

1. Objectives

- To outline who can receive the protections provided by the *Public Interest Disclosures Act 1994* (PID Act) when they report wrongdoing.
- To give guidance to staff receiving a report about whether or not the provisions of the PID Act apply.

2. Why is this important?

All public sector staff should be encouraged to report wrongdoing. It is important for staff who report wrongdoing to know if their report will receive the protections of the PID Act. This is especially the case for staff who may have particularly valuable information to disclose but who fear reprisals.

However, regardless of who provides information about wrongdoing, organisations should adopt the principle that no one should be disadvantaged for raising their concerns.

3. Legal and management obligations

PID Act

Any public official may make a protected disclosure under the PID Act. Public officials are defined in section 8 of the Act as an employee or someone in the service of a public authority. People who may make a disclosure include:

- a person employed under the *Public Sector Employment and Management Act 2002*
- a person employed by either or both of the President of the Legislative Council or the Speaker of the Legislative Assembly
- any other individual having public official functions or acting in a public official capacity whose conduct and activities may be investigated by an investigating authority
- an individual in the service of the Crown
- an individual who is engaged by a public authority under a contract to provide services to or on behalf of the public authority – referred to in this guideline as an independent contractor to the public authority.

4. What does this mean for your organisation?

The first stage of deciding whether a report of wrongdoing is a protected disclosure under the PID Act is to determine whether the internal reporter is a person who can make a protected disclosure. It should be relatively easy for those who consider reporting wrongdoing and those who deal with reports to decide if the person reporting fits within one of the following categories provided for in the PID Act.

Table 1. Examples of public officials under the PID Act

Public official under the PID Act	Examples
A person employed under the <u>Public Sector Employment and Management Act</u>	This covers most public sector staff – except for teachers, and staff of NSW Health or the NSW Police Force. It includes staff of state government departments and other public service divisions.
A person employed by either or both of the President of the Legislative Council or the Speaker of the Legislative Assembly	Parliamentary Committee staff, electorate officers. This does not include someone employed by a political party.
Any other individual having public official functions or acting in a public official capacity whose conduct and activities may be investigated by: <ul style="list-style-type: none"> • the Auditor-General • the Ombudsman • the Independent Commission Against Corruption (ICAC) • the ICAC Inspector • the Police Integrity Commission (PIC) • the PIC Inspector • the local government investigating authority • the Information Commissioner 	Teachers, police, public universities staff, public hospital staff, local government councillors, local government staff, staff of state owned corporations or their subsidiaries, correctional officers, foster carers, most members of Boards or Committees. It may include some contractors, volunteers and staff of non-government organisations, if they are performing a public official function, and the organisations they are working for fall within the jurisdiction of an investigating authority. It also includes all individuals working for bodies whose financial activities may be subject to audit under the <u>Public Finance and Audit Act 1983</u> .
An individual in the service of the Crown	This covers most staff who work for NSW government agencies or statutory bodies, except where provided for in legislation. It also includes judicial officers and other statutory position holders.
An individual who is engaged by a public authority under a contract to provide services to or on behalf of the public authority	This may include independent contractors such as security guards, builders, cleaners, trainers, facilitators, editors and tradespeople.

Your organisation should always try to support those people who come forward and report wrongdoing, even if they do not fit within one of the categories of a public official. In particular, a contracted entity should not be disadvantaged because one of their staff has raised concerns about your organisation.

5. Your questions answered

What about members of the public?

The NSW PID Act only covers the groups of public officials listed in Table 1.

However, it is important to remember that any member of the public may raise or report wrongdoing by an organisation. People reporting wrongdoing may be protected if they report to an external investigating authority such as the Ombudsman or the ICAC. If anyone makes a complaint under the *Ombudsman Act 1974* or the *Independent Commission Against Corruption Act 1988*, it is an offence to take any action against them in reprisal for their complaint. [Contact details](#) for a number of investigating authorities are included at the end of this guideline.

What about volunteers?

Although the PID Act does not specifically mention volunteers, it does extend protection to an individual in the service of the Crown, or an individual having public official functions or acting in a public official capacity whose conduct and activities may be investigated by an investigating authority. This includes all individuals working for bodies whose financial activities may be subject to audit under the *Public Finance and Audit Act*. In practice, this definition will cover most volunteers in public sector organisations – such as rural firefighters, State Emergency Services officers, RSPCA inspectors, and committee or board members.

If volunteers are unsure whether they are covered by the PID Act, they should contact either your organisation's disclosures coordinator or the [Public Interest Disclosures Unit](#) at the NSW Ombudsman. Volunteers, like any members of the public, may also receive protections for raising or reporting wrongdoing to an external investigating authority.

What about private contractors?

One of the recent changes to the PID Act was extending coverage to independent contractors who work for a public authority and who report wrongdoing. Generally, independent contractors differ from staff in the following ways:

- they are paid for results achieved in relation to specific tasks
- they are free to decide how the work is performed, delegate work to others, and accept or refuse work
- they are responsible for their own expenses and in a position to make a profit or loss
- they provide all or most of the necessary materials and equipment to complete the work
- they can work for a variety of clients at one time.

Contractors who trade as a company, subcontractors, and staff working for larger private companies are not included under the Act. However, if the individual contractor – regardless of their trading status – is performing public official functions or acting in a public official capacity, they are covered under the Act.

For example if John Smith, who trades as John Smith Consulting Pty Ltd, is working as a project manager within a public authority he is covered under the Act. But if John Smith, who trades as John Smith Consulting Pty Ltd, is painting a public authority's building he is not covered under the Act.

