

Procedure

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Public Interest Disclosure

1. Purpose

The health service will establish and maintain a management system to ensure staff and members of the public are aware of, and receive the rights and protections afforded by the *Public Interest Disclosure Act 2010* (PID Act).

The procedure seeks to encourage any person who becomes aware or suspects of any matter that may constitute wrong-doing or would adversely impact on operations of the health service to report the incident. This will be achieved by:

- Creating an organisational climate where all employees are confident and comfortable about making a disclosure of wrongdoing
- Dealing with disclosures diligently, thoroughly and in a timely manner ensuring appropriate reporting and action is taken
- Ensuring that those who come forward with disclosures are protected against adverse conduct or behaviour resulting from their disclosure and that where possible, and in accordance with legislative obligations, confidentiality is maintained and
- Raising awareness amongst employees through Public Interest Disclosure training (as part of the mandatory training) and undertaking communication regarding public interest disclosures.

A copy of this document is to be published in the health service's Internet site and be available in each of its facilities.

2. Scope

This procedure applies to all employees and other persons engaged in the health service as well as members of the health board and its committees.

The procedure also applies to an external person (member of the public) referring a matter within the scope of the PID Act to the health service.

3. Procedures for the management of Public Disclosures

3.1. Health Service Commitment

The Central West Hospital and Health Service (CWHHS) encourages any employee who considers that they have witnessed wrongdoing to come forward and make a disclosure. Every employee has a responsibility to disclose wrongdoing that reflects negatively on the high standards of professional and ethical conduct and integrity expected and required of all employees in the Health Service.

3.2. Types of wrongdoing to be reported

A public interest disclosure is defined in the PID Act under section 12 and 13 as an appropriate disclosure of public interest information that is made to a proper authority that results in the discloser receiving protections and support under the PID Act.

Appropriate disclosure is a disclosure of information that:

- The person honestly believes on reasonable grounds tends to show the conduct or other matter (subjective test) or
- 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).

Public Interest information is information from any person (including members of the public) 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 (see Schedule 2 of the PID Act)
- The conduct of another person that could, if proven, be a reprisal.

Public Interest information from Public Officers (public sector employees) may be about:

- Suspected official misconduct, as defined in the *Crime and Misconduct Act 2011*
- Maladministration that adversely affects a person's interests in a substantial and specific way
- A substantial misuse of public resources or
- A substantial and specific danger to public health or safety.

The disclosure is still a PID and covered by the PID Act, with the protections under the PID Act extending to the discloser, even if it subsequently is proven not to be correct. If there is any doubt as to whether a disclosure is in fact a PID, the matter will be dealt with as if it is a PID.

What may not be a Public Interest Disclosure

Some disclosures are not protected by the PID Act, including disclosures made to the media (except as described in section 20 of the PID Act) and any frivolous or vexatious disclosures.

Matters that involve activity that is primarily aimed at that person, such as harassment or bullying, are employee complaints, not Public Interest Disclosures. These matters should still be reported, but will be handled in line with bullying, harassment and staff grievance procedures.

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. Any employees who make a false or misleading statement will be subject to disciplinary action.

3.3. Responsibilities

The Health Service Chief Executive and Executive Directors are responsible for:

- Creating an ethical workplace culture where employees report suspected wrongdoing when they become aware of it and are supported when they do so (Code of Conduct for the Queensland Public Service)
- Ensuring reasonable procedures are in place to deal with a PID and that those procedures are published to enable members of the public and employees to access them

- Ensuring that PIDs are properly assessed, investigated and dealt with, including appropriate action being taken in relation to any wrongdoing in a PID
- Ensuring that employees making a PID receive support and protection from reprisal; ensuring that all legislative obligations in relation to reporting and investigation are met and
- Ensuring that all matters involving suspected official misconduct are referred to the Crime and Misconduct Commission (*Crime and Misconduct Act 2001*).

People and Culture is responsible for:

- Overall co-ordination of the CWHHS Public Interest Disclosure process
- Development, maintenance and communication of this Public Interest Disclosure procedure
- Providing training in ethical decision-making; misconduct prevention and managing PIDs, disclosures or workplace issues relating to a PID
- Informing the Health Service Chief Executive and the Crime and Misconduct Commission of any cases of suspected official misconduct
- Providing advice in relation to the Health Service's obligations under the PID Act
- Ensuring appropriate actions are taken to ensure and maintain confidentiality with respect to the person who is the subject of the allegation as well as the identity and information provided by the discloser as required under the PID Act
- Advising line managers and supervisors with regard to case management of employees making a PID and employees who are the subject of a PID, to ensure they receive fair treatment, have access to support and assistance, and that protected disclosers are safeguarded from reprisal
- Ensuring legislative reporting obligations on PID issues are met (including reporting to the Public Service Commission as Oversight Agency).

