



Policy Name:	Internal Reporting		
Status:	<i>Active</i>		
Policy Number:	5	Version Number:	5
File reference:	ADM/4968		
Compliance Level:	Mandatory		
Applies to:	<i>All staff</i>		
Category:	Governance		
Summary	<p>Outlines our commitment to effectively handling disclosures by staff. The policy also outlines the process that is to be followed when disclosures are made as well as what support is available to staff.</p> <p>The policy nominates the Manager of our public interest disclosures unit – Chris O’Mallon - as our PID co-ordinator.</p>		
Related Policies:	Code of Conduct; Grievance Management and Resolution; Good Working Relationships; Conflict of Interests; Corporate Governance; Gifts and Benefits.		
Publication Date:	20 September 2011		
Review Date:	20 September 2013		
Policy Owner:	Director Corporate		
Distribution Method:	<p>Staff are advised of all policies by email when they are approved by the Ombudsman.</p> <p>Because of the nature of this policy, all staff will be required to acknowledge that they have read the policy.</p> <p>New staff will be required to acknowledge that they have read the policy as part of their induction into the office.</p>		
Superseded Policy Reference:	Internal Reporting Policy, dated 9 March 2010		
Public availability:	The policy will be made available on the Ombudsman’s website		
Feedback	Any comments or suggestions can be made to the Director Corporate or Project Officer (Executive)		

PREFACE

We aim to be an effective organisation. We do not tolerate improper or inappropriate conduct by any staff member. We are committed to the aims and objectives of the *Public Interest Disclosures Act 1994* and recognise the value and importance of contributions of staff to enhance administrative and management practices. We strongly encourage staff to report poor practices, inappropriate conduct and wrongdoing.

Management will support staff making disclosures about such conduct and every effort will be made to protect them from any detrimental action that may be taken in reprisal for their disclosure, including keeping the identity of the staff member confidential wherever possible and appropriate. All reports will be dealt with thoroughly and impartially. If some form of wrongdoing is found, we will take appropriate action to rectify it and will keep staff who make reports informed of their progress and the outcome.

Our aim is to create a climate of trust, where staff are comfortable and confident about reporting. We will ensure that managers and supervisors at all levels understand the benefits of reporting wrongdoing, are familiar with this policy and aware of the needs of those who report wrongdoing.

PURPOSE

The purpose of this policy is to establish an internal reporting system for the making of disclosures about corrupt conduct, maladministration, serious and substantial waste of public money by the office or any of our staff or a failure to properly fulfil functions under the *Government Information (Public Access) Act 2009* (GIPA Act). The reporting system enables such disclosures to be made to certain officers as well as the Ombudsman.

This policy is designed to complement normal communication channels between supervisors and staff. Members of staff are encouraged to continue to raise appropriate matters at any time with their supervisors, but also have the option of making a public interest disclosure in accordance with this policy.

RESPONSIBILITY

The Ombudsman and Senior Officers are responsible for receiving and handling public interest disclosures under this policy.

The disclosures coordinator and disclosures officers are responsible for receiving disclosures from staff and referring them to the Ombudsman or Senior Officers.

LEGISLATIVE FRAMEWORK

Public Interest Disclosures Act 1994

DEFINITIONS

‘Senior Officers’	in this policy refers to all Deputy Ombudsman, the Director Corporate and the Director Strategic Projects Division (SPD) collectively.
‘Disclosures officers’	in this policy refers to all Senior Officers as well as Division Managers and any position that has ‘Director’ in the title.

POLICY STATEMENT

1. What should be reported?

You should report any wrongdoing you see within the Ombudsman's office. Reports about the four categories of serious wrongdoing – corrupt conduct, maladministration, serious and substantial waste of public money, and government information contravention should be made in accordance with the PID Act and this policy.

a. Corrupt conduct

Corrupt conduct is the dishonest or partial exercise of official functions by a public official.

For example, this could include:

- the improper use of knowledge, power or position for personal gain or the advantage of others
- acting dishonestly or unfairly, or breaching public trust
- a member of the public influencing or trying to influence a public official to use their position in a way that is dishonest, biased or breaches public trust.

For more information about corrupt conduct, see the Ombudsman's guideline on [what should be reported](#), which can be found on our website.

b. Maladministration

Maladministration is conduct that involves action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory or based wholly or partly on improper motives.

For example, this could include:

- failing to provide the subject of the investigation procedural fairness
- investigating a public authority to pursue a personal vendetta against them.

For more information about maladministration, see the Ombudsman's guideline on [what should be reported](#), which can be found on our website.

c. Serious and substantial waste of public money

Serious and substantial waste is the uneconomical, inefficient or ineffective use of resources that could result in the loss or wastage of public resources.

