

# Management commitment to internal reporting

## 1. Objectives

- To increase understanding of the benefits and importance of internal reporting systems, policies and practices.
- To outline how organisations can promote management commitment to internal reporting and staff confidence in internal reporting systems, policies and practices.

## 2. Why is this important?

The reporting of suspected wrongdoing by staff is vital to the integrity of the public sector. Staff who are prepared to raise their concerns about corrupt conduct, maladministration or other serious wrongdoing are one of the most important and accurate sources of information for identifying and addressing serious problems within an organisation.

Managers and supervisors are responsible for establishing and maintaining a positive reporting environment that encourages staff to adopt an 'if in doubt, report' approach. Staff should feel that it is a part of their job to report wrongdoing and that they will not suffer reprisals for doing so. An ethical environment gives people confidence that allegations will be taken seriously and responded to.

There are several very good reasons why organisations and their management should support staff who report wrongdoing.

### a) Identifying problems

Staff are often best placed to bring to light serious problems within the management and operations of an organisation. They are a valuable source of quality intelligence that is now well recognised.

The *Whistling While They Work* research<sup>1</sup> showed that:

- Managers and casehandlers rank reporting by staff as the single most important trigger for uncovering wrongdoing.
- Reports by staff account for two out of every three wrongdoing cases recorded and dealt with by public sector organisations.
- Reports by staff are more likely to be substantiated and lead to change in an organisation than allegations or complaints from other sources.

Internal reports, like complaints and suggestions from the public, should be treated as a way to identify and address organisational problems. A genuine internal reporter should be seen as providing management with an opportunity for improvement.

### b) Providing an early warning system

The reporting of suspected wrongdoing by staff provides managers with an early warning system that can help expose, as well as prevent, problems. If unchecked, problems within an organisation are likely to be repeated, could get worse, and may seriously damage the functioning and reputation of the organisation. Sometimes the act of reporting concerns may itself be a warning sign of a different problem – for example, workplace disharmony or a failure to communicate decisions to staff.

By identifying any weak or flawed systems that make the organisation vulnerable to criticism or legal action, internal reporters can help organisations avoid financial loss, inefficiency and embarrassment.

### c) Maintaining a healthy and ethical culture

A positive reporting environment is an essential element of an organisational culture that promotes ethics and accountability.

Experience shows that if a staff member's report is not dealt with appropriately or they are subjected to reprisals or victimisation, this can lead to conduct (by the internal reporter and other staff) that is seriously detrimental to the work of the organisation and the morale of its staff – often for an extended period of time.

## 3. Legal and management obligations

### 3.1 PID Act

#### a) Objectives

A key objective of the *Public Interest Disclosures Act 1994* (PID Act) is to encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration, serious and substantial waste, government information contravention and local government pecuniary interest contravention in the public sector by:

- enhancing and augmenting established procedures for making disclosures
- protecting people from reprisals simply because they have made a disclosure
- providing for those disclosures to be properly investigated and dealt with.

## b) Responsibilities of heads of public authorities

Section 6E of the PID Act provides that the head of a public authority is responsible for ensuring that:

- the public authority has an internal reporting policy
- the staff of the public authority are aware of the contents of the policy and the protections under the PID Act for people who make public interest disclosures (PIDs)
- the public authority complies with the policy and its obligations under the PID Act
- the policy designates at least one staff member as being responsible for receiving PIDs.

## 3.2 State government requirements

The *Code of Conduct and Ethics for Public Sector Executives* provides a framework for ethical decision-making by executives and sets out the values and behaviours expected of all state public employees in NSW. The code is underpinned by the ethical principles of integrity, impartiality, responsiveness to the public interest, accountability and honesty. It states that executives have special responsibilities for demonstrating ethical behaviour by virtue of their positions of authority, and high levels of accountability for decision-making and leadership. Implementing the provisions of the PID Act is one element of this commitment.

Also, the *Model Contract of Employment for the Chief and Senior Executive Service* obliges chief and senior executives to ensure employees are aware of the procedures for making PIDs and of the protection provided by the PID Act. Chief executives are also required to ensure the satisfactory introduction and operation of internal reporting systems (including PIDs).

## 3.3 Local government requirements

The *Local Government Act 1993* requires councils to adopt a code of conduct that incorporates the provisions of the *Model Code of Conduct for Local Councils in NSW*. This model code sets the minimum requirements of conduct for council officials in carrying out their functions. It is underpinned by the key principles of integrity, leadership, selflessness, impartiality, accountability, openness, honesty and respect. In addition to stating the purpose and aims of the PID Act, the model code also states that – when dealing with a complaint that is or could be a PID – officers must comply with the confidentiality provisions of the Act.

Also, the Standard Contract of Employment for **general managers** and **senior staff (other than general managers)** of local councils in NSW requires these officers to facilitate Council staff awareness of the procedures for making PIDs and of the protection provided by the PID Act. General managers are also required to maintain satisfactory operation of Council's reporting systems (including PIDs).

