

Roles and responsibilities

1. Objectives

- To identify the key people in a public authority's internal reporting system.
- To outline the roles and responsibilities of those key people.

2. Why is this important?

An ethical organisational culture – one that encourages staff to report wrongdoing, responds to reports appropriately and supports reporters – is a shared responsibility between:

- Leadership – the 'tone at the top' and a belief by staff that their leaders can be trusted to do the right thing and support organisational systems for dealing with reports of wrongdoing.
- Management – managers and supervisors setting the right example for staff and encouraging ethical behaviour.
- Staff – staff committed to doing the right thing and peers supporting those who report wrongdoing.
- Disclosures officers and coordinators – staff trained and skilled in handling reports of wrongdoing who can support the authority in fulfilling its obligations under the *Public Interest Disclosures Act 1994* (PID Act).

3. Legal and management obligations

3.1 PID Act

Section 6E of the PID Act provides that the head of a public authority is responsible for ensuring that:

- the public authority has an internal reporting policy
- the staff of the public authority are aware of the contents of the policy and the protections under the PID Act for people who make public interest disclosures (PIDs)
- the public authority complies with the policy and its obligations under the PID Act
- the policy designates at least one staff member as being responsible for receiving PIDs.

The PID Act also provides the public authority must:

- report annually on the authority's compliance with the PID Act and provide this report to the NSW Ombudsman (s.31)
- report on the authority's compliance with the PID Act every six months to the NSW Ombudsman (s.6CA).

3.2 State government requirements

The Code of Conduct and Ethics for Public Sector Executives provides a framework for ethical decision-making by executives and sets out the values and behaviours expected of all state public employees in NSW. It states that executives have special responsibilities for demonstrating ethical behaviour by virtue of their positions of authority, and high levels of accountability for decision-making and leadership. Implementing the provisions of the PID Act is one element of this commitment.

There are also core values set out in section 7 of the *Government Sector Employment Act 2013*, which apply across the state government sector. They are integrity, trust, service and accountability. Each core value is underpinned by specific principles to guide its implementation.

3.3 Local government requirements

The *Local Government Act 1993* requires councils to adopt a code of conduct that incorporates the provisions of the Model Code of Conduct for Local Councils in NSW. This model code sets the minimum requirements of conduct for council officials in carrying out their functions. It is underpinned by the key principles of integrity, leadership, selflessness, impartiality, accountability, openness, honesty and respect. In addition to stating the purpose and aims of the PID Act, the model code also states that – when dealing with a complaint that is or could be a PID – officers must comply with the confidentiality provisions of the Act.

Also, the Standard Contract of Employment for general managers and senior staff of local councils in NSW requires these officers to facilitate council staff awareness of the procedures for making PIDs and of the protection provided by the PID Act. General managers are also required to maintain satisfactory operation of council's reporting systems (including PIDs).

3.4 Work health and safety and duty of care requirements

Reporting wrongdoing can be a difficult process and, if not properly managed, can result in stressful interactions with colleagues and managers. Stress