Public interest disclosure facts

Guidance on assessing the risk of reprisal

This fact sheet provides guidance to entity officers who may undertake risk management processes associated with public interest disclosures (PIDs).

Relevant law and standards

One of the main purposes of the Public Interest Disclosure Act 2010 is to provide people who make PIDs with protection from reprisal.

The Queensland Ombudsman’s Public Interest Disclosure Standard No. 1 (the PID Standard) requires a public sector entity CEO to conduct an assessment of the risk of reprisal to the discloser, and others associated with the matter, when a disclosure is received. The standard also requires protective measures to be proportionate to the risk of reprisal. If the risk is sufficiently high, an entity must prepare a protection plan.

The PID Act also:

- requires public officers be given support and offered protection from reprisals (s.28)
- prevents referral of disclosure to another public entity if there is an ‘unacceptable risk of reprisal’ (s.31).


ISO 31000 states: ‘a risk is the effect of uncertainty on objectives’. In the case of a PID, the objective is to manage the risk of reprisal against the discloser and others associated with the disclosure.

The risk management process includes:

- establishing the context
- assessing risk
  - identification
  - analysis
  - evaluation
- treating the risk
- monitoring and reviewing actions.

Communication and consultation feeds into each step of the process.

Identify, assess and evaluate the risk of reprisal

To identify and assess the risk of reprisal, you will need to consider the specific circumstances that apply to the PID.

Every organisation is different and risk management should be considered within the local context. Research and experience indicate some risk factors.\(^1\)

The following table provides general guidance on issues that could be considered in determining the risk of reprisal.

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1 Derived from content in Whistling While They Work: A good-practice guide for managing internal reporting of wrongdoing in public sector organisations and the NSW Ombudsman’s guideline for ‘Managing risk of reprisals and conflict’.
### Assessing the likelihood of reprisal—examples

<table>
<thead>
<tr>
<th></th>
<th>Reprisal may be less likely</th>
<th>Reprisal may be more likely</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>The disclosure</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>How serious is the allegation about wrongdoing?</td>
<td>Matter is in the lower range. If proven, it’s likely the matter could be dealt with through management action.</td>
<td>It’s serious. If proven, dismissal is highly likely or there is a high probability that it could lead to a criminal charge.</td>
</tr>
<tr>
<td>For example, does the allegation involve large sums of money or significant disadvantage to a person or group?</td>
<td>The disclosure relates to an isolated event or actions that occurred some time ago.</td>
<td>Disclosure relates to a current or ongoing practice. It occurs frequently.</td>
</tr>
<tr>
<td><strong>Timing? When did the event or behaviour take place?</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The disclosure relates to an isolated event or actions that occurred some time ago.</td>
<td>Disclosure relates to a current or ongoing practice. It occurs frequently.</td>
<td></td>
</tr>
<tr>
<td><strong>The discloser</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>What relationship or history is there between the discloser and the subject officer?</td>
<td>Little connection between the discloser and subject officer. No particular relationship or history.</td>
<td>A history of tension between the officers (for example, previous complaints or allegations of reprisal).</td>
</tr>
<tr>
<td>On a daily basis, how closely connected are the discloser and subject officer(s)?</td>
<td>Relatively low level connection—for example, work in different work units, little work interaction.</td>
<td>The subject officer is the discloser’s direct supervisor or makes decisions about the officer’s work.</td>
</tr>
<tr>
<td>Can there be adequate monitoring and response in the workplace environment for reprisal activity?</td>
<td>Yes. Discloser works in close proximity to other managers and work units; activities can be readily observed.</td>
<td>No. Discloser is isolated from observation.</td>
</tr>
<tr>
<td>How likely is it that the discloser’s identity will become known during the investigative process?</td>
<td>Unlikely.</td>
<td>Likely.</td>
</tr>
<tr>
<td>What is the discloser’s employment status?</td>
<td>Secure employment.</td>
<td>Less secure such as casual/temporary or seeking change to employment status (for example, seeking leave for family reasons, seeking to reduce hours to transition to retirement).</td>
</tr>
<tr>
<td>Has the discloser raised concerns about the risk of reprisal during the process of making a disclosure?</td>
<td>Not concerned.</td>
<td>A specific threat has been made; or discloser has expressed concern and has provided reasons for that concern.</td>
</tr>
<tr>
<td>Have others raised concerns about the risk of reprisal?</td>
<td>No.</td>
<td>The discloser’s manager or the subject officer’s manager has expressed concern about the potential for reprisal.</td>
</tr>
<tr>
<td>What support is available to the discloser?</td>
<td>Discloser has strong support network in workplace.</td>
<td>Little or no support available in workplace.</td>
</tr>
</tbody>
</table>
### Subject officer