## 3.4 Occupational health and safety and duty of care requirements

Reporting wrongdoing can be a difficult process and, if not properly managed, can result in stressful interactions with colleagues and managers. Stress is a legitimate and serious workplace concern and may result in a staff member sustaining a serious injury.

Organisations have obligations under occupational health and safety legislation to ensure their staff have a safe and healthy working environment. Section 8 of the *Occupational Health and Safety Act 2000* states that this duty extends to ensuring that systems of work and the working environment are safe and without risks to health, providing staff with information to ensure their health and safety, and providing adequate facilities for the welfare of staff. Contravening occupational health and safety obligations is a serious offence that attracts significant penalties for the individuals or corporations involved (s.12, 27).

Organisations also have a duty of care under common law to provide a safe workplace for their staff. This means that managers and supervisors are responsible for taking all reasonable steps to prevent inappropriate behaviour at work – which includes harassment, bullying, discrimination and victimisation. Organisations have been successfully sued for compensation for breaching this duty of care where the staff member has become ill or suffered injury – physically or psychologically – as a result (see text box).

In 2001, the New South Wales District Court awarded a police officer \$664,270 in damages.<sup>2</sup> The police officer made a report to internal affairs alleging corruption on the part of a senior officer. The officer claimed that, because of his disclosure, over the following decade he was subject to harassment and victimisation and was denied welfare assistance, leading to psychiatric illness.

The court found that the State of NSW was liable for the Police Service's breaches of its duty of care to the officer by failing to:

- properly investigate the allegations
- provide a proactive system of protection
- give proactive support and guidance
- prevent ostracism of the officer by colleagues
- assure the officer that he had done the right thing by reporting.

Another matter in 2011 saw an electorate officer being awarded \$429,166 in damages following a breach of duty of care by the Speaker of the Legislative Assembly. The Court found the Speaker was vicariously liable for his office's failure to take all reasonable steps to ensure that the officer's psychiatric illness was not exacerbated.<sup>3</sup> The officer's illness was triggered in part when she made criminal allegations to the police against the Member of Parliament that she worked for.

## 4. What does this mean for your organisation?

### 4.1 Demonstrating organisational commitment

Staff are more likely to report wrongdoing if they trust that appropriate action will be taken in response to their report and they will be supported for having raised their concerns. This will be affected by their perceptions about how management has responded to others who have reported wrongdoing in the past.

When deciding whether to report wrongdoing, internal reporters are more influenced by situational factors (including their perception of management response) than personal characteristics, attitudes or beliefs.<sup>4</sup>

The PID Act sets down a system of protection for reporters but, for the legislation to be effective, your organisation needs to demonstrate leadership and commitment by establishing an effective internal reporting system to appropriately deal with reports of wrongdoing, support staff who report, and ensure reprisals are not taken against them. Adequate resources, both financial and human, should be dedicated towards achieving these outcomes.

Your internal reporting policy should contain a clear statement, signed by your principal officer (endorsed by any Board or Council), that your organisation is committed to the highest standards of ethical and accountable conduct and will support staff who report wrongdoing. The policy should also note the personal responsibilities of the head of your organisation under the PID Act.

Your organisation's internal reporting system should be clearly communicated. Heads of organisations have a statutory responsibility to ensure that staff are aware of the contents of the policy and the protections under the PID Act. Managers, supervisors and staff should be appropriately trained in their responsibilities and your organisation's policies and procedures for reporting wrongdoing. Experienced and skilled disclosures coordinators and managers can help your organisation to fulfil its obligations under the PID Act.

Further guidance on how your organisation can demonstrate organisational commitment is provided in our model internal reporting policies for [organisations](#) and [local government](#).

### 4.2 Building management commitment

No internal reporting system will be effective without a clearly demonstrated leadership commitment to support staff who report wrongdoing. All levels of management – from the principal officer to line supervisors – need to fully understand and support your organisation's attitude, systems, policies and procedures for internal reporting.

Managers and supervisors must feel that the culture of your organisation truly supports the reporting of wrongdoing, and

that identifying issues from within their team gives them the best chance of fixing a problem directly – rather than being exposed to external criticism.

Engage with managers and supervisors through training or other communication strategies, such as disseminating our [Fact sheet 2: Am I dealing with a public interest disclosure?](#) This will help to ensure that they:

- have a positive attitude to their staff reporting wrongdoing and encourage them to do so
- are aware of their responsibilities to their staff
- identify when a staff member reports wrongdoing that may be a PID under the PID Act and refer them to a person who can receive PIDs under your organisation's internal reporting policy
- offer genuine support to staff who report wrongdoing, including ensuring that they have access to any necessary professional support
- effectively manage the workplace situation if reprisals or conflict are threatened or take place.

### 4.3 Supporting management commitment

Managers and supervisors are responsible for creating and supporting a workplace culture where staff feel that wrongdoing is not acceptable, and reporting is valued and will be taken seriously. They should accept and embrace these values and clearly communicate them to their staff.

