

# **Department of Juvenile Justice Internal Reporting Policy under the Protected Disclosures Act 1994**

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### **FROM THE DIRECTOR GENERAL**

As the Director General of the Department of Juvenile Justice, I have a responsibility to ensure that this department is operating both efficiently and ethically. I do not condone corrupt conduct, maladministration or the serious and substantial waste of public money.

In addition, I have a legal obligation to report all matters of corrupt conduct to the Independent Commission Against Corruption and I have a duty to notify the police of suspected criminal conduct.

To meet my obligations, I must be informed of all allegations of corrupt conduct, waste and maladministration. An effective internal reporting system whereby staff feel confident in making a disclosure is an important source of information.

For staff to feel confident in making a disclosure, they must feel safe from reprisals. They must consider that their disclosure will be taken seriously and will be treated with the utmost confidentiality. It is also important for staff to feel that making a disclosure is worthwhile.

This policy document establishes an internal procedure for the reporting of corruption, maladministration and serious and substantial waste within the Department of Juvenile Justice. The policy enables internal disclosures to be made to Managers, Cluster Directors, the Director Operations and the Director Corporate Services. Disclosures may also be made to me directly. The policy also ensures that all reasonable steps will be taken to provide protection for staff against detrimental action arising from their making a disclosure.

Because anonymity is the best protection, the policy also ensures that the identity of the person making the disclosure is not revealed, except in limited circumstances. The policy provides sanctions against staff who wrongfully breach this confidentiality.

Prompt, sensitive and appropriate resolution of all employee grievances is sound management practice and an effective internal reporting system can only enhance the process of continuous improvement within the organisation.

KEN BUTTRUM  
DIRECTOR GENERAL

## 1. PURPOSE OF POLICY

The purpose of this policy is to establish an internal reporting procedure for the reporting of corruption, maladministration and serious and substantial waste within the Department of Juvenile Justice and to ensure that all staff are afforded the protection provided by the *Protected Disclosures Act 1994 (NSW)*.

## 2. PRINCIPLES

- Staff are entitled to feel safe when making disclosures about corruption, maladministration or serious and substantial waste.
- Staff should feel confident that a disclosure made on a reasonable and honest belief will be taken seriously and will be dealt with properly.
- The best protection against reprisals is confidentiality of the identity of the person making a disclosure. Sanctions should exist against persons who breach this confidentiality without due cause.
- Management have an obligation to properly investigate and deal with disclosures.
- Staff should be encouraged to make disclosures and be fully supported when they do so.
- Staff are more likely to report matters which concern them if they see improvements in the workplace as a result.
- An effective reporting mechanism is both an important source of information and a useful management tool.
- The entire culture of the Department of Juvenile Justice is influenced if all managers act with integrity.

## 3. OBJECT OF THE POLICY

In line with the *Protected Disclosures Act 1994 (NSW)*, this policy aims to encourage and facilitate the disclosure of corrupt conduct, maladministration and serious and substantial waste by:

- enhancing established procedures for making disclosures;
- protecting staff from reprisals that might otherwise be perpetrated on them because of the making of disclosures; and
- providing for disclosures to be properly investigated and dealt with.

## 4. COMMON TERMS

For information to be a "**protected disclosure**" under the *Protected Disclosures Act 1994 (NSW)*, it must be:

- made by a staff member to a Nominated Disclosure Officer within the department or directly to an investigating authority; (the ICAC, the NSW Ombudsman, the NSW Auditor General, the Police Integrity Commission and the Police Integrity Commission Inspector);
- made voluntarily;
- made to a journalist or member of parliament, but only if substantially the same disclosure was made earlier to a person or authority nominated above, and that person or agency:
  - decided not to investigate the matter;
  - decided to investigate the matter but did not complete the investigation within six

months of the original disclosure;

- investigated the matter but did not recommend any action in relation to the matter;
- failed to notify the person making the disclosure, within six months of the disclosure, whether or not the matter was to be investigated;
- substantially true, and the person making the disclosure must have reasonable grounds for believing that the disclosure is substantially true.

Disclosures must **show or tend to show** corrupt conduct, maladministration or serious and substantial waste of public money by the Department of Juvenile Justice or any of its staff. Protected disclosures cannot be mere allegations.

**"Detrimental action"** is action that can cause, comprise or involve any of the following:

- injury, damage or loss;
- intimidation or harassment;
- discrimination, disadvantage or adverse treatment in relation to employment;
- dismissal from or prejudice in employment; or
- disciplinary proceeding.

