



**POLICY TITLE: PUBLIC INTEREST DISCLOSURE POLICY**

**APPROVED: 21 MARCH 2017**

**REVIEW DATE: MARCH 2020**

## **1. PURPOSE**

To ensure that the Council of the Queensland Institute of Medical Research (the Council, the Institute, QIMR Berghofer) complies with the *Public Interest Disclosure Act 2010* (Qld) (PID Act), the Public Interest Disclosure Standard No.1 and to explain the procedure for making a public interest disclosure, or for when a public interest disclosure has been made.

This policy is part of an overall performance management framework.

## **2. SCOPE**

As a public sector entity established under the *Queensland Institute of Medical Research Act 1945*, the Institute is considered a Proper Authority for the purposes of s6 of the PID Act. This policy applies to any person (including an Institute employee) who makes a disclosure in accordance with this policy.

## **3. POLICY**

The Institute is committed to the objectives of the PID Act and recognises the value and importance of contributions of Institute employees in enhancing administrative and management practices.

The Institute considers Public Interest Disclosures to be an important component of ensuring its employees uphold the highest standard of integrity and accountability. Accordingly, the Institute is committed to creating and maintaining an environment that encourages disclosure of information about wrongdoing or danger. This is achieved by:

- facilitating disclosures of information, or complaints, about wrongdoing or danger that relate to the Institute;
- ensuring disclosures, including those made anonymously, are properly assessed and when appropriate, properly investigated or otherwise dealt with;
- ensuring Public Interest Disclosure assessments, investigations and decision-making processes are completed within a reasonable timeframe;
- affording appropriate and reasonable protection from Reprisals, and support, for those who have made a Public Interest Disclosure; and
- ensuring appropriate consideration is given to the interests of those who are the subject of a Public Interest Disclosure.

## 4. DISCLOSURES THAT ARE PROTECTED AND NOT PROTECTED

### 4.1. Types of Information that can be disclosed under the PID Act (2010) and who may disclose it

The PID Act distinguishes between Public Interest Disclosures made by Public Officers (including Institute employees) and those made by anyone else.

**Any persons (including Public Officers)** can disclose information under the PID Act about:

- a substantial and specific danger to the health and safety of a person with a disability;
- a substantial and specific danger to the environment; and
- the conduct of another person that could, if proved, be a Reprisal.

A **Public Officer** can also disclose information under the PID Act about:

- corrupt conduct as defined in the *Crime and Corruption Act 2001* (Qld);
- Maladministration that adversely affects a person's interests in a substantial and specific way;
- a substantial and specific danger to public health and safety; and
- 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.

The protections under the PID Act apply to a person who makes the Public Interest Disclosure with respect to the issues listed above and which is either:

- a. based on an honest belief, on reasonable grounds that the information disclosed tends to show the conduct or danger concerned (subjective test); or
- b. the information tends to show the conduct or danger, regardless of whether the discloser honestly believes that the information tends to show the conduct or danger (objective test).

If neither of these tests are satisfied, the PID Act will not apply to the disclosure. See clause 4.2 for details of which disclosures will not be protected or investigated further.

### 4.2. Who can a Public Interest Disclosure be made to?

The PID Act only protects Public Interest Disclosures that are made to a Proper Authority and in accordance with this policy. If a disclosure is made to a person or an entity other than a Proper Authority, the person making the disclosure will not receive the protections of the PID Act. The Institute is a Proper Authority for the purposes of the PID Act.

To ensure Public Interest Disclosures are identified and appropriately investigated, it is preferable that the disclosure is made internally in writing as follows:

- If the disclosure concerns any person within the Institute who is not the Chief Operating Officer (COO) or the Director and Chief Executive Officer (CEO) of the Institute or the Chief Human Resources Officer (CHRO), the disclosure should be made to the **Chief Human Resources Officer**.
- If the disclosure concerns the Director/CEO of the Institute or the CHRO, the disclosure should be made in writing to the **Secretary of the Council/COO**, who will then refer the disclosure to the Chair of the Council for further consideration in accordance with this Policy.
- If the disclosure concerns the **COO**, the disclosure should be made in writing to the **Director/CEO** of the Institute.

