclosure.

- section 12(3) sets out the subjective test, which stipulates that the discloser must have an honest belief, on reasonable grounds that their information tends to show the conduct or danger concerned.
- section 13(3) sets out the objective test, which is that the information tends to show the conduct or danger, regardless of whether the discloser honestly believes their information tends to show the conduct or danger.

### Assessed as disclosure

Once the matter is assessed as a disclosure, the Integrity and Employee relations unit creates a disclosure file with a unique register number and advises the discloser:

- that their information has been received by the department and assessed as a disclosure
- the action to be taken by the department in relation to the disclosure, which could include the facilitation of a formal investigation of the matters alleged in the disclosure
- the likely timeframes involved
- their responsibility to maintain confidentiality
- the protections available under the Act
- the commitment of the department to keep appropriate records and maintain confidentiality except where disclosure is permitted under the Act
- the means by which updates regarding intended actions and outcomes will be provided to the discloser

- the role of the Integrity and Employee relations unit as the discloser's central point of contact if they want further information or are concerned about reprisals, and
- contact details of the department's professional counselling service.

If a disclosure is about another proper authority, the Integrity and Employee relations unit will refer it to that authority, if it is deemed safe to do so after consulting with the discloser about the risk of reprisal.

Upon assessing a disclosure as a disclosure, the Integrity and Employee relations unit will conduct a risk assessment to ascertain the likelihood of the discloser suffering a reprisal as a result of their having made the disclosure.

The assessment will take into account the actual and reasonably perceived risk of victimisation or unlawful discrimination, and will include input from the discloser.

Consistent with the level of perceived risk, the Integrity and Employee relations unit will arrange protection for the discloser where they are a departmental employee, and where practicable, their anonymity. It should be noted that while the department will conduct equally rigorous risk assessments for employees and members of the public, it does not have the legislative authority to provide members of the public with the same level of protection that it would provide to employees.

If there is any doubt as to whether a disclosure is a disclosure, further information will, where possible, be obtained to inform the decision. If doubt still remains, the matter will be considered and managed in accordance with the requirements of a disclosure.

#### **Assessed and not considered a disclosure, or decision not to deal with a disclosure**

If a matter is determined not to be a disclosure, the Integrity and Employee relations unit will only provide a discloser with written reasons for the decision if the discloser has:

- explicitly requested that their matter be treated as a disclosure; even though their information does not meet the conditions of the Act, or
- specifically requested that the department provide them with reasons for deciding not to treat their matter as a disclosure.

Under section 30 of the Act, the department can decide not to deal with a disclosure if it reasonably concludes the disclosure:

- has already been investigated or dealt with by another appropriate process
- should be dealt with by another appropriate process
- is impractical to investigate because of its age, or
- is trivial in nature.

If the department decides not to deal with (or investigate) a disclosure for any of the reasons above, it will provide the discloser with written advice, explaining how it considers one or more of the provisions of section 30 apply to the matter and why it has decided it is appropriate to take no further action.

In the event that a discloser has met all the requirements regarding making a disclosure, and the information is assessed as not being a disclosure, the discloser can:

- request an internal right of review.
- raise the matter with appropriate external entities (e.g. the Queensland Ombudsman in cases of maladministration).

## 5. Dealing with a disclosure

The following actions may be taken to deal with a disclosure:

- providing an explanation to the discloser (for example, where the discloser was not aware of the whole circumstances surrounding an action which appeared to them to be improper)
- resolving the disclosure managerially
- conducting an internal audit, or a review of an issue or the operations of a particular unit
- implementing or changing policies, procedures or practices
- formally investigating the allegations, and/or
- referring the allegations to an appropriate external entity.

### Reprisal and detriment

Disclosers should not suffer any form of detriment as a result of making a disclosure.

In the event of a reprisal being alleged or suspected, the department will attend to the safety of the discloser/s or affected third parties as a matter of priority, review its risk assessment and any protective measures needed to mitigate any further risk of reprisal; and manage any allegation of a reprisal as a PID in its own right.

All managers must notify Integrity and Employee relations unit of any allegations of reprisal action against a discloser, or if they suspect that reprisal action against a discloser is occurring.

The department may conduct a disciplinary investigation on any employee found to have engaged in reprisal action. Where conduct is considered to be reprisal, Integrity and Employee relations unit may refer the matter to the Queensland Police Service for further investigation.

## 6. Finalisation

On finalisation of a matter:

- employees involved in the disclosure will be debriefed to clarify any decisions or outcomes, without breaching confidentiality, and to emphasise the opportunities to learn from the situation.
- disclosers will be provided with written advice about the outcome and finalisation of their disclosure.