Employees and persons engaged in the health service are responsible for reporting suspected wrongdoing and other PID matters that they may become aware of.

3.4. Reporting a PID

Employees wishing to make a disclosure are encouraged to do so internally, in accordance with the HR Policy E9, by making a disclosure either in writing, in person or by telephone to:

- The employee's immediate line manager or supervisor
- The Health Service Chief Executive
- The People and Culture Manager or
- Any other person in a management position in the health service.

A member of the public, or employees, can make a complaint by telephone, in writing or in person to:

- Any health service employee (for information or a complaint that relates to the health service)
- The People and Culture Manager
- The Crime and Misconduct Commission
- The Ombudsman Advisory Service or
- A member of the Legislative Assembly in Queensland.

Disclosures to the media

In **exceptional circumstances**, a disclosure may be made to a journalist (section 20 of the PID Act) with the provisions of the PID Act still being applicable, however this can only occur after certain pre-conditions are met. An employee who seeks to do so is encouraged to seek clarification and formal (legal) advice in the first instance to avoid placing themselves at risk of breaching other legal/legislative requirements when disclosing information to unauthorised parties.

Anonymous disclosures

Disclosures can be made anonymously, in writing or by telephone. However, this may impact the action that can be taken in relation to the allegation and will likely impact the ability to provide feedback in relation to the progress of the matter to the discloser. The CWHHS is committed to acting on any complaints, including anonymous complaints, and the effectiveness of dealing with these complaints is greatly enhanced by the provision of as much information as possible so the matters alleged can be appropriately investigated.

Information to be provided

Proof is not required, as long as there are reasonable grounds to believe that the wrongdoing has occurred. Where possible, the information provided should include:

- The name and position of the person making the disclosure
- The name and job title of the person who is the subject of the disclosure, or alternatively a description of the person
- Details of relevant events, dates and places
- The names of people who may be able to support the disclosure
- Any other information that supports the disclosure (i.e. documentation, CCTV footage etc.).

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

3.5. Assessment of Public Interest Disclosure

All employees are to treat matters as possible public interest disclosures from the time a disclosure is made until the assessment has been completed.

This means that confidentiality about the disclosure is to be maintained at all times and any record of the information is to be stored securely.

Upon the receipt of all relevant information as required, a summary of the disclosed information and any additional information gathered will be prepared and provided to the People and Culture Manager for consideration and assessment.

3.6. Support for the internal witness

The health service will initiate and coordinate ongoing support for any internal witness/discloser throughout the management of the matter. The type of support will depend on a number of factors including the assessed risk and the concerns, the needs of the individual internal witness and in particular if there is any detriment to the internal witness. This may include:

- Alleged or suspected breaches of confidentiality or reprisal action are to be immediately reported to the People and Culture Director
- Day-to-day concerns about the disclosure or other related matters are to be addressed with the person the internal witness nominates as their support person and for ongoing emotional and psychological support, the internal witness can be referred to the Employee Assistance Program
- Advice about the resources available in the CWHHS to handle any concerns they may have as a result of making a disclosure
- The provision of education sessions for the wider work unit (if appropriate) about the obligations to make disclosures and the protections against breaches of confidentiality and reprisal action under the PID Act
- Support through the appropriate and prompt action being taken in the event of any breaches of confidentiality, or suspicions of reprisal, victimisation or harassment;
- Maintaining contact and support after the matter has been finalised, for a reasonable and appropriate period of time.

The internal witness will be encouraged to notify their line manager or the People and Culture Manager if they consider they may need additional or a particular type of support as a result of making a disclosure.

All employees, including managers, are under an obligation to report if they believe any employee is suffering or has suffered a detriment as a result of reporting a wrongdoing.

3.7. Protections for the internal witness

The purpose of the PID Act is to promote the public interest by protecting those persons who make disclosures. This protection continues following the disclosure of information being dealt with or at the completion of any review or investigation.

The health service is committed to ensuring that no disciplinary or adverse action, including workplace reprisals by managers, occurs as a result of making a disclosure.

No employee should suffer any form of detrimental action as a result of making a disclosure, or being thought to have made a disclosure.

If any of the above does occur, the internal witness or other employee has the right to request that the health service take positive action to provide protection.

Any employee who commits an act of reprisal may face disciplinary action

As soon as the health service becomes aware that a PID has been made, or will be made, and a (potential) internal witness is known to exist, the level of protection and support appropriate for the internal witness at the local level will be determined. Relevant information will be gathered, summary prepared and provided to the People and Culture Manager so that an assessment can be undertaken of the potential PID and any risks to the internal witness, particularly with respect to potential reprisal action.