<table>
<thead>
<tr>
<th>Question</th>
<th>One subject officer.</th>
<th>A number of officers involved in the allegations.</th>
</tr>
</thead>
<tbody>
<tr>
<td>How many subject officers?</td>
<td>Little influence or decision-making power.</td>
<td>Influential or with significant decision-making powers.</td>
</tr>
</tbody>
</table>

### Organisational environment

<table>
<thead>
<tr>
<th>Question</th>
<th>Relatively minor and contained.</th>
<th>Would be severe with widespread impact.</th>
</tr>
</thead>
<tbody>
<tr>
<td>What kind of impact would there be on the organisation if allegation is proven?</td>
<td>Strong ethical culture that encourages officers to speak-up about wrongdoing.</td>
<td>A history of inappropriate behaviours and harassment.</td>
</tr>
<tr>
<td>What is known about the culture of the workplace generally and the work area connected to the disclosure?</td>
<td>Concerns raised by discloser or other person involved in the process.</td>
<td></td>
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</tbody>
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### Is there anything known that would suggest someone other than the subject officer may take reprisal action?

| Nothing known.                                                                 |                                                                                     |

### How is the investigation undertaken?

| Internally conducted.                                                                 | Investigation is conducted outside the organisation.                                  |

### Risk management resources

- Risk Management Toolkit for NSW Public Sector Agencies (2012), NSW Treasury

Your organisation’s risk management policy and procedures will also be useful resources when considering how to assess and manage PID reprisal risk.

Your organisation’s risk management unit or officer may be able to provide you with further information and support.

### Risk assessment process

#### Identify the risks

Given what is known about the disclosure, the discloser and the subject officer, consider the potential risks.

A reprisal causes detriment to another person. The PID Act, defines detriment to include:

- personal injury or prejudice to safety
- property damage or loss
- intimidation or harassment
- adverse discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business
- financial loss
- damage to reputation, including, for example, personal, professional or business reputation.
Analyse the risks

Given the identified risks, what are the consequences and likelihood of reprisal? What factors may make reprisal more likely or less likely?

For example, a junior officer makes a corrupt conduct allegation about their immediate supervisor, who is a senior figure in the organisation, and it seems likely confidentiality will not be maintained in the investigative process. The research indicates this kind of situation presents a higher risk.

Consider the consequences of reprisal. What impact could it have on the discloser, the work unit and the organisation? How serious would these outcomes be? For example, would it be a relatively minor impact that could be relatively easily rectified or corrected? Or is it more likely to have significant resource and reputational impacts?

What controls do you already have in place to manage this risk?

Evaluate the risks

Weigh up the risks and make a determination about what action is needed.

Risk treatment and monitoring

After assessment, the next step is to move on to treating the risks to provide appropriate protection that is proportionate to the risk of reprisal. A risk treatment plan can be used to record the risk, the action to be taken (including timing and frequency, if relevant), who is responsible for action and the arrangements for reporting and monitoring.

The implementation of risk treatment needs to be monitored to ensure the planned action has been implemented and is having the expected effect. Risk treatments should be reviewed at critical stages in the investigation.

Other issues to watch

- Have you appropriately documented the risk assessment process?
- Have you considered risks to others, such as someone who helps with the investigation or could be mistakenly assumed to be discloser?
- Can you demonstrate your reasoning that the action taken was proportionate to the risk?
- Can you use the findings of risk assessments to inform and improve your agency’s PID management practice?