Managers and supervisors can show their support for internal reporting in many practical ways such as:

- being clear with staff about the types of conduct that are unacceptable
- raising staff awareness of their responsibility to report wrongdoing, as well as the organisation's expectation that they do so
- letting staff know who they can report wrongdoing to within your organisation
- advising staff of their rights to report wrongdoing to external investigating authorities
- reassuring staff that they will be supported for reporting wrongdoing and reprisals will not be tolerated
- ensuring staff are familiar with your organisation's internal reporting policy and procedures
- being visible and approachable, communicating openly and leading by example.

## 5. Your questions answered

### **Isn't it the responsibility of management and units such as internal audit to identify wrongdoing rather than staff?**

Good corporate governance is the responsibility of all staff. A strong internal reporting policy supplements effective management and internal audit processes.

Unintentional problems due, for example, to incompetence or a lack of time and resources can generally be identified through alert management, effective management reporting systems,

# Management commitment to internal reporting

performance measures, internal or external audits, and complaints from members of the public who receive services from your organisation, such as customers. However, our experience is that even these kinds of problems are often only brought to light by staff who are prepared to draw attention to them.

Intentional problems due to misconduct, corrupt conduct or illegality are much harder to identify. People involved in such activities will often actively take steps to hide or disguise the problem and their involvement. It is these types of problems that are most effectively identified by staff reporting.

**Why should our organisation support staff whose reports are not substantiated by the evidence? If a member of the public made a complaint that was not substantiated, the organisation would simply dismiss the complaint.**

Not every report from a staff member will be substantiated. The internal reporter may not see the full picture or may not have a full understanding of what is going on. Alternatively, they may be correct in their perception but there may be insufficient evidence to substantiate their allegations – to the required standard of proof – for the organisation to take disciplinary or other action.

Organisations and the general public can both benefit from people raising their concerns about the way an organisation is functioning. Reports of wrongdoing are valuable because the organisation can identify where they might improve operations or fix a problem. Reports of wrongdoing from staff are particularly valuable because they see 'close-up' what is happening. It is in an organisation's interests to tolerate over-reporting rather than risk serious wrongdoing taking place without detection.

Research showed that 29% of people working in the public sector who saw serious wrongdoing did not report it, take action themselves to deal with it or indicate that anyone else reported it.<sup>5</sup>

If people feel that they must always provide evidence to substantiate their allegations, they will be less likely to report suspected wrongdoing. We know that people fear they won't be taken seriously, might suffer reprisals, be left unsupported or otherwise be affected detrimentally by reporting.

Managers have a higher duty of care to their staff than the public. People who report wrongdoing often find themselves in very stressful situations, and organisations should support staff through the reporting process whatever the outcome.

## Contact us for more information

Our business hours are: Monday to Friday, 9am–5pm (*Inquiries section closes at 4pm*)

If you wish to visit us, we prefer you make an appointment. Please call us first to ensure your complaint is within our jurisdiction and our staff are available to see you.

Level 24, 580 George Street  
Sydney NSW 2000

Email [pid@ombo.nsw.gov.au](mailto:pid@ombo.nsw.gov.au)

Web [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)

**General inquiries** 02 9286 1000  
**Facsimile** 02 9283 2911

**Toll free** (outside Sydney metro) 1800 451 524

**Tel. typewriter** (TTY) 02 9264 8050

Telephone Interpreter Service (TIS): 131 450  
We can arrange an interpreter through TIS or you can contact TIS yourself before speaking to us.

## 6. Additional resources

- [Model internal reporting policy](#)
- [Model internal reporting policy \(local government\)](#)
- [Fact sheet 2: Am I dealing with a public interest disclosure?](#)
- [Local Government Act 1993](#)
- [Occupational Health and Safety Act 2000](#)
- [Public Interest Disclosures Act 1994](#)
- [Code of Conduct and Ethics for Public Sector Executives](#)
- [Model Code of Conduct for Local Councils in NSW](#)
- [Model Contract of Employment for the Chief and Senior Executive Service](#)
- [Standard Contract of Employment for General Managers of Local Councils in New South Wales](#)
- [Standard Contract of Employment for Senior Staff \(Other Than General Managers\) of Local Councils in New South Wales](#)
- [Whistleblowing in the Australian public sector: Enhancing the theory and practice of internal witness management in public sector organisations.](#)

## 7. Last updated

November 2011

## 8. Endnotes

- 1 Brown, AJ (ed.) 2008, [Whistleblowing in the Australian public sector: Enhancing the theory and practice of internal witness management in public sector organisations](#), ANU E Press, Canberra, pp. 42–45.
- 2 *Wheadon v State of NSW*, unreported, District Court of New South Wales, No. 7322 of 1998 [2 February 2001] per Cooper J.
- 3 *Sneddon v The Speaker of the Legislative Assembly* [2011] NSWSC 508 per Price J.
- 4 Brown, pp. 70–72.
- 5 Brown, p. 48.