If the health service becomes aware of reprisal action against any person, not just the actual internal witness, immediate steps will be taken to ensure a senior and experienced officer who has not been involved in dealing with the initial disclosure will investigate the concerns of reprisal. The person against whom the alleged reprisal has occurred will be

kept informed of the progress of the investigation and outcome. Where it is established that reprisal action is occurring, or has occurred, all steps possible to stop that activity and protect the internal witness will be taken.

Any person who has information about the conduct of another person that could, if proved, be a reprisal, can be in itself a disclosure of information in the public interest (Section 12[1]{d}).

Confidentiality

Maintaining confidentiality is very important in the handling of a disclosure. Confidentiality not only protects the internal witness against reprisals, but any other people affected by the disclosure, including the person the subject of the disclosure.

The information that is considered to be confidential information includes:

- The fact a disclosure has been made
- Any information that may identify the internal witness 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 confidentiality, the health service will ensure that the details of the disclosure, the investigation and related decisions will be stored securely and handled in a secure manner. Employees involved in the management of the disclosure will be made aware that the information is to be treated confidentially and will be provided with appropriate training.

It is important that the person making the disclosure is aware that, while every attempt to ensure confidentiality will be made, there will be occasions when the disclosure of the internal witness's identity may be necessary. These include:

- Providing natural justice to the subject officer, taking into account the degree of risk of reprisal
- Responding to a court order or legal directive (e.g. subpoena, notice to produce, direction by a parliamentary committee) or
- In court proceedings.

The internal witness will be notified if their identity needs to be revealed for any reason listed above and their consent will be sought, if possible. All reasonable efforts will be made, as much as reasonably possible, to avoid a situation where the internal witness's identity will need to be revealed particularly when the internal witness does not provide consent.

While all steps necessary to protect the confidentiality of the information provided will be taken, the internal witness also has some obligations. The fewer people who know about the disclosure, both before and after the disclosure is made, the more likely it is that the identity of the internal witness will be able to be kept confidential and the more likely of protecting the internal witness against detrimental action in reprisal. The internal witness is encouraged not to talk about the disclosure to work colleagues or any other unauthorised person.

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

3.8. Rights of the person/s the subject of the disclosure

The health service is committed to taking appropriate, reasonable and proportionate action to deal with the subject of the disclosure and to deal with any adverse findings or systemic issues in an appropriate and timely manner. This is usually achieved by way of preliminary enquiries that may result in any further action between the matter being finalised at that point up to a full investigation conducted internally or by an external entity or authority, or referral to another appropriate unit of public administration such as the Queensland Police Service.

In many situations a person who is the subject of a disclosure (the Subject Officer) will be interviewed, but this may not occur if there is insufficient information available for the allegation to be substantiated and it is considered inappropriate in the circumstances to take the matter further. The confidentiality protections under the PID Act extend to the Subject Officer prohibiting disclosure of the Subject Officer's identity except within the provisions of the legislation. The Subject Officer will be afforded natural justice and the matter will be dealt with impartially, objectively and reasonably.

3.9. Managing the disclosed information

The health service will make a decision on how to best deal with the disclosure. It may be that the person who receives the disclosure undertakes initial inquiries and decides not to take the matter any further, the internal witness will be advised if this is the case. If the disclosure is referred to another area for investigation or other action, or to an external entity such as the Crime and Misconduct Commission, the internal witness will be notified.

All employees should remember their responsibilities under the Code of Conduct for the Queensland Public Service. 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 employee found to have engaged in reprisals will be the subject of disciplinary action.

The health service will provide any internal witness with advice and assistance on the process and to inform them of the outcome. This will include information on the action taken or proposed to be taken as a result of the disclosure and the reasons for this decision.

Finalisation of PID matters

Once a decision is made regarding the action to be taken to deal with the PID, the internal witness will be notified of this by the decision maker with conduct of the matter and provided with regular updates as they become available.

The Crime and Misconduct Commission (CMC) may also be notified of how the matter was managed and any outcome.

3.10. Maintaining records and fulfilling reporting requirements

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

The People and Culture Manager 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 health service will provide relevant information to the oversight agency through completion of the Public Interest Disclosure database which is managed by the Public Service Commission.

3.11. Review of decisions

If an internal witness is dissatisfied with the decision made and the outcome in response to the disclosed information, once a disclosure has been dealt with, the internal witness may seek an internal review by the CWHHS Chief Executive within 28 days of being notified of the outcome, or within six months of making the notification.

If the disclosed information was assessed as suspected official misconduct the internal witness may seek a review of the management of the matter via the CMC.

