

Protected Disclosures (Whistleblower) Policy

Overview

This document is to detail how the Protected Disclosures Act 2000 will be implemented by QLDC

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Introduction

Purpose

1. Provide employees of QLDC with the names of persons to whom they can disclose a serious wrongdoing and a process under which disclosure can be made.
2. Advise employees disclosing serious wrongdoing of the protections available to them (e.g. identity kept confidential, protection from civil and criminal liability).
3. Ensure that all serious wrongdoings are investigated appropriately and that specific action is taken to remedy any wrongdoing.
4. Comply with the Protected Disclosures Act 2000, which requires public sector organisations to have an internal procedure in which employees can disclose serious wrongdoing.
5. Ensure that employees are aware of alternative persons/organisations that they can disclose serious wrongdoing to when the internal procedure is not appropriate.

Scope

This document applies to:

- All employees and former employees of QLDC
- Any person seconded to QLDC
- Any person engaged or contracted under a contract for services to do work with QLDC
- Any person who is engaged as a volunteer by QLDC;

For the purposes of this document the terms 'employee' and 'employees' include all of the above.

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Associated documents

Other documents that are relevant to the contents of this document are:

Type	Title
QLDC Corporate	<ul style="list-style-type: none"> • Discipline and Dismissal • QLDC Code of Conduct • Professional and Statutory Liability Policy • Fraud Policy
Legislation	<ul style="list-style-type: none"> • Employments Relations Act 2000 • Local Government Act 2002 • Local Government Official Information and Meetings Act 1987 • Ombudsmen Act 1973 • Protected Disclosures Act 2000 • Privacy Act 1993 <p><i>Note: Any legislation referred to should be interpreted as meaning the Act and its amendments.</i></p>
Other	<ul style="list-style-type: none"> • Employment Agreements

Purpose of the Act

The purpose of the Protected Disclosures Act 2000 ('the Act'), commonly known as the 'Whistleblower Act', is to promote the public interest:

- a. by facilitating the disclosure and investigation of matters of serious wrongdoing in or by an organisation; and
- b. by protecting employees who, in accordance with the Act, make disclosures of information about serious wrongdoing in or by an organisation.

Protected disclosure definition

A disclosure will be a 'protected disclosure' if:

1. the information is about serious wrongdoing in or by that organisation;
2. the employee believes on reasonable grounds that the information is true or likely to be true;
3. the employee wishes to disclose the information so that the serious wrongdoing can be investigated; and
4. the employee wishes the disclosure to be protected.

A protected disclosure can only relate to 'serious wrongdoing' as defined below.

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Serious Wrongdoing: definition

'Serious wrongdoing' is defined in the Act to include:

- an unlawful, corrupt, or irregular use of public funds or public resources;
- an act, omission, or course of conduct that constitutes a serious risk to public health or public safety or the environment;
- an act, omission, or course of conduct that constitutes a serious risk to the maintenance of law, including the prevention, investigation, and detection of offences and the right to a fair trial;
- an act, omission, or course of conduct that constitutes an offence; or
- an act, omission, or course of conduct by a public official that is oppressive, improperly discriminatory, or grossly negligent, or that constitutes gross mismanagement.

Examples

Examples of serious wrongdoing are:

- a situation where persons responsible to, or who work in relation to, public finance, are corrupt in relation to their use of the finance, or who use the finance in any unlawful way.
- any violent or abusive actions towards other persons that would constitute an offence.

A serious wrongdoing is not:

- something that is not unlawful or offensive but which you may not approve of.

Not sure?

If you are not sure whether a matter is a serious wrongdoing, you may make a disclosure under this Policy.

- The person responsible for your disclosure can determine whether or not the matter is a serious wrongdoing.

Disclosures that are not protected

A disclosure is not protected if the information disclosed is subject to legal professional privilege. This includes information prepared by or for lawyers for the purpose of giving or receiving legal advice. It also includes documents prepared to enable lawyers to conduct or advise on litigation.

A disclosure is not a protected disclosure if an employee makes an allegation they know to be false or they otherwise act in bad faith.

