

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 public authorities can promote management commitment to internal reporting.

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 wrongdoing are one of the most important and accurate sources of information for identifying and addressing serious problems within an authority.

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 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 authorities 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 authority. It is recognised that staff are a valuable source of quality intelligence.

The *Whistling While They Work* research¹ 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.

Similarly to complaints and suggestions from the public, internal reports should be treated as a way to identify and address problems within an authority. A report of wrongdoing 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 serious problems. If unchecked, problems within an authority may be repeated or could get worse. This could seriously damage the functioning and reputation of the authority. 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 internal reports can help authorities avoid criticism, legal action, financial loss, inefficiency or embarrassment.

c) Maintaining a healthy and ethical culture

A positive reporting environment is an essential element of a workplace 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 reporter and other staff) that is seriously detrimental to the work of the authority 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 serious wrongdoing in the public sector by:

- enhancing and augmenting established procedures for making disclosures
- protecting people from reprisals
- 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.

Section 69(2) of the *Government Sector Employment Act 2013* makes the head of a public authority responsible for dealing with misconduct by employees. Misconduct includes taking detrimental action against a person substantially in reprisal for the person making a report under the PID Act.

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.

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. The Procedures for the Administration of the Model Code states that:

Code of conduct complaints that are made as public interest disclosures under the *Public Interest Disclosures Act 1994* are to be managed in accordance with the requirements of that Act, the council's internal reporting policy and any guidelines issued by the NSW Ombudsman that relate to the management of public interest disclosures. (p16.).

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 a PID 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 Work 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.

The *Work Health and Safety Act 2011* states that a person conducting a business or undertaking – which includes public sector departments, authorities and councils – has a primary duty of care to ensure the health and safety of workers and others. An authority can fulfil this obligation by doing what they reasonably can in the circumstances to manage health and safety risks. All officers who can make decisions that significantly affect their authority must exercise due diligence to ensure compliance. Failure to comply with health and safety duties is a serious offence that attracts significant penalties (ss.31-33).

Authorities 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. Authorities 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.

In 2001, the New South Wales District Court awarded a police officer \$664,270 in damages.² 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.³ 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 public authorities?

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. The way in which management has responded to others who have reported wrongdoing will affect their perception of the authority's commitment.

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

The PID Act sets down a system of protection for reporters but, for the legislation to be effective, an authority 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 take reasonable steps to ensure reprisals are not taken against them. Authorities' internal reporting systems are not limited to the minimum requirements of the legislation. Taking steps beyond those will demonstrate a strong commitment to the effectiveness of the legislation. Adequate resources must also be committed towards achieving these outcomes.

An authority's internal reporting policy should contain a clear statement, signed by the principal officer (endorsed by any Board or Council), that the authority 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 the authority under the PID Act.

The internal reporting system should be clearly communicated. Heads of authorities 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 as well as the policies and procedures for reporting wrongdoing. Experienced and skilled disclosures coordinators and managers can help an authority to fulfil its obligations under the PID Act. See *Guideline A3: Awareness and training*.

Further guidance on how to demonstrate organisational commitment is provided in our model internal reporting policies for state government 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 the authority's attitude, systems, policies and procedures for internal reporting.

Managers and supervisors must feel that the authority's culture 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.

There needs to be engagement 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?*, to ensure 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 and refer them to a person who can receive PIDs in accordance with the authority'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 know 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 expectation that they do so
- letting staff know who they can report wrongdoing to within the authority
- 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 the 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 to incompetence or a lack of time and resources, for example, can generally be identified through alert management, effective management reporting systems,

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performance measures, internal or external audits, and complaints received from members of the public. 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 serious problems that are most effectively identified by staff reporting.

Why should our authority support staff whose reports are not substantiated by the evidence?

Not every report from a staff member will be substantiated. The person making the report 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 – to enable any disciplinary or other action to be taken.

Public authorities and the general public can both benefit from people raising their concerns about the way an authority is functioning. Reports of wrongdoing are valuable because they can assist with identifying where an authority 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 authority’s interests to tolerate over-reporting rather than risk wrongdoing taking place without detection.

In 2012 the NSW Public Service Commission conducted a survey of all NSW public sector employees. Of the respondents, 30% indicated they had witnessed improper conduct in the workplace in the previous year. Of those, 23% submitted a formal complaint which represents 7% of the total number of respondents.⁵

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, may be subjected to reprisal, 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 authorities should support staff through the reporting process whatever the outcome.

6. Additional resources

- *Model internal reporting policy*
- *Model internal reporting policy (local government)*
- *Guideline A3: Awareness and training*
- *Fact sheet 2: Am I dealing with a public interest disclosure?*
- *Government Sector Employment Act 2013*
- *Local Government Act 1993*
- *Work Health and Safety Act 2011*
- *Public Interest Disclosures Act 1994*
- *Code of Conduct and Ethics for Public Sector Executives*
- *Model Code of Conduct for Local Councils in NSW*
- *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*

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 NSW Public Service Commission, *People Matter Employee Survey 2012 - Main Findings Report*, www.psc.nsw.gov.au/About-the-Public-Sector/People-Matter-Survey-2012

Contact us for more information

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

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