

Thinking about reporting serious wrongdoing?

If you become aware that something is seriously wrong in the way a public official has acted or is acting, or a NSW public sector authority has acted or is functioning, it is in the public interest and the authority's interest that you tell someone who can do something about it. The *Public Interest Disclosures Act 1994* (PID Act) sets up a scheme for people who work in the NSW public sector to come forward with important information. This fact sheet provides guidance on how to do this.

Before you report wrongdoing

Ask yourself

Is the report covered by the PID Act?

The PID Act is designed to deal with reports about serious wrongdoing, in particular:

- corrupt conduct**
- serious maladministration**
- serious and substantial waste** of public money
- failure to exercise functions properly in accordance with the *Government Information (Public Access) Act 2009* (also known as the **GIPA Act**)
- breach of an obligation imposed by the *Local Government Act 1993* in connection with a **pecuniary interest**.

An authority's internal reporting policy should contain information to explain what these terms mean. You could also look on the NSW Ombudsman's website www.ombo.nsw.gov.au.

A report is **not** covered by the PID Act if:

- it was made primarily to avoid dismissal or disciplinary action
- it contains intentionally false statements or is intended to mislead or attempt to mislead the recipient (these are offences under the PID Act)
- it questions the merits of government policy
- it is a grievance.

To receive the protections of the PID Act, your concerns must be about wrongdoing serious enough that it is clearly in the interests of the citizens of NSW that you report it. Any concerns that relate to the way someone's behaviour is affecting you as an individual employee or general complaints of dissatisfaction should be made using a grievance or other staff complaint process. This includes, for example, actions or decisions by managers or other employees that you believe involve inequitable treatment in the workplace, harassment or bullying that affect you personally (other than where this is part of a course of conduct, particularly of a general practice affecting a number of staff).

Do I have evidence to back up my allegations?

It is important that the information you provide is clear, accurate and factual. If you have documents to support your allegations, you should make them available. This will help the authority to focus on the relevant issues and fix the problems.

Remember

The best protection is confidentiality – discretion is essential

- Seek advice from the NSW Ombudsman or from the person responsible for dealing with public interest disclosures within the authority. Be discreet when you are doing so.
- Be careful in deciding who you report to and how. To be protected under the PID Act your report must be made to specific people or authorities (see 'How to report wrongdoing').
- Keep records of all relevant conversations and all written communications received and sent that are related to your report.
- Don't make known your intention to report in the workplace. For example, threatening to report may backfire. If you provide your information discreetly, the authority will be better able to focus on the issues rather than on you.
- Don't tell anyone you are thinking about reporting.

How to report wrongdoing

Making your report in accordance with the scheme in the PID Act gives you the best chance of helping the authority concerned to remedy the situation.

The scheme encourages all those involved to focus on the issues (not the people) involved.

In the spirit of the PID Act, the authority should take reasonable action to protect you from reprisals.

I want to report something about the authority where I work:

- Your authority is required by law to have an internal reporting policy. The policy will tell you how you should report these matters – for example, whether you can report orally or if you have to put it in writing, and the person you can report these matters to. The policy should also tell you how the report will be handled.
- If you cannot find a copy of the internal reporting policy, or you are reluctant to ask for it, you can report to the principal officer.

I want to report something about another authority:

You can report:

- to the principal officer of that authority or of your authority
- to a person in that authority or yours who is responsible for dealing with public interest disclosures
- to the investigating authorities below.

If you don't want to report something internally, you can report it to:

• If it's about corrupt conduct

Independent Commission Against Corruption
Tel: 02 8281 5999 or 1800 463 909 (toll free)
Fax: 02 9264 5364
GPO Box 500, Sydney NSW 2001
Email: icac@icac.nsw.gov.au
Web: www.icac.nsw.gov.au

• If it's about serious and substantial waste of public money

Auditor-General
Tel: 02 9275 7100
Fax: 02 9275 7200
GPO Box 12, Sydney NSW 2001
Email: mail@audit.nsw.gov.au
Web: www.audit.nsw.gov.au

• If it's about maladministration

NSW Ombudsman
Tel: 02 9286 1000 or 1800 451 524 (toll free)
Fax: 02 9283 2911
Level 24, 580 George Street, Sydney NSW 2000
Email: nswombo@ombo.nsw.gov.au
Web: www.ombo.nsw.gov.au