**"The ICAC"** and **"the Commission"** both refer to the New South Wales Independent Commission Against Corruption.

**"Investigating authority"** includes the ICAC, the NSW Ombudsman, the NSW Auditor General, the Police Integrity Commission and the Police Integrity Commission Inspector.

**"Nominated Disclosure Officers"** are persons holding the positions set out in paragraphs 6.1 to 6.4 below, responsible for receiving and handling internal disclosures.

## 5. LEGAL DEFINITIONS

**"Corrupt conduct"** is defined in sections 8 and 9 of the *Independent Commission Against Corruption Act 1988*, and includes the dishonest or partial exercise of official functions by a public official. Corrupt conduct includes, (but is not limited to), taking or offering bribes, theft, dishonestly using influence, forgery, perverting the course of justice, blackmail, fraud, illegal gambling and harbouring criminals. Conduct of a person who is not a public official, when it adversely affects the impartial or honest exercise of official functions by a public official also comes within the definition.

**"Maladministration"** is defined in section 11 of the *Protected Disclosures Act 1994* as conduct that involves action or inaction of a serious nature that is:

- contrary to law; or
- unreasonable, unjust, oppressive or improperly discriminatory; or
- based wholly or partly on improper motives.

**"Public Authority"** means any public authority whose conduct or activities may be investigated by an investigating authority.

**"Public Official"** means a person employed under the *Public Sector Management Act 1988*.

**"Serious and substantial waste"** is not defined in the *Protected Disclosures Act 1994*, but has been defined by the Auditor General as:

- the uneconomical, inefficient or ineffective use of resources, authorised or unauthorised, which results in a loss or wastage of public funds and resources (including misappropriation or misuse of public property, the purchase of unnecessary or inadequate goods or services or too many personnel being employed in a particular area incurring costs which might otherwise have been avoided.)

## 6. PROCEDURES FOR MAKING INTERNAL DISCLOSURES

- 6.1 Staff who wish to make an internal disclosure may make the disclosure to the senior manager of their unit. Centre staff may make a disclosure to their Centre Manager, community based staff may make a disclosure to their manager, while staff from Central Support Office may make a disclosure to their branch head.
- 6.2 Where, for any reason, cluster based staff do not feel that they can make a disclosure to their local manager, or where the disclosure involves the relevant manager, the staff member may make a disclosure to their Cluster Director.
- 6.3 Staff from Central Support Office who do not feel that they can make a disclosure to their branch head and staff from the clusters who do not feel that they can make a disclosure to their manager or their Cluster Director may make a disclosure to the Director Operations or the Director Corporate Services.
- 6.4 Where, for any reason, a staff member does not feel that they can make a disclosure to any of the persons nominated above, or where the disclosure involves those persons, a disclosure can be made directly to the Director General.
- 6.5 Where staff contemplating making a disclosure are concerned about discussing the matter in front of their colleagues, they can request a meeting in a discreet location away from the workplace.

## 7. ALTERNATIVE AVENUES FOR DISCLOSURE

- 7.1 Where staff do not wish to make a disclosure internally, they may make a disclosure to any one of the investigating authorities under the *Protected Disclosures Act 1994*, (the Independent Commission Against Corruption, the NSW Ombudsman, the Auditor General, the Police Integrity Commission and the Police Integrity Commission Inspector.)
- 7.2 The **Independent Commission Against Corruption's** role is to expose and minimise corruption within and affecting the NSW public sector. Information received at the Commission may lead to investigation and/or corruption prevention or education work.
- 7.3 The mission of the **NSW Ombudsman** is to safeguard the public interest by providing for the redress of justified complaints and promoting fairness, integrity and practical reforms in public administration in NSW. The Ombudsman may hold inquiries, may require the production of documents or the provision of statements of information. The Ombudsman must be satisfied on the balance of probabilities the conduct does/does not conform with the standard reasonably expected of a public authority or public official.
- 7.4 The **Auditor-General** is part of the accountability mechanism through which the Parliament holds the government accountable for fulfilling its responsibilities. The Audit Office's mission is to improve public sector performance by providing the best auditing and related service advice. Under the *Public Finance and Audit Act 1983*, the Auditor-General may conduct an audit of all or any of the particular activities of an authority to determine whether the authority is carrying out these activities effectively, economically and in compliance with all relevant

laws.

7.5 Staff may also make a disclosure to a journalist or member of parliament, but the disclosure will only be protected if substantially the same disclosure was made earlier to a person or authority nominated above, and that person or agency:

- decided not to investigate the matter; or
- decided to investigate the matter but did not complete the investigation within six months of the original disclosure; or
- has investigated the matter but not recommended any action in relation to the matter; or
- has failed to notify the person making the disclosure, within six months of the disclosure, whether or not the matter is to be investigated.

