

What should be reported?

1. Objectives

- To provide guidance about the types of wrongdoing that are included within the scope of the *Public Interest Disclosures Act 1994* (PID Act).
- To provide information about what sort of conduct these types of wrongdoing can include.

2. Why is this important?

The reporting of suspected wrongdoing by staff is vital to the integrity of the public sector. Reporting is in the public interest, and should be encouraged and seen as a normal part of working for a public authority. While some types of reports will attract the protections of the PID Act, authorities should encourage staff to report all wrongdoing that they observe. It should not be seen as something out of the ordinary.

This guideline outlines what types of reports will attract the protections of the PID Act.

3. Legal and management obligations

3.1. PID Act

a) Subject of the report

The PID Act covers public interest disclosures (PIDs) about public officials or public authorities that come under the Act. Public officials include the following people:

- a Public Service employee

- a Member of Parliament (although they cannot make a disclosure)
- 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
- an employee or officer of a corporation engaged by a public authority under a contract to provide services to or on behalf of the public authority who provides or is to provide the contracted services or any part of those services.

The PID may also be about any public authority whose conduct or activities may be investigated by an investigating authority. This includes:

- a Public Service agency
- a local government authority
- a state owned corporation or any subsidiary of a state owned corporation
- the Police Force, Police Integrity Commission (PIC) and PIC Inspector
- the Crime Commission and Crime Commission Inspector
- the Department of Parliamentary Services, the Department of the Legislative Assembly and the Department of the Legislative Council.

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b) Categories of wrongdoing

outlined in that Act. These are:

- corrupt conduct
- maladministration
- serious and substantial waste of public money
- government information contravention
- local government pecuniary interest contravention

c) Belief of the reporter

To be covered by the PID Act, the public official making the report has to honestly believe on reasonable grounds that the information shows or tends to show at least one of these five categories of wrongdoing. See further section 4.2 below.

4. What does this mean for public authorities?

The content of a report by a staff member has to meet three criteria to be considered a PID under the PID Act:

- the reporter has an honest belief based on reasonable grounds that the information they have shows or tends to show the alleged wrongdoing
- the report is about the conduct of a public official or the activities of a public authority
- the report is about corrupt conduct, maladministration, serious and substantial waste of public money, government information contravention or local government pecuniary interest contravention.

The following sections explain each aspect of these three criteria in more detail.

4.1. Potential subject of report

The subject of the report of wrongdoing must be a public authority or public official. Members of Parliament are considered public officials if the report is about them, but they cannot make a PID. *Guideline B1: Who can report wrongdoing?* provides more information about the definition of a public official.

4.2. Honest belief on reasonable grounds that information shows or tends to show

a) Honest belief

An honest belief is a belief that is genuinely held. It is more than suspicion, speculation or rumour.

Section 9A of the PID Act states that if a public official asserts their belief in connection with the disclosure, in the absence of evidence to the contrary, it should be presumed that the belief is honest. This applies even if the assertion is inferred rather than expressed.

b) Reasonable grounds

The test applied here is whether, from an objective viewpoint, the basis for the person's belief is reasonable. That is, would a reasonable person in the circumstances believe that wrongdoing had occurred? The belief cannot be based on personal favouritism, animosity or prejudice.

When assessing the report, the disclosures coordinator can consider what information the reporter knew at the time and whether the person is being rational. For example, consideration may be given to what information is available to the reporter. However, information known only to the disclosures coordinator (and not the reporter) should not be relied on in making such an assessment. For example, the alleged conduct the subject of the report may have already been found to be unsubstantiated, but this was not known to the reporter who at the time had a reasonable belief it had occurred.

c) Shows or tends to show

There must be sufficient information to show or tend to show that the wrongdoing has happened or is happening. This may include:

- direct observation of the wrongdoing by the reporter
- corroborative observation by others
- evidence such as unbalanced accounts, missing items of value or contradictory records.

There should be no alternative innocent explanations that reasonably explain the conduct or activities observed that are likely to be applicable.

Taken together, an 'honest belief on reasonable grounds that information shows or tends to show' means that a PID cannot be based on a mere allegation or suspicion that is unsupported by any facts, circumstances or evidence.

However, it is not necessary for the reporter to provide sufficient information to conclusively establish or prove that the wrongdoing occurred to any investigative standard of proof. The following example could be the content of a PID.

A local council worker is drinking at a pub in a country town. He sees a police sergeant drinking and laughing with the publican. The worker knows the sergeant is the licensing officer for the region. Over the next few months, there are a number of incidents at the pub relating to extremely intoxicated patrons and complaints are made to the police in relation to those. Despite this, no action appears to be being taken against the publican. The worker continues to see the sergeant drinking with the publican, and overhears them talking about playing golf together on the weekend. The worker has an honest belief on reasonable grounds that he has information that tends to show wrongdoing and should report the matter to the council, the police or the Police Integrity Commission.

4.3. Categories of wrongdoing

a) Corrupt conduct

Corrupt conduct is defined in sections 8 and 9 of the *Independent Commission Against Corruption Act 1988*. The definition provided in these sections is intentionally broad.

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

Some examples are:

- the improper use of knowledge, power or position for personal gain or the advantage of others
- acting dishonestly or unfairly, or breaching public trust.

b) Maladministration

Maladministration¹ is defined in s.11 of the PID Act as conduct that involves action or inaction of a serious nature that is either:

- contrary to law (other than a legal technicality)
- unreasonable, unjust, oppressive or improperly discriminatory
- based wholly or partly on improper motives.

c) Serious and substantial waste of public money

A serious and substantial waste of public money is any uneconomical, inefficient or ineffective use of resources, authorised or unauthorised, which results in a loss of public funds or resources.