Notwithstanding the above, the PID Act also provides that a Public Interest Disclosure may always be made to the following external Proper Authorities:

- the Queensland Ombudsman, if it concerns Maladministration;
- the Queensland Audit Office, if it concerns a misuse of public resources;
- the Crime and Corruption Commission, if it concerns corrupt conduct or Reprisals; or
- a member of the Legislative Assembly of the Queensland Parliament who may refer it to a relevant public sector entity.

While the Institute strongly encourages internal reporting, a person may report to an external Proper Authority as a first step.

#### **4.3. Public Interest Disclosures that do not require further action**

When assessing a disclosure under clause 5.1, a decision may be made not to deal with or investigate a disclosure further for any of the following reasons:

- the disclosure has already been investigated or dealt with by another process;
- the disclosure should be dealt with by another process;
- it is impractical to investigate the disclosure because of its age;
- the disclosure is too trivial in nature and dealing with it would substantially and unreasonably divert the Institute's resources from their use in the performance of the Institute's functions; or
- another entity (with appropriate jurisdiction) has notified the Institute that the disclosure does not warrant further investigation.

A decision not to deal with or investigate the disclosure further will be made in writing with reasons for the decision. The discloser will have 28 days to request a review of the decision in accordance with section 30(3) of the PID Act. The discloser will be informed of these review rights in the written decision.

#### 4.4. Disclosures not protected by the PID Act

The PID Act does not provide protection where a disclosure is not made to a Proper Authority, for example through the media, to federal government departments, private organisations and unions.

Further, the PID Act does not protect the following types of disclosures:

- disclosures which intentionally contain false or misleading information;
- frivolous or vexatious complaints (abuse of process);
- information which does not satisfy the subjective or objective test (clause 4.1);
- disclosures which are considered to be entirely policy disputes;
- disclosures which are considered entirely employee related complaints e.g. relating to issues between personnel or performance management. These should be reported and managed in accordance with the relevant policies.

It is a criminal offence under the PID Act to intentionally make a false or misleading disclosure. An employee making a false or misleading disclosure may also face disciplinary action. Further, making a Public Interest Disclosure does not protect the discloser from any management, disciplinary or criminal action if they have been involved in improper conduct or their performance is unsatisfactory.

#### 5. PROCEDURE FOR MAKING A DISCLOSURE

The Institute has established the following procedure for persons making a Public Interest Disclosure. To ensure that Public Interest Disclosures are identified and appropriately investigated, it is preferable that the disclosure is made in writing. As Public Interest Disclosures relate to matters of public interest, once a disclosure is made it cannot be withdrawn by the discloser and will be managed in accordance with this Policy and any of the Institute's other relevant policies.

Ideally, a Public Interest Disclosure should contain the following information:

- name and position of the person who is the subject of the disclosure (i.e. who did the wrongdoing), if known;
- information about the wrongdoing or danger, relevant events, dates and places;
- the names of people who may be able to provide additional information i.e. witnesses; and
- contact details of the person making the public interest disclosure, so that they can be updated on the disclosure where appropriate.

A Public Interest Disclosure can be made **anonymously**, however it is not preferable because it can make it difficult to properly investigate it, to seek clarification or more information, or to advise the discloser of progress with respect to the disclosure.

An anonymous discloser may also experience difficulties in relying upon the protections afforded by the PID Act.