7.6 The staff member must have reasonable grounds for believing that the disclosure is substantially true and the disclosure must in fact be substantially true.

## **8. ROLE AND RESPONSIBILITIES OF NOMINATED DISCLOSURE OFFICERS**

8.1 Nominated Disclosure Officers (i.e. those persons identified in section 6 above) are responsible for receiving, forwarding and acting on disclosures in accordance with this policy.

8.2 Nominated Disclosure Officers must:

- when requested, make arrangements so that disclosures can be made privately and discreetly;
- clearly explain to the person making the disclosure what will happen in relation to the information received;
- put in writing any disclosures received verbally and have the person making the disclosure sign and date the document;
- ensure that the document contains all the available information about the disclosure;
- make a copy of the written disclosure;
- orally advise the Manager Professional Conduct of the disclosure in the first instance and forward the written disclosure by secure/registered post (or hand deliver the written disclosure where possible);
- destroy the copy of the written disclosure once satisfied that the Manager Professional Conduct has received the original disclosure;
- take all necessary and reasonable steps to ensure that the identity of the person making the disclosure, and the person(s) the subject of the disclosure are kept confidential;
- support the person making the disclosure and protect them from victimisation;
- investigate the matters raised if so advised by the Manager Professional Conduct; and
- act impartially at all times.

8.3 Nominated Disclosure Officers who breach confidentiality without due cause, will be subjected to disciplinary action (see section 14).

## 9. ROLE AND RESPONSIBILITIES OF THE MANAGER PROFESSIONAL CONDUCT

9.1 The Manager Professional Conduct must:

- record and monitor all disclosures made;
- assess each disclosure to determine whether the disclosure is a protected disclosure within the meaning of the *Protected Disclosures Act 1994*.
- in consultation with the Director General, determine the appropriate action to be taken in relation to a protected disclosure, for example:
  - nominating and advising the appropriate person to investigate the subject matter of the disclosure; or
  - referring the matter to the proper investigating authority.
- take all necessary and reasonable steps to ensure that the identity of the person making a protected disclosure, and the person(s) the subject of the disclosure are kept confidential;
- report to the Director General all protected disclosures and inform the Director General of the findings of any investigations arising from disclosures;
- co-ordinate all internal investigations and any disciplinary action arising out of a disclosure subject to the direction of the Director General;
- ensure that procedural fairness is afforded to the person the subject of the disclosure, whilst protecting the confidentiality of the person making the disclosure (within the guidelines set out at section 14 below);
- report actual or suspected corrupt conduct to the Director General in a timely manner to enable compliance with the reporting requirements of the *Independent Commission Against Corruption Act 1988*; and
- advise the person making the disclosure of the action which the department intends to take in relation to the information disclosed within six months of receiving the disclosure.

## 10. ROLE AND RESPONSIBILITIES OF THE DIRECTOR GENERAL

10.1 Where a disclosure is made directly to the Director General, the Director General must act in accordance with the role and responsibilities of a Nominated Disclosure Officer.

10.2 The Director General must also:

- receive reports from the Manager Professional Conduct on the findings of any investigation and any recommendations for remedial action and determine what action, including disciplinary action, should be taken.
- take all necessary and reasonable steps to ensure that the identity of the person making the disclosure, and the person(s) the subject of the disclosure are kept confidential;
- have primary responsibility for protecting staff who make disclosures, either internal or external, from victimisation, harassment or any other form of reprisal;
- report actual or suspected corrupt conduct in accordance with the reporting requirements of the *Independent Commission Against Corruption Act 1988*;

- where appropriate, advise Cluster and other Directors of the nature and progress of investigations of alleged corrupt conduct, maladministration and serious and substantial waste of public money;
- in conjunction with the other members of the Executive, be responsible for implementing organisational reform identified as necessary following the investigation of a disclosure;
- receive reports of allegations of detrimental action taken wholly or substantially in reprisal for the making of a protected disclosure.

## **11. REPORTING ALLEGATIONS OF DETRIMENTAL ACTION TAKEN WHOLLY OR SUBSTANTIALLY IN REPRISAL FOR THE MAKING OF A PROTECTED DISCLOSURE.**

- 11.1 Where a staff member feels that they have been subjected to detrimental action which has been taken in reprisal for having made a protected disclosure, the staff member may report that fact, in writing, to the Manager Professional Conduct.
- 11.2 The Manager Professional Conduct must impartially assess the allegation and determine the appropriate action, for example;
- referring the matter to the local grievance receiver;
  - referring the matter for further investigation;
  - referring the matter to the Director General for implementation of disciplinary action; or
  - referring the matter to the police for instigation of criminal action.