Alternatively, the internal witness may lodge a complaint (or appeal) with the Queensland Ombudsman.

4. Related policies and procedures

5. Supporting documents

- *Crime and Misconduct Act 2001* (Qld)
<https://www.legislation.qld.gov.au/view/pdf/2013-09-06/act-2001-069>
- *The Public Sector Ethics Act 1994* (Qld)
<https://www.legislation.qld.gov.au/view/pdf/2014-07-01/act-1994-067>
- Code of Conduct for the Queensland Public Service 2011
<https://www.forgov.qld.gov.au/code-conduct-queensland-public-service>
- Requirement for Reporting Official Misconduct HR Policy E9 (QH-POL-218)
https://www.health.qld.gov.au/_data/assets/pdf_file/0024/396132/qh-pol-218.pdf
- *Hospital and Health Boards Act 2011*
<https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2011-032>
- *Public Interest Disclosure Act 2010* (Qld)
<https://www.legislation.qld.gov.au/view/html/inforce/current/act-2010-038>
- Queensland Ombudsman Public Interest Disclosure Standard No. 1 (January 2013)
https://www.ombudsman.qld.gov.au/.../public_interest_disclosure_standard_no_1.pdf...
- Fact Sheet – Excerpt from *Public Interest Disclosure Act 2010* – Reasonable Management Action.

- Fact Sheet – Excerpt from Public Interest Disclosure Act 2010 – Reprisal
<https://www.legislation.qld.gov.au/view/html/inforce/current/act-2010-038#sec.40>
- Fact Sheet – Excerpt from *Public Interest Disclosure Act 2010* – Preservation of Confidentiality
<https://www.legislation.qld.gov.au/view/html/inforce/current/act-2010-038#sec.65>
- Fact Sheet – Support Person for Internal Witness.

6. Related Standards

- EQUIPNational Standard 14: Information Management
<https://www.achs.org.au/programs-services/equipnational/>

7. Definition of terms

Term	Definition	Source
Appropriate disclosure	Is either information: <ul style="list-style-type: none"> • The discloser honestly and reasonably believes tends to show the conduct or danger or • Tends to show the conduct or danger regardless of the discloser's belief. 	<i>Public Interest Disclosure Act 2010</i> (Qld)
Mal-administration	An act or omission that is unlawful, unreasonable, unfair, improper, unjust, improperly discriminatory or based on a mistake of law or fact or otherwise wrong, that adversely affects a person's interest in a substantial and specific way.	<i>Public Interest Disclosure Act 2010</i> (Qld)
Misuse of public resources	A substantial misuse of public resources such as negligent accounting practices or inaccurate reporting rather than a disagreement with policy about priorities for expenditure.	<i>Public Interest Disclosure Act 2010</i> (Qld)
Misconduct	Inappropriate or improper conduct in an official capacity or inappropriate or improper conduct in a private capacity that reflects seriously and adversely on the public service.	<i>Public Service Act 2008</i>
Official misconduct	Conduct concerned with the performance for an officer's duties that is not honest or impartial, a breach of the trust placed in the person or a misuse of information or material acquired through the officer's position and that could if proved be: <ol style="list-style-type: none"> (a) A criminal offence or (b) A disciplinary breach providing reasonable grounds for terminating the person's service if the person is or was the holder of an appointment. 	<i>Crime and Misconduct Act 2001</i>
Public Interest information	Information disclosed by anyone that relates to: <ul style="list-style-type: none"> • Danger to the health or safety of a person with a disability or • Danger to the environment or • Reprisal or 	<i>Public Interest Disclosure Act 2010</i> (Qld)

	Information disclosed by a public officer identifying: <ul style="list-style-type: none"> • Official misconduct or • Maladministration or • Misuse of public resources or • Danger to public health or safety or the environment. 	
Reprisal	A form of detriment to a person because it is believed the person had made, or intends to make, a public interest disclosure, including: <ul style="list-style-type: none"> • Threatening or harassing a discloser or those close to them • Discriminating against a discloser in relation to employment, career etc. • Financial loss • Property loss or damage • Personal injury or prejudice to safety or • Damage to personal, professional or business reputation. 	<i>Public Interest Disclosure Act 2010 (QLD)</i>

8. Procedure revision and approval history

Custodian				
Author				
Approval authority				
Keywords				
Version	Approved	Effective	Comment	Date reviewed
1.0	HSCE			
1.1	Health Board	20/06/2014		

9. Audit strategy

Level of risk/risk rating	
Audit strategy	
Audit tool	
Audit frequency	
Audit responsibility	
Key elements/ indicators/outcomes	

Name:

Signature:

Role/Designation:

Date:

Appendices

- Nil