• If it's about a failure to comply with the GIPA Act

Information Commissioner (NSW)
Tel: 1800 463 626 (free call)
GPO Box 7011, Sydney NSW 2001
Email: ipcinfo@ipc.nsw.gov.au
Web: www.ipc.nsw.gov.au

• If it's about local government

Chief Executive
Office of Local Government
Tel: 02 4428 4100
Fax: 02 4428 4199
Locked Bag 3015, Nowra NSW 2541
Email: dlg@dlg.nsw.gov.au
Web: www.dlg.nsw.gov.au

After you report

Confidentiality

The person to whom you reported should keep information that might identify you confidential unless:

- you give your written consent for them to reveal the information
- you have already identified yourself voluntarily
- fairness to other people requires the information to be revealed
- it is necessary to disclose the information in order to investigate the matter
- it is otherwise in the public interest to reveal the information.

Protection from reprisals

It is a criminal and disciplinary offence for someone to take detrimental action against you substantially in reprisal for you making a public interest disclosure under the PID Act. It is not in the public interest for people to suffer for reporting wrongdoing.

Detrimental action includes taking or threatening action that involves any of the following:

- injury, damage or loss
- intimidation or harassment
- discrimination, disadvantages or adverse treatment in your employment
- dismissal from employment
- disciplinary proceeding.

The authority to which you reported should take reasonable action to protect you against reprisals. The government and investigating authorities expect this.

The authority also has obligations under the common law and work health and safety legislation to make sure that you do not suffer as a result of coming forward.

Legal action

You may sue someone for taking detrimental action against you substantially in reprisal for having made a public interest disclosure under the PID Act. This means you can take civil action and seek compensation for any detriment suffered.

Other protections

You do not incur any liability for making a public interest disclosure under the PID Act.

You have a legal defence to any action taken against you, such as defamation or breach of confidence, for making a public interest disclosure under the PID Act.

However, the PID Act will not protect you if you break the law in other ways, for example, if you access someone's computer without authorisation to obtain evidence to support your allegations.

Thinking about reporting serious wrongdoing?

What if my allegations cannot be investigated without my identity being guessed or revealed?

A person in the authority that you reported to should:

- talk you through the options
- alert you before your identity, or information that may tend to identify you, is revealed as part of the investigation
- take all reasonable steps to protect you against any reprisals in the workplace.

What if someone takes or threatens to take reprisals against me?

Raise your concerns with the person to whom you reported or to the person who is responsible for dealing with public interest disclosures in your authority.

If they do not help you or do not take your concerns seriously, complain to the NSW Ombudsman or the Independent Commission Against Corruption. They may be able to use their investigative powers to help.

Who can I go to for support?

If you have reported wrongdoing internally, your authority should nominate a support person. You could also seek support from your union.

When will I be told what's happened to my public interest disclosure?

The authority to whom you made the public interest disclosure must:

- acknowledge receipt of the public interest disclosure and provide you with a copy of their internal reporting policy within 45 days (but preferably much sooner)
- tell you within six months what action they have taken or propose to take.

If you don't hear from them within six months, contact them and ask them what is happening. If you do not get a response you can complain to the NSW Ombudsman.

What if I'm not happy with the response?

You can complain to the NSW Ombudsman or the Independent Commission Against Corruption about the way your report was handled, particularly if:

- it has been decided that your allegations will not be investigated
- the investigation was not completed within six months
- no recommendations were made for action to be taken despite an investigation
- you were not notified within six months of whether or not the matter was to be investigated.

In these circumstances you can also make a public interest disclosure to a Member of Parliament or a journalist. However, make sure you seek advice before you do this. To obtain protection for reporting to a Member of Parliament or a journalist, you must be able to prove that the information in your disclosure is substantially true.

Where do I go for further information?

- Speak to the person in your authority that is responsible for dealing with PIDs - see your internal reporting policy.
- You can also contact the NSW Ombudsman.

Contact us for more information

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

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.

Level 24, 580 George Street
Sydney NSW 2000

Email pid@ombo.nsw.gov.au

Web www.ombo.nsw.gov.au

General inquiries 02 9286 1000
Facsimile 02 9283 2911

Toll free (outside Sydney metro) 1800 451 524

Tel. typewriter (TTY) 02 9264 8050

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