

Who can report wrongdoing?

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 responsible for assessing 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 make such reports to know if their disclosure 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, authorities should adopt the principle that no one should be disadvantaged for raising their concerns.

3. Legal and management obligations

3.1 PID Act

Any public official may make a public interest disclosure (PID) under the PID Act. Public officials are defined in section 4A of the PID Act as an employee or someone in the service of a public authority. The definition of public official includes:

- a Public Service employee
- 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.

4. What does this mean for public authorities?

4.1 The reporter has to be a public official

The first stage of deciding whether a report of wrongdoing meets the criteria of the PID Act is to determine whether the reporter is a person who can make a PID. Staff assessing such reports should consider if the person reporting fits within one of the categories provided for in the PID Act - see Table 1.

An authority should always try to support people who come forward and report wrongdoing, even if they do not fit within one of the categories of the definition of 'public official'.

4.2 What about other types of reporters?

a) Members of the public

It is important to remember that any member of the public will be protected from being sued for defamation, for example, if they raise or report wrongdoing within a public sector authority to an external investigating authority such as the NSW Ombudsman or the ICAC. Largely the same statutory protections that apply under the PID Act also apply when a person makes a complaint under the *Ombudsman Act 1974* or the *Independent Commission Against Corruption Act 1988*. Contact details for a number of investigating authorities are included at the end of this guideline.

b) Volunteers

The PID Act extends 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 1983*.

In practice, this definition will cover most volunteers in public authorities, including committee or board members. Section 4A(2) of the PID Act, for example, specifically notes that volunteer fire fighters, State Emergency Services officers or members, and RSPCA inspectors are public officials.

Who can report wrongdoing?

Table 1. Examples of public officials under the PID Act

Public official under the PID Act	Examples
A Public Service employee	This covers staff employed under the <i>Government Sector Employment Act 2013</i> in Departments, Related Agencies and Separate Agencies.
A person employed by either or both of the President of the Legislative Council or the Speaker of the Legislative Assembly	This includes Parliamentary Committee staff and electorate officers. This does not include someone employed by a political party.
<p>Any other individual having public official functions or acting in a public official capacity whose conduct and activities may be investigated by:</p> <ul style="list-style-type: none"> • the Auditor-General • the NSW Ombudsman • the Independent Commission Against Corruption (ICAC) • the Inspector of the ICAC • the Police Integrity Commission (PIC) • the Inspector of PIC • the local government investigating authority – the Office of Local Government • the Information Commissioner • the Inspector of the NSW Crime Commission 	<p>This includes teachers, transport officers, 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.</p> <p>It may include some volunteers and staff of non-government organisations, if they are performing a public official function, and the authorities they are working for fall within the jurisdiction of an investigating authority. However, it does not include staff of non-government organisations where their contract – or 'funding' or 'service' agreement – with a public authority specifically states that they are not providing the service on behalf of the authority.</p> <p>It also includes all individuals working for bodies whose financial activities may be subject to audit under the <i>Public Finance and Audit Act 1983</i>.</p>
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 individual contractors such as trainers, editors or tradespeople.
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.	<p>This may include security guards, builders, cleaners.</p> <p>It does not include all staff of the contracted corporation – only those that they are directly involved in providing the contracted services.</p>

If volunteers are unsure whether they are covered by the PID Act, they should contact the disclosure coordinator in their authority 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.

c) 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 PID 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.

d) Police

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

The *Police Act 1990* also provides that nothing prevents a police officer who makes a 'protected allegation' from making a PID about the same wrongdoing. Protection for police officers who report wrongdoing is therefore available under both the *Police Act* and the PID Act.

5. Your questions answered

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 when making a PID. If the identity of an anonymous reporter becomes known, they should be given the protections provided under the PID Act. Additionally, an anonymous disclosure that meets the other criteria set out in the PID Act and contains information that is clearly from a public official should be assessed as a PID and included in the authority's six-monthly and annual PID reports. See *Guideline B6: Anonymous reporting* and *Guideline C2: Reporting to the NSW Ombudsman*.

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

Section 8(3) of the PID Act provides that a PID 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 PID under the PID Act.

If the person resigns, retires or is fired from an authority but is then employed by another public authority, they will be a public official for the purposes of the PID Act and therefore able to make a PID about their former authority, or any of its staff.

Are staff limited to only making a disclosures about the authority where they work?

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

The person can make the PID either to their own authority or to the authority to which their report relates, in accordance with their internal reporting policy, or to a relevant investigating authority.

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

It can be, provided the investigator is an authorised recipient of PIDs under the authority'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 PID under the Act.

Are all staff of contracted corporations public officials for the purposes of the PID Act?

No, they must be directly involved in providing the contracted services to the public authority. See further, examples above.

6. Additional resources

- *Government Information (Public Access) Act 2009*
- *Independent Commission Against Corruption Act 1988*
- *Ombudsman Act 1974*
- *Police Act 1990*
- *Public Finance and Audit Act 1983*
- *Public Interest Disclosures Act 1994*
- *Guideline B6: Anonymous reporting*
- *Guideline C2: Reporting to the NSW Ombudsman*
- *Government Sector Employment Act 2013*

Who can report wrongdoing?

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

Level 7, 255 Elizabeth 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

Level 15, 1 Margaret Street
Sydney NSW 2000

To report police misconduct:

The 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

Level 3, 111 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

Level 24, 580 George Street
Sydney NSW 2000

To report wrongdoing in local government:

The Chief Executive Officer
Office 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: olg@olg.nsw.gov.au
Web: www.olg.nsw.gov.au

5 O'Keefe Avenue
Nowra NSW 2541

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

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
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.