As more government services are being provided by private sector organisations, many of those who do work for and on behalf of the NSW Government will be classed as 'having public official functions or acting in a public official capacity whose conduct and activities may be investigated by an investigating authority' (s.8 of the PID Act).

If contractors are unsure whether they are covered by the PID Act, they should contact either your organisation's disclosures coordinator or the [Public Interest Disclosures Unit](#) at the NSW Ombudsman. Someone working for an organisation contracted to work for a public sector organisation, like any member of the public, may also receive protections for raising or reporting wrongdoing to an external investigating authority.

What about Members of Parliament (MPs)?

Section 4A(1)(b) of the PID Act provides that a Member of Parliament (MP) is a public official under the PID Act, 'but not for the purposes of a disclosure made by the member'. This means that although an MP is not prevented from reporting any of the matters set out in the PID Act, their report will not be a protected disclosure and none of the obligations or protections under the Act will apply.

MPs, like any member of the public, may receive protections for raising or reporting wrongdoing to an external investigating authority.

What about police?

Police officers can make protected disclosures under the PID Act. They can make a disclosure to the Commissioner of Police or to another officer, in accordance with the NSW Police Force's internal reporting procedure.

Even though there are legislated duties imposed on police officers to report wrongdoing, s.9(4) of the PID Act provides that any such disclosure is considered to be made voluntarily for the purposes of that Act. Also, the *Police Act 1990* provides that nothing prevents a police officer who makes a 'protected allegation' from making a protected disclosure about the same wrongdoing. Protection for police officers who report wrongdoing is therefore available under both the *Police Act* and the PID Act.

What if the reporter does not identify themselves?

The PID Act does not specifically refer to anonymous disclosures or impose any obligation on people to identify themselves in a disclosure. If the identity of the anonymous internal reporter becomes known, they should be given the protections provided under the PID Act.

The reporter's identity should not be necessary for the matter to be properly investigated if the reporter has provided sufficient information to establish that they honestly believe on reasonable grounds that the information they have shows or tends to show the alleged wrongdoing.

What if the internal reporter resigns, retires or is fired before or after making the report?

Section 8(3) of the PID Act provides that a report made while a person is a public official receives the protections provided by the Act, even if they subsequently resign, retire or are fired.

However, if a report of wrongdoing is made just after a person resigns, retires or is fired from the public sector, this would not be considered a protected disclosure under the PID Act.

If the person resigns, retires or is fired from your organisation but is then employed by another public sector organisation, they may still be considered a public official and be able to make a protected disclosure under the PID Act.

Are staff limited to making disclosures about their own organisation?

No. The PID Act specifically provides that a public official can make a protected disclosure about a public authority, even if that public official has never been or is no longer employed by the public authority to which the disclosure relates. For example, a procurement officer of NSW Procurement can make a disclosure about a staff member of another government department if the officer has information that shows or tends to show the staff member purchased unnecessary goods and services.

The person can make the disclosure either to their own organisation, to the organisation to which their report relates, or to a relevant investigating authority, in accordance with the organisation's procedures.

Can a voluntary statement given by a witness to an investigator be a disclosure?

It can be, provided the investigator is an authorised recipient of disclosures under the organisation's internal reporting policy.

However, if the person making the statement is seeking protections under the PID Act, the investigator should advise that they make a separate and explicit disclosure under the Act.

6. Additional resources

- [Guideline B2: What should be reported?](#) for information about what types of wrongdoing should be reported
- [Police Act 1990](#)
- [Public Interest Disclosures Act 1994](#)
- [Public Sector Employment and Management Act 2002](#)
- [Ombudsman Act 1974](#)
- [Independent Commission Against Corruption Act 1988](#)
- [Public Finance and Audit Act 1983](#)

Contact details for investigating authorities

To report corrupt conduct:

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

To report maladministration:

NSW Ombudsman
Phone: 02 9286 1000
Toll free (outside Sydney metro): 1800 451 524
Tel. typewriter (TTY): 02 9264 8050
Facsimile: 02 9283 2911
Email: nswombo@ombo.nsw.gov.au
Web: www.ombo.nsw.gov.au
Address: Level 24, 580 George Street,
Sydney NSW 2000

To report 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

To report serious and substantial waste in local government:

Division of Local Government in the Department of Premier and Cabinet
Phone: 02 4428 4100
Tel. typewriter (TTY): 02 4428 4209
Facsimile: 02 4428 4199
Email: dlg@dlg.nsw.gov.au
Web: www.dlg.nsw.gov.au
Address: 5 O'Keefe Avenue, Nowra, NSW 2541

To report police misconduct:

Police Integrity Commission (PIC)
Phone: 02 9321 6700
Toll free: 1800 657 079
Facsimile: 02 9321 6799
Email: contactus@pic.nsw.gov.au
Web: www.pic.nsw.gov.au
Address: Level 3, 111 Elizabeth Street,
Sydney NSW 2000

To report breaches of the GIPA Act:

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

7. Last updated

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Level 24, 580 George Street
Sydney NSW 2000

If you wish to visit us, we prefer you make an appointment. Please call us first to ensure your complaint is within our jurisdiction and our staff are available to see you.



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

Telephone Interpreter Service (TIS): 131 450
We can arrange an interpreter through TIS or you can contact TIS yourself before speaking to us.

General inquiries: 02 9286 1000

Toll free (outside Sydney metro): 1800 451 524

Tel. typewriter (TTY): 02 9264 8050

Facsimile: 02 9283 2911

Email: pid@ombo.nsw.gov.au

Web: www.ombo.nsw.gov.au

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