## **5.1. Assessment of Public Interest Disclosure**

Subject to 4.2, upon receipt of a disclosure, the information will be referred to the COO or Director/CEO or the Chair of the Council (in the case of a PID relating to the Director/CEO) who will make an initial assessment of the following:

- whether the disclosure falls within the terms of the PID Act;
- whether immediate action is required to halt the conduct or remedy the danger to which the disclosure relates;
- whether the substance of the disclosure is such that it should be dealt with under another policy e.g. the Misconduct and Serious Misconduct Policy or the Research Misconduct Policy.

In making the assessment, the Director/CEO or Chair of Council may delegate to Institute Officers as required.

If there is any doubt whether the disclosure is a Public Interest Disclosure, it will be assumed to be a Public Interest Disclosure and dealt with in accordance with this policy. Upon completion of the initial assessment, the Director/CEO or the Chair of Council will:

- where a disclosure is not assessed as a Public Interest Disclosure, decide how to deal with the disclosure in accordance with the Institute's other policies;
- where a disclosure is assessed as a Public Interest Disclosure and is determined to warrant further investigation, it will be referred for investigation in accordance with section 5.2 of this Policy (clause 5.5).

## **5.2. Investigation of Public Interest Disclosure**

Public Interest Disclosures that require further investigation will be dealt with in accordance with the Institute's policies and procedures. For example:

- allegations made against the Director/CEO of the Institute will initially be dealt with in accordance with the policy on Complaints Involving the Director/CEO (Public Official) and if not resolved will be dealt with under the direction of the Council of the Queensland Institute of Medical Research in accordance with the Institute's policies;
- allegations of financial impropriety will be addressed in accordance with the Misconduct and Serious Misconduct Policy and any notification requirements of any funding bodies such as NHMRC;
- allegations of research misconduct will be addressed in accordance with the Research Misconduct Policy;
- allegations of substantial and specific danger to public health or safety or allegations of a substantial and specific danger to the environment will be referred to the Chief Operating Officer or Director/CEO and then dealt with under any other relevant policies referred to above.

### **5.3. Corrupt Conduct**

All Public Interest Disclosures will be assessed to determine whether the conduct disclosed could constitute Corrupt Conduct for the purposes of the *Crime and Corruption Act (2001)*. If there is reasonable suspicion of Corrupt Conduct, notification will be made to the Crime and Corruption Commission. Further, where the assessment specifically relates to research misconduct, notification may need to be made to the National Health and Medical Research Council or other funding body in accordance with the Research Misconduct Policy.

Refer to relevant policies for further details.

### **5.4. Finalising Investigations**

Once a Public Interest Disclosure has been finalised, the discloser and the Subject Officer will be notified separately of the outcome of the investigation and any steps taken as a result.

### **5.5. Public Interest Disclosure (PID) Case Manager**

The PID Case Manager has the following responsibilities:

- to advise the discloser about what making a Public Interest Disclosure means and that their identity will be kept confidential except as allowed under the PID Act;
- to assess the risk of Reprisal and immediate protection needs of the discloser;
- to listen and respond to any concerns of harassment, intimidation or victimisation in Reprisal for making a Public Interest Disclosure;
- to coordinate and provide support to the discloser;
- to advise the discloser of progress of the Investigation including likely timeframes and the importance of maintaining confidentiality;
- to keep records of all aspects of case management of the discloser, including all contact and follow-up action; and
- to ensure that the expectations of the discloser are realistic.

The PID Case Manager will ensure that the discloser receives reasonable information relating to the disclosure in writing which will include, as a minimum:

- a. a confirmation that the Public Interest Disclosure was received;
- b. a description of the action proposed to be taken by the Institute;
- c. if action has been taken, a description of the action.

## **6. PROTECTIONS UNDER THE PID ACT**

### **6.1. Reprisal and grounds for Reprisal**

One of the purposes of the PID Act is to provide protection from Reprisals for a person who makes a Public Interest Disclosure, as far as reasonably practicable. Under section

40 of the PID Act, a person must not cause or attempt or conspire to cause a detriment to another person because a Public Interest Disclosure has been made. To do so is considered to be a Reprisal; this can take many forms:

- the personal safety of the discloser may be prejudiced;
- the personal property of that person may be damaged;
- disclosers may be faced with intimidation or harassment in the workplace and may be discriminated against or disadvantaged in their career or profession (for example, if disciplinary action is taken, a person is transferred or duties downgraded).