Integrity and Employee relations unit will complete a final report which considers opportunities for improvements.

## 7. Reporting of a public interest disclosure

The Integrity and Employee relations unit ensures:

- the collection of accurate data about the receipt and management of disclosures, and
- reporting to the Office of the Queensland Ombudsman, via their disclosure database.

## Definitions

<b>complaint</b>	A matter reported to a receiving officer. A complaint is not a disclosure unless assessed as meeting the requirements of a public interest disclosure.
<b>corrupt conduct</b>	<p>As defined in section 15 of the <a href="#">Crime and Corruption Act 2001 (Qld)</a></p> <p>(1) Corrupt conduct means conduct of a person, regardless of whether the person holds or held an appointment, that—</p> <ul style="list-style-type: none"> <li>(a) adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of— <ul style="list-style-type: none"> <li>(i) a unit of public administration; or</li> <li>(ii) a person holding an appointment; and</li> </ul> </li> <li>(b) 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— <ul style="list-style-type: none"> <li>(i) is not honest or is not impartial; or</li> <li>(ii) involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or</li> <li>(iii) involves a 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</li> </ul> </li> <li>(c) is engaged in for the purpose of providing a benefit to the person or another person or causing a detriment to another person; and</li> <li>(d) would, if proved, be— <ul style="list-style-type: none"> <li>(i) a criminal offence; or</li> <li>(ii) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment.</li> </ul> </li> </ul> <p>(2) Without limiting subsection (1), conduct that involves any of the following could be corrupt conduct under subsection (1)—</p> <ul style="list-style-type: none"> <li>(a) abuse of public office;</li> <li>(b) bribery, including bribery relating to an election;</li> <li>(c) extortion;</li> <li>(d) obtaining or offering a secret commission;</li> <li>(e) fraud;</li> <li>(f) stealing;</li> <li>(g) forgery;</li> </ul>



	<p>(h) perverting the course of justice;</p> <p>(i) an offence relating to an electoral donation;</p> <p>(j) loss of revenue of the State;</p> <p>(k) sedition;</p> <p>(l) homicide, serious assault or assault occasioning bodily harm or grievous bodily harm;</p> <p>(m) obtaining a financial benefit from procuring prostitution or from unlawful prostitution engaged in by another person;</p> <p>(n) illegal drug trafficking;</p> <p>(o) illegal gambling.</p>
<b>detriment</b>	<p>Can include:</p> <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/or</li> <li>• damage to reputation, including, for example, personal, professional or business reputation</li> </ul>
<b>disability</b>	<p>As defined in section 11 of the <a href="#">Disability Services Act 2006 (Qld)</a>, for the purposes of this procedure:</p> <p>(1) A disability is a person's condition that—</p> <p>(a) is attributable to—</p> <p style="padding-left: 40px;">(i) an intellectual, psychiatric, cognitive, neurological, sensory or physical impairment; or</p> <p style="padding-left: 40px;">(ii) a combination of impairments mentioned in subparagraph (i); and</p> <p>(b) results in—</p> <p style="padding-left: 40px;">(i) a substantial reduction of the person's capacity for communication, social interaction, learning, mobility or self-care or management; and</p> <p style="padding-left: 40px;">(ii) the person needing support.</p> <p>(2) For subsection (1), the impairment may result from an acquired brain injury.</p> <p>(3) The disability must be permanent or likely to be permanent.</p> <p>(4) The disability may be, but need not be, of a chronic episodic nature.</p>
<b>discloser</b>	A person who makes a disclosure in accordance with the Act.
<b>disclosure</b>	A disclosure of information as specified under the Act, made to a proper