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Making Disclosure

Before making disclosure

Usual reporting lines first

In general, QLDC employees should use their normal management reporting lines to report serious wrongdoings. In most instances an employee will be able to achieve a satisfactory outcome by reporting the serious wrongdoing to their own manager, the General Manager of their service, or some other senior staff member.

However, there may be occasions when an employee either:

- reports a serious wrongdoing through their normal management reporting lines and they believe on reasonable grounds that the outcome leaves the serious wrongdoing uncorrected or creates a further serious wrongdoing; or
- believes on reasonable grounds that if they report the serious wrongdoing through their normal management reporting lines there may be retaliatory action against them; or
- believes on reasonable grounds that their manager is involved in the serious wrongdoing or is closely associated with people involved in the serious wrongdoing.

If any of the above circumstances apply the employee can make use of the internal procedure for disclosure in accordance with the Act (see below).

Internal procedure for making a disclosure

If a QLDC employee believes they have grounds for making a protected disclosure of serious wrongdoing, as defined above, they should make that disclosure, in confidence, to:

IN CONFIDENCE

**The General Manager, Legal & Regulatory
QLDC
Private Bag
Queenstown
(phone 03 450 1758)**

Disclosure by letter

If the employee reports the serious wrongdoing by letter, they should include details of how they can be contacted. Unless the employee requests otherwise, they will be contacted discreetly within five working days to discuss how the matter should be handled.

Escalation

Where an employee believes on reasonable grounds either that the above person is or may be involved in the serious wrong-doing, or is closely associated with the people involved in the serious wrongdoing, the employee may make the disclosure to **QLDC's Chief Executive Officer**.

If the employee believes on reasonable grounds that the Chief Executive is or may be involved in the serious wrongdoing they may report the matter to an 'appropriate authority' (see below).

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Disclosure to an outside authority (External Disclosure)

An employee may be protected by the Act when making disclosure to an 'appropriate authority' (see below) outside QLDC where the employee believes on reasonable grounds:

- that QLDC's Chief Executive is or may be involved in the serious wrongdoing;
- that immediate reference to an 'appropriate authority' (as defined below) is justified by the urgency of the matter or some other exceptional circumstances; or
- there has been no action or recommended action on the matter to which the disclosure relates within 20 working days of the employee having made the disclosure in accordance with QLDC's internal procedure.

Appropriate Authority

The employee may choose the authority or authorities most relevant to the nature of the serious wrongdoing he or she is disclosing. The Act says 'appropriate authority', without limiting the meaning of that term, includes:

- The Commissioner of Police.
- The Controller and Auditor-General
- The Director of the Serious Fraud Office
- The Inspector-General of Intelligence & Security
- An Ombudsman
- The Parliamentary Commissioner for the Environment.
- The Police Complaints Authority
- The Solicitor-General
- The State Services Commissioner
- the head of every public sector organisation (as defined under the State Sector Act 1988)
- a private sector body which comprises members of a particular profession or calling and which has powers to discipline its members.

The Act specifically states that 'appropriate authority' does not include a Minister of the Crown or a member of Parliament. Similarly in a local government context elected members or the Mayor should not be considered an 'appropriate authority.'

Disclosure to Minister of the Crown Ombudsman

If an employee has made a disclosure in accordance with the above provisions and they believe on reasonable grounds that the person or appropriate authority to whom the disclosure was made:

- i. has decided not to investigate the matter;
- ii. has decided to investigate the matter but has not made progress with the investigation within a reasonable time after the date on which the disclosure was made to the person or appropriate authority; or
- iii. has investigated the matter but has not taken any action in respect of the matter nor recommended the taking of action in respect of the matter, as the case may require;

and the employee continues to believe on reasonable grounds that the information disclosed is true or likely to be true, the employee can make a disclosure to a Minister of the Crown or an Ombudsman.

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QLDC as an appropriate authority

In some circumstances, QLDC may be an appropriate authority, as defined in the Act, which is able to receive protected disclosures relating to serious wrongdoing in respect of other organisations. Any disclosure of this nature that is received will be dealt with in accordance with the relevant statutory requirements.