## **12. PROTECTION UNDER THE *PROTECTED DISCLOSURES ACT 1994***

- 12.1 Section 20 (1) of the *Protected Disclosures Act 1994* states:

**A person who takes detrimental action against another person that is substantially in reprisal for the other person making a protected disclosure is guilty of an offence.**

**Maximum penalty: 50 penalty units or imprisonment for 12 months or both.**

(One penalty unit currently equals \$110)

- 12.2 A person who takes any detrimental action, disciplinary proceedings or disciplinary action against another person that is substantially in reprisal for the person making a protected or internal disclosure is also liable to be charged with a breach of discipline within the meaning of section 66(g) or section 66(h) of the *Public Sector Management Act 1988*.
- 12.3 A person who makes a protected disclosure and who subsequently receives a disciplinary punishment under the *Public Sector Management Act 1988* may appeal to the Government and Related Employees Appeal Tribunal on the ground that the decision appealed against was made substantially in reprisal for a protected disclosure within the meaning of the *Protected Disclosures Act 1994*.
- 12.4 The *Protected Disclosures Act 1994* also provides that a person is not subject to any liability for making a protected disclosure and no action, claim or demand may be taken or made of or

against the person for making the disclosure.

12.5 The person making the disclosure has a defence of absolute privilege in any proceedings for defamation.

12.6 The *Protected Disclosures Act 1994* states that a person who makes a protected disclosure will not be deemed to have committed any offence in any Act which imposes a duty to maintain confidentiality with respect to any information disclosed.

### **13. DISCLOSURES MADE ON FRIVOLOUS OR OTHER GROUNDS**

13.1 A decision may be made to decline to investigate or discontinue an investigation the subject matter of a disclosure if it is determined that the disclosure was made frivolously or vexatiously.

13.2 The *Protected Disclosures Act 1994* creates an offence for the wilful making of a false statement to mislead or attempt to mislead. The offence is currently punishable by imprisonment for 12 months, \$5000, or both.

13.3. Under the *Protected Disclosures Act 1994*, protection is not available for disclosures which are:

- frivolous or vexatious;
- primarily question the merits of government policy;
- made in an attempt to avoid dismissal or disciplinary action.

13.4 The Director General retains the right to decline to investigate disclosures which fall into the above categories. Where, following a full investigation, it is deemed that a false or vexatious disclosure was made, disciplinary or criminal action may follow.

### **14. EXCEPTIONS TO THE CONFIDENTIALITY REQUIREMENT**

14.1 It is recognised that the most effective protection which can be given to a person who makes a disclosure is anonymity. However, there are some circumstances where it may be necessary to reveal the source of a disclosure to the person who is the subject of the disclosure in order to investigate the matter fully or for reasons of natural justice.

14.2 Section 22 of the *Protected Disclosures Act 1994* provides confidentiality guidelines for protected disclosures. The section prohibits investigating authorities or disclosure receivers from disclosing information which might identify or tend to identify a person who made a protected disclosure unless:

- the person consents in writing to the disclosure of that information; or
- it is essential, having regard to the principles of natural justice, that the identifying information be disclosed to a person whom the information provided by the disclosure may concern; or
- the investigating authority, public authority, officer or public official is of the opinion that disclosure of the identifying information is necessary to investigate the matter effectively, or
- it is otherwise in the public interest to do so.

- 14.3 An example of where it may be eventually necessary to reveal the identity of the person making the disclosure is if the person was an eyewitness to the corrupt activity and there was no other way of investigating or proving the allegation. For instance, where a staff member observes a senior officer taking a bribe and there were no other witnesses to the event (other than the senior officer and the person making the bribe, both of whom have denied the allegation.) However, where other proof can be obtained (i.e. camera surveillance, audit reports, admissions), confidentiality can be maintained.
- 14.4 As a general rule, an absolute guarantee of confidentiality should not be given to the person making the disclosure, however they should be advised that all reasonable steps will be taken.
- 14.5 Under this policy, unauthorised breaches of confidentiality by a person handling a protected disclosure are viewed seriously and may lead to disciplinary action under Part 5 of the *Public Sector Management Act 1988*. The punishments which may be imposed under section 75 of the Act include:
- a caution
  - a reprimand
  - a fine
  - reduction of salary or demotion
  - a direction to resign
  - dismissal.