Serious and substantial waste can be:

- Absolute – where the waste is regarded as significant.

This section is currently being reviewed. We will provide updated advice on assessing PIDs of maladministration as soon as possible. In the interim, please contact the PID team if you have any questions on assessing PIDs of maladministration.

- Systemic – where the waste indicates a pattern that results from a weakness within an organisation's systems.
- Material – where the waste is about the authority's expenditure or a particular item of expenditure, or is to such an extent that it affects an authority's capacity to perform its primary functions.

Some examples are:

- misappropriation or misuse of public property
- the purchase of unnecessary or inadequate goods and services
- overstaffing in particular areas

- staff being remunerated for skills that they do not have, but are required to have under the terms or conditions of their employment
- programs not achieving their objectives and therefore the program's costs being clearly ineffective and inefficient.

Waste can result from such things as:

- insufficient safeguards to prevent the theft or misuse of public property
- purchasing practices that do not ensure goods and services are necessary and adequate for their intended purpose
- poor recruiting practices.

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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).

Some examples are:

- intentionally overlooking documents that are clearly covered by an access application
- destroying, concealing or altering records to prevent them from being released
- knowingly making decisions that are contrary to the GIPA Act
- directing another person to make a decision that is contrary to the GIPA Act.

e) Local government pecuniary interest contravention

A local government pecuniary interest contravention is a failure to fulfil certain functions under the *Local Government Act 1993* relating to the management of pecuniary interests.

This Act places specific obligations on councillors, council delegates, council staff and other people involved in making decisions or giving advice on council matters to act honestly and responsibly in carrying out their functions. Generally, those obligations are to lodge disclosure of interests returns, lodge written declarations and the disclosure of pecuniary interests at council and council committee meetings.

A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. This extends to whether there are chances or possibilities, and probabilities of a financial gain or loss in the matter. The onus is on councillors, council delegates, council staff and other people to determine whether they are affected by the pecuniary interest provisions in relation to a matter under consideration by the council.

Allegations or complaints concerning possible breaches of the pecuniary interest provisions of the *Local Government Act 1993* are to be made to the Office of Local Government (OLG) for assessment and any necessary action. Potentially, the OLG may be required to formally investigate the matter and then refer a report of the investigation to the Pecuniary Interest and Disciplinary Tribunal.

- a senior council staff member recommending a family member for a council contract and not declaring the relationship
- a general manager holding an undisclosed shareholding in a company competing for a council contract.

The above information and further advice in relation to complaints about councils and pecuniary interest matters can be found in the OLG's Pecuniary interest guidelines and on their website.

5. Your questions answered

Why do the protections only apply to reports about these categories of wrongdoing?

The five categories of wrongdoing covered by the PID Act can have a serious impact on the people of NSW as well as the authority where they are taking place. They can impact on public trust in government as well as trust within the authority.

It is important to remember that while reports about these categories of wrongdoing attract the protections of the PID Act, staff should be encouraged to report all wrongdoing. Employees need to understand there are multiple avenues within an authority for reporting different types of concerns and that they may need to be dealt with differently.

The difference with matters under the PID Act is that the public official who made the report is provided with certain statutory protections.

How do staff report other wrongdoing?

Staff make many different types of reports. These can include workplace disputes, harassment or bullying complaints, or health and safety concerns.

If staff suspect something wrong is happening they should report it. Authorities will have policies and guidance about what should be reported and how it should be reported.

Staff should approach a supervisor or senior staff member with their concerns. Disclosures officers and other staff who receive reports of wrongdoing under an internal reporting policy should be trained and know to refer reporters to other appropriate policies if they raise concerns that are not PIDs under the PID Act.

For example, if staff:

- believe there is a risk in the workplace, they should be referred to the work health and safety policy
- believe they are being discriminated against, they should be referred to the equal opportunity policy
- wish to lodge a grievance, they should be referred to the grievance policy.

6. Additional resources

- [Guideline B1: Who can report wrongdoing?](#)
- Public sector agencies fact sheet 13: [Maladministration](#)
- [Pecuniary interest guidelines](#) and website www.olg.nsw.gov.au
- [Government Information \(Public Access\) Act 2009](#)
- [Independent Commission Against Corruption Act 1988](#)
- [Local Government Act 1993](#)
- [Ombudsman Act 1974](#)
- [Public Interest Disclosures Act 1994](#)

6.1. 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 7, 255 Elizabeth 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 wrongdoing in local government:

The Chief Executive Officer
Office of Local Government
Phone: 02 4428 4100
Tel. typewriter (TTY): 02 4428 4209
Facsimile: 02 4428 4199
Email: olg@olg.nsw.gov.au
Web: www.olg.nsw.gov.au
Address: 5 O'Keefe Avenue, Nowra, NSW 2541

To report police misconduct:

Commissioner
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
Information and Privacy Commission
Toll free: 1800 472 679
Facsimile: 02 8114 3756
Email: ipcinfo@ipc.nsw.gov.au
Web: www.ipc.nsw.gov.au
Address: Level 11, 1 Castlereagh Street,
Sydney NSW 2000

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

Toll free (outside Sydney metro) 1800 451 524

National Relay Service 133 677

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

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This guideline is one of a series produced by the NSW Ombudsman. Feedback is welcome.

Endnote:

An authority does not need to consider section 12 of the *Ombudsman Act 1974* in its assessment of whether conduct is maladministration. That section applies to the NSW Ombudsman only.