Protection

Disclosures that are not protected

An employee is not authorised to disclose information protected by legal professional privilege.

This includes information prepared by or for lawyers for the purpose of giving or receiving legal advice. It also includes documents prepared to enable lawyers to conduct or advise on litigation.

A disclosure is not a protected disclosure if an employee makes an allegation they know to be false or they otherwise act in bad faith.

Protection provided

If an employee makes a protected disclosure of information in accordance with the above procedure, or refers a protected disclosure of information to an appropriate authority for investigation, they will have the following protection:

1. In the unlikely event of retaliatory action by QLDC against the employee for making or referring the disclosure, the employee may have grounds for a personal grievance action against QLDC (this applies only to employees within the meaning of the Employment Relations Act 2000).
2. The employee will be immune from any civil or criminal proceeding or any disciplinary proceeding by reason of having made or referred that disclosure of information.

This protection overrides any enactment, rule of law, contract, oath or practice, including the Privacy Act 1993 and codes made under that Act.

Immunity

The employee may not be immune from civil or criminal or disciplinary proceedings if they were personally involved in the serious wrongdoing they disclose.

However their cooperation in reporting the wrongdoing will be taken into account in decisions on any action that may be taken against them.

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Confidentiality

As a general rule, the identity of an employee who makes a protected disclosure must be kept confidential. The person to whom a protected disclosure is made or referred must use his or her best endeavours not to disclose information that might identify the employee.

Exceptions

There are exceptions to this general rule which are:

- a. where the employee consents in writing to the disclosure of their identity;
- b. the person who has acquired knowledge of the protected disclosure reasonably believes that disclosure of identifying information;
 - i. is essential to the effective investigation of the allegations in the protected disclosure;
 - ii. is essential to prevent serious risk to public health or public safety or the environment; or
 - iii. is essential having regard to the principles of natural justice.

Grounds for refusing identification

This confidentiality provision can be cited by QLDC as a ground for refusing disclosure of information requested pursuant to the Local Government Official Information and Meetings Act 1987, if that disclosure might identify a person who has made a protected disclosure.

Timing

Timeline

The table below shows the estimated time line for investigating and development of an Implementation Plan by the Receiver of the information (usually the General Manager, Legal and Regulatory or the Chief Executive).

Working Day(s)	Action/Activity
1	Employee discloses information to the Receiver.
2	The Receiver will talk to the employee about the details of the serious wrongdoing.
3-14	The Receiver must carry out an investigation in accordance with the procedures set out in the policy.
15	Investigation must be completed and where appropriate the receiver will ensure the employee is aware of the investigation and outcome.
15-18	The Receiver must have completed a plan of action (following completion of the investigation) and the Receiver and persons appointed by him or her must begin implementing the plan.

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20	The Receiver and persons appointed by him or her must have implemented the plan and must ensure that the recommendations made in the plan are effectively being met. Note that if the Receiver has not taken this action within 20 working days of receiving the disclosure, then the employee may make the disclosure to an appropriate authority.
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Deciding Who to Disclose To

Decision chart

The diagram below shows the options when deciding who to contact to receive your disclosure.

You can disclose serious wrongdoing to the **General Manager, Legal and Regulatory**. He or she must complete the investigation and implement the plan within 20 working days of receiving the complaint.



But, if you think the **General Manager, Legal and Regulatory** is involved in the serious wrongdoing – then tell the CEO.



Or, if you think the CEO is involved in the serious wrongdoing – or if you have disclosed the information to the **General Manager, Legal and Regulatory** and he or she has not completed the investigation and implemented the plan within 20 working days of receiving the complaint – then you can tell an appropriate authority.



Otherwise, you can disclose the information to a **Minister of the Crown or an Ombudsman** if:

- You have made the same disclosure (as set out in the above boxes); and
- You consider that the person has decided not to investigate the matter, or has investigated the matter but has not made progress within reasonable time, or has investigated the matter but has not taken any action or made any recommendations; and
- You still consider the serious wrongdoing to be true.