	<p>authority that has the responsibility or power to take action and provide an appropriate remedy.</p> <p>For a report to be considered a disclosure, under the Act, it must be:</p> <ul style="list-style-type: none"> <li>• an appropriate disclosure</li> <li>• public interest information about serious wrongdoing or danger as specified in sections 12 and 13 of the Act</li> <li>• made by the proper person, and</li> <li>• made to a proper authority.</li> </ul>
<b>maladministration</b>	<p>As defined in schedule 4 of the Act, maladministration is administrative action that—</p> <ul style="list-style-type: none"> <li>(a) was taken contrary to law; or</li> <li>(b) was unreasonable, unjust, oppressive, or improperly discriminatory; or</li> <li>(c) 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; or</li> <li>(d) was taken— <ul style="list-style-type: none"> <li>(i) for an improper purpose; or</li> <li>(ii) on irrelevant grounds; or</li> <li>(iii) having regard to irrelevant considerations; or</li> </ul> </li> <li>(e) was an action for which reasons should have been given, but were not given; or</li> <li>(f) was based wholly or partly on a mistake of law or fact; or</li> <li>(g) was wrong.</li> </ul>
<b>natural justice</b>	<p>Natural justice, also referred to as procedural fairness' applies to any decision that can affect the rights, interests or expectations of individuals in a direct or immediate way. Natural justice is at law a safeguard applying to an individual whose rights or interests are being affected.</p> <p>The rules of natural justice, which have been developed to ensure that decision-making is fair and reasonable, are:</p> <ul style="list-style-type: none"> <li>• avoid bias, and</li> <li>• give a fair hearing.</li> </ul>
<b>organisational support</b>	<p>For the purposes of this procedure, organisational support means actions such as, but not limited to:</p> <ul style="list-style-type: none"> <li>• providing moral and emotional support</li> <li>• advising disclosers about departmental resources available to handle any concerns they have as a result of making their disclosure</li> <li>• appointing a mentor, confidante or other support officer to assist the discloser through the process</li> </ul>

	<ul style="list-style-type: none"> <li>referring the discloser to the department's employee assistance program or arranging for other professional counselling</li> <li>generating support for the discloser in their work unit where appropriate</li> <li>ensuring that any suspicions of victimisation or harassment are dealt with</li> <li>maintaining contact with the discloser</li> <li>negotiating with the discloser and their support officer a formal end to their involvement with the support program when it is agreed that they no longer need assistance.</li> </ul>
<b>proper authority</b>	A person or organisation that is authorised under the Act (sections 14, 15 and 17) to receive disclosures.
<b>receiving officer</b>	<p>The person to whom a suspected public interest disclosure is reported. This may include:</p> <ul style="list-style-type: none"> <li>the Integrity and Employee relations unit</li> <li>any person in a supervisory or management position within the department</li> <li>the human resources unit within a region or work unit</li> <li>the Director-General, or</li> <li>the Minister for the department.</li> </ul>
<b>reasonable management action</b>	<p>Reasonable management action taken by a manager in relation to an employee's performance or conduct may include any of the following:</p> <p>A reasonable:</p> <ul style="list-style-type: none"> <li>appraisal of the employee's work performance</li> <li>requirement that the employee undertakes counselling</li> <li>suspension of the employee from the employment workplace</li> <li>disciplinary action</li> <li>action to transfer or deploy the employee</li> <li>action to the end the employee's employment by way or redundancy or retrenchment</li> <li>action in relation to the employee's failure to obtain a promotion, reclassification, transfer or benefit, or to retain a benefit in relation to their employment.</li> </ul> <p>Reasonable management action in relation to a discloser must:</p> <ul style="list-style-type: none"> <li>be based on sufficient grounds</li> <li>be reasonable, as well as proportionate and consistent with similar cases</li> <li>have taken into account the discloser's particular circumstances</li> <li>not be taking action because the discloser has made a disclosure.</li> </ul>
<b>reprisal</b>	Reprisal is defined under the Act as causing, attempting to cause or conspiring to cause detriment to another person in the belief that they or

	<p>someone else:</p> <ul style="list-style-type: none"> <li>• has made or intends to make a disclosure, or</li> <li>• has been or intends to be involved in a proceeding under the Act against any person.</li> </ul> <p>Reprisal under the Act is a criminal offence and investigations may be undertaken by the Queensland Police Service.</p>
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## Legislation

- [Public Interest Disclosure Act 2010 \(Qld\)](#)
- [Code of Conduct for the Queensland public service](#)
- [Crime and Corruption Act 2001 \(Qld\)](#)

## Delegations/Authorisations

- Nil

## Related policies

- [Department of Education – Standard of Practice](#)
- [Managing employee complaints](#)

## Related procedures

- Nil

## Guidelines

- Nil

## Supporting information/websites

- [Public interest disclosure – Standard No.1](#)
- [Queensland Ombudsman – What is a public interest disclosure?](#)
- [Queensland Ombudsman – A checklist for making a public interest disclosure](#)
- [Queensland Ombudsman – Discloser information and support](#)

## Contact

For further information, please contact:

Integrity and Employee relations unit

Email: [ethicalstandards@qed.qld.gov.au](mailto:ethicalstandards@qed.qld.gov.au)

## Review date

18/06/2020

## Superseded versions

*Previous seven years shown. Minor version updates not included.*

2.2 Making and Managing a Public Interest Disclosure under the *Public Interest Disclosure Act 2010* (Qld)

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