For example, this could include:

- not following a competitive tendering process for a large scale contract
- having bad or no processes in place for a system involving large amounts of public funds.

For more information about serious and substantial waste, see the Ombudsman's guideline on [what should be reported](#), which can be found on our website.

d. Government information contravention

A government information contravention is a failure to properly fulfil functions under the *Government Information (Public Access) Act 2009* (GIPA Act).

For example, this could include:

- destroying, concealing or altering records to prevent them from being released
- knowingly making decisions that are contrary to the legislation

- directing another person to make a decision that is contrary to the legislation.

For more information about government information contravention, see the Ombudsman's guideline on [what should be reported](#), which can be found on our website.

e. Other wrongdoing

Although reports about the previous four categories of conduct can attract the specific protections of the PID Act, you should report all activities or incidents that you believe are wrong.

For example, these could include:

- harassment or unlawful discrimination
- reprisal action against a person who has reported wrongdoing
- practices that endanger the health or safety of staff or the public.

These types of issues should be reported to a supervisor, in line with the Ombudsman's policies.

Even if these reports are not dealt with as public interest disclosures, the Ombudsman will consider each matter and make every attempt to protect the staff member making the report from any form of reprisal.

2. When will a report be protected?

The Ombudsman will support any staff who make a bona fide report alleging wrongdoing. For a report to be considered a public interest disclosure, it has to meet all of the requirements under the PID Act. These requirements are:

- The person making the disclosure must honestly believe on reasonable grounds that the information shows or tends to show wrongdoing.
- The report has to be made to one or more of the following:
 - the Ombudsman
 - the disclosures coordinator
 - a disclosures officer
 - one of the investigating authorities nominated in the PID Act

Reports by staff will not be considered to be public interest disclosures if they:

- mostly question the merits of government policy
- are made with the sole or substantial motive of avoiding dismissal or other disciplinary action.

3. How to make a report

You can report wrongdoing in writing or verbally. You are encouraged to make a report in writing as this can help to avoid any confusion or misinterpretation.

If a report is made verbally, the person receiving the report must make a comprehensive record of the disclosure and ask the person making the disclosure to sign this record. The staff member should keep a copy of this record.

If you are concerned about being seen making a report, ask to meet in a discreet location away from the workplace.

4. Can a report be anonymous?

There will be some situations where you may not want to identify yourself when you make a report. Although these reports will still be dealt with by our office, it is best if you identify yourself. This allows us to provide you with any necessary protection and support, as well as feedback about the outcome of any investigation into the allegations.

It is important to realise that an anonymous disclosure may not prevent you from being identified. If we do not know who made the report, it is very difficult for us to prevent any reprisal action.

5. *Maintaining confidentiality*

The Ombudsman realises many staff will want their report to remain confidential. This can help to prevent any action being taken against you for reporting wrongdoing.

We are committed to keeping your identity, and the fact you have reported wrongdoing, confidential. However there may be situations where this may not be possible or appropriate. We will discuss with you whether it is possible to keep your report confidential.

If confidentiality cannot be maintained, we will develop a plan to support and protect you from risks of reprisal. You will be involved in developing this plan.

If you report wrongdoing, you should only discuss your report with those dealing with it. This will include a Senior Officer, the disclosures coordinator, a disclosures officer, or the Ombudsman.

6. *Who can receive a report*

You are encouraged to report general wrongdoing to your supervisor. However the PID Act requires that – for a report to be a public interest disclosure – it must be made to a public official in accordance with the organisation's disclosure procedures. This means this policy and any supporting procedures.

Any supervisor who receives a report that they believe may be a public interest disclosure must refer the staff member making the report to one of the positions listed below. The broader responsibilities of these positions will be outlined in the procedures supporting this policy.

The following positions are the only staff within the office of the Ombudsman who can receive a public interest disclosure.

a. *The Ombudsman*

You can report wrongdoing directly to the Ombudsman. The Ombudsman is responsible for:

- deciding if a report is a public interest disclosure
- determining what needs to be done next, including referring it to other authorities
- deciding what needs to be done to correct the problem that has been identified.

Our office has implemented systems to support and protect any staff who report wrongdoing.

The Ombudsman will also refer actual or suspected corrupt conduct to the Independent Commission Against Corruption.

The Ombudsman can be contacted in person, by telephone or by e-mail.

b. *Disclosures coordinator*

You can report wrongdoing directly to the disclosures coordinator, who has a central role in dealing with reports made by staff. They receive them, assess them, and refer them to the people within our office who can deal with them appropriately.

The disclosures coordinator for our office is the Manager Public Interest Disclosures Unit – Chris O'Mallon.

c. *Disclosures officers*

You can report wrongdoing directly to one of the disclosures officers.