Sometimes there may be other reasons for taking action that affects a person's interests; however, where the making of the public interest disclosure constitutes a substantial ground for taking action which might constitute a Reprisal, that action taken will be unlawful under the PID Act.

Reprisals extend to threats made to a discloser that any of the above consequences may occur. Additionally, inducing another person to take Reprisal action itself may constitute a Reprisal. Penalties for contravening section 40 of the PID Act range from financial penalties to up to two years imprisonment. Further, if the person that suffers the Reprisal suffers loss as a result, section 42 of the PID Act allows them to bring an action in damages against the person that committed the Reprisal.

## **6.2. Immunity from liability**

A person who makes a Public Interest Disclosure under the PID Act is not subject to any civil or criminal liability or any liability arising by way of administrative process, including disciplinary action, for making the public interest disclosure subject to 4.4.

## **6.3. Confidentiality provisions do not apply**

A person who makes a Public Interest Disclosure will have immunity from prosecution or other legal proceedings for a breach of any confidentiality requirements under another Act.

This means a person who makes a Public Interest Disclosure does not breach an obligation by way of oath, or a rule of law (e.g. another Act), restricting or requiring the person to maintain confidentiality, provided the disclosure is made to a Proper Authority.

## **6.4. Protection from defamation action**

A person who makes a Public Interest Disclosure will have absolute privilege in defamation proceedings from the making of the disclosure, provided the disclosure is made to a Proper Authority.

## **6.5. Confidentiality**

It is an offence under the PID Act for a person to make a record of, or intentionally or recklessly disclose, confidential information received in the administration of the PID Act to anyone, except where authorised by the PID Act.

Every effort will be made to maintain confidentiality in managing the Public Interest Disclosures. This confidentiality will extend to the following types of information:

- the fact that a disclosure has been made;

- any information that may identify the discloser or any person which is the subject of a disclosure;
- the actual information disclosed; and
- information relating to the disclosure which would cause detriment if known.

There may be occasions when disclosure of the discloser's identity may be necessary which include:

- providing natural justice to the Subject Officer (see 6.6 below);
- responding to a court order or legal directive; and
- in court proceedings.

The discloser will be advised if their identity needs to be revealed for any reason and their consent will be obtained where possible.

The discloser also has an obligation to minimise the number of people who are told about the disclosure which will assist the Institute in maintaining confidentiality and protecting the discloser from any Reprisals.

## **6.6. Subject Officer**

The Subject Officer of any Public Interest Disclosure must be afforded natural justice.

Generally, natural justice refers to the right of the Subject Officer to be heard and present their case, the right for decisions to be made by an unbiased decision maker and, finally, the right to have any decisions made to be supported by appropriate evidence. In the case of disclosures, this will generally (but not always) mean that the Subject Officer has a right to know that allegations have been made prior to a formal investigation, to be provided with an opportunity to respond to the allegations and to be advised of the outcomes of any investigative findings.

The particular requirements of natural justice will vary between cases. However, the identity of the discloser may only be released if it is considered to be essential to do so and it is unlikely that a Reprisal will be taken against the person because of the disclosure.

## **7. RELATED DOCUMENTS**

*Public Interest Disclosure Act 2010 (Qld)*  
 Misconduct and Serious Misconduct Policy  
 Research Misconduct Policy  
 Complaints involving the Director/CEO (Public Official) Policy  
 Code of Conduct

## **8. CONTACT OFFICER**

Chief Human Resources Officer – Ext 3196

## **9. APPROVAL AND AMENDMENT HISTORY**

Approved by Council – 21 March 2017