Disclosures officers are responsible for receiving reports and then referring them to the relevant people within our office. A disclosures officer can also deal with a report directly if appropriate.

7. Who can receive a report outside the office of the Ombudsman

Staff are encouraged to report wrongdoing within the office, but internal reporting is not your only option. If you follow the guidance below, your report can still be a public interest disclosure.

You can choose to make your report to another investigating authority. You can do this first, or at any stage after your initial internal report.

If your report is about the Ombudsman, you should make it to the Independent Commission Against Corruption, Auditor-General or the Information Commissioner, depending on the subject matter of the disclosure.

You can also choose to make a report to a Member of Parliament or a journalist, but only in the limited circumstances referred to in (b) below.

a. Investigating authorities

The PID Act lists a number of investigating authorities in NSW that staff can report wrongdoing to and the categories of wrongdoing each authority can deal with.

For Ombudsman staff, the relevant authorities are:

- the Auditor-General — for serious and substantial waste
- the Independent Commission Against Corruption (ICAC) — for corrupt conduct
- the Information Commissioner — for disclosures about a government information contravention.

You should contact the relevant authority for advice about how to make a disclosure to them. Contact details for each investigating authority are provided at the end of this policy.

You should be aware that it is very likely the investigating authority will discuss the case with the Ombudsman. We will make every effort to assist and cooperate with the investigating authority to ensure the matter is dealt with appropriately and there is a satisfactory outcome. We will also provide appropriate support and assistance to staff who report wrongdoing to an investigating authority.

b. Members of Parliament or journalists

To have the protections of the PID Act, staff reporting wrongdoing to a Member of Parliament (MP) or a journalist must have already made substantially the same report to one of the following:

- the Ombudsman
- the disclosures coordinator
- a disclosures officer
- an investigating authority in accordance with the PID Act.

Also, the office must have either:

- decided not to investigate the matter
- decided to investigate the matter, but not completed the investigation within six months of the original report
- investigated the matter but not recommended any action as a result
- not told the person who made the report, within six months of the report being made, whether the matter will be investigated.

Most importantly – to be protected under the PID Act – if you report wrongdoing to an MP or a journalist you will need to be able to prove that you have reasonable grounds for believing that the disclosure is substantially true and that the report is in fact substantially true.

If you report wrongdoing to a person or an organisation that is not listed above, you will not be protected under the PID Act. This may mean you will be in breach of legal obligations or the Ombudsman's code of conduct – by, for example, disclosing confidential information.

8. *Feedback to staff who report wrongdoing*

Staff who report wrongdoing will be told what is happening in response to their report.

When you make a report, you will be given:

- an acknowledgement that your disclosure has been received
- the timeframe for when you will receive further updates
- the name and contact details of the people who can tell you what is happening.

While the PID Act requires agency policies to provide for an acknowledgement and a copy of this policy to be provided to a person reporting wrongdoing within 45 days of the report being made, we have decided that the timeframe to acknowledge the report will be much sooner. It is our policy that this information will be given to you within two working days from the date you make your report.

After a decision is made about how your report will be dealt with, you will be given:

- information about the action that will be taken in response to your report
- likely timeframes for any investigation
- information about the resources available within the office to handle any concerns you may have
- information about external agencies and services you can access for support.

This information will be given to you within ten working days from the date you make your report.

During any investigation, you will be given:

- information on the ongoing nature of the investigation
- information about the progress of the investigation and reasons for any delay
- advance warning if your identity is to be disclosed.

At the end of any investigation, you will be given:

- enough information to show that adequate and appropriate action was taken and/or is proposed to be taken in response to your disclosure and any systemic issue brought to light
- advice about whether you will be involved as a witness in any further matters, such as disciplinary or criminal proceedings.

9. *Protection against reprisals*

The PID Act provides protection for people reporting wrongdoing by imposing penalties on anyone who takes detrimental action substantially in reprisal for them making the public interest disclosure.

The Ombudsman will not tolerate any reprisal action against staff who report wrongdoing. The criminal penalties that can be imposed include imprisonment or fines. Detrimental action is also misconduct that justifies disciplinary action. Any person, including those acting independently or on behalf of a person who is the subject of a disclosure who takes detrimental action against someone who has made a disclosure can also be required to pay damages for any loss suffered by that person.

Detrimental action means action causing, comprising or involving 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
- disciplinary proceedings.

a. Responding to reprisals

The Ombudsman will act to protect staff who report wrongdoing from reprisals.

When a report is received, we will ensure that a thorough risk assessment is conducted. This will identify any risks to the member of staff who reported the wrongdoing, as well as strategies to deal with those risks.

If you believe that detrimental action has been or is being taken against you or someone else who has reported wrongdoing in reprisal for making a report, you should tell your supervisor, a disclosures officer, the disclosures coordinator, or the Ombudsman immediately.

All supervisors must report any suspicions they have that reprisal action against a staff member is occurring, or any reports that are made to them, to a disclosures officer, the disclosure coordinator or the Ombudsman.

If a disclosures officer, the disclosures coordinator or the Ombudsman becomes aware of reprisal action against a person who has made a disclosure, they will:

- ensure a senior and experienced member of staff, who has not been involved in dealing with the initial disclosure, will investigate the suspected reprisal
- give the results of that investigation to the Ombudsman for a decision
- if it has been established that reprisal action is occurring against someone who has made a disclosure, take all steps possible to stop that activity and protect the member of staff who made the disclosure
- take appropriate disciplinary or criminal action against anyone proven to have taken or threatened any action in reprisal for making a disclosure.

If you report reprisal action, you will be kept informed of the progress of any investigation and the outcome.

The Ombudsman may issue specific directions to help protect against reprisals, including:

- issuing warnings to those alleged to have taken reprisal action against the member of staff who made the disclosure
- relocating the member of staff who made the disclosure or the subject officer within the current workplace
- transferring the member of staff who made the disclosure or the staff member who is the subject of the allegation to another position for which they are qualified
- granting the member of staff who made the disclosure or the subject officer leave of absence during the investigation of the disclosure.

These directions will only be taken if the member of staff who made the disclosure agrees to it. A Deputy Ombudsman or the Ombudsman will make it clear to other staff that this action was taken in consultation with the staff member and with management support – and it is not a punishment.

If you have reported wrongdoing and feel that any reprisal action is not being dealt with effectively, contact the ICAC or the Information Commissioner, depending on the type of conduct you have reported.

b. Protection against legal action

If you make a disclosure in accordance with the PID Act, you will not be subject to any liability and no action, claim or demand can be taken against you for making the disclosure. You will not have breached any confidentiality or secrecy obligations and you will have the defence of absolute privilege in defamation.

10. Support for those reporting wrongdoing

The Ombudsman will make sure that staff who have reported wrongdoing, regardless of whether they have made a public interest disclosure, are provided with access to any professional support they may need as a result of the reporting process – such as stress management, counselling services, legal or career advice.

Division Managers and Directors will support those who report wrongdoing. They are responsible for initiating and coordinating support, particularly to those who are suffering any form of reprisal. This includes offering counselling services in accordance with our Employee Assistance Program, details of which can be found on our intranet.

All supervisors must notify a Senior Officer, the disclosures coordinator or the Ombudsman if they believe a staff member is suffering any detrimental action as a result of disclosing wrongdoing.

11. Sanctions for making false or misleading disclosures

It is important that all staff are aware that it is a criminal offence under the PID Act to wilfully make a false or misleading statement when reporting wrongdoing.

12. Support for the subject of a report

The Ombudsman is committed to ensuring staff who are the subject of a report of wrongdoing are treated fairly and reasonably. If you are the subject of a report, you will be:

- treated fairly and impartially
- told your rights and obligations under our policies and procedures
- kept informed during any investigation
- given the opportunity to respond to any allegation made against you
- told the result of any investigation
- able to make use of counselling services in accordance with our Employee Assistance Program.

13. Review

This policy will be reviewed every two years, in accordance with our policy development and review policy.

14. More information

More information around public interest disclosures is available on our website. Staff can also access advice and guidance from staff in the office's Public Interest Disclosures Unit and our website.

15. Relevant investigating authorities

Below are the contact details for relevant investigating authorities.

a. For disclosures about corrupt conduct and serious maladministration

Independent Commission Against Corruption (ICAC)

Phone: 02 8281 5999

Toll free: 1800 463 909

Tel. typewriter (TTY): 02 8281 5773 Facsimile: 02 9264 5364

Email: icac@icac.nsw.gov.au

Web: www.icac.nsw.gov.au

Address: Level 21, 133 Castlereagh Street, Sydney NSW 2000

b. For disclosures about serious and substantial waste

Auditor-General of the NSW Audit Office

Phone: 02 9275 7100 Facsimile: 02 9275 7200

Email: mail@audit.nsw.gov.au

Web: www.audit.nsw.gov.au

Address: Level 15, 1 Margaret Street, Sydney NSW 2000

c. For disclosures about breaches of the GIPA Act

Office of the Information Commissioner

Toll free: 1800 463 626 Facsimile: 02 8114 3756

Email: oiinfo@oic.nsw.gov.au

Web: www.oic.nsw.gov.au

Address: Level 11, 1 Castlereagh Street, Sydney NSW 2000

OMBUDSMAN APPROVAL



Bruce Barbour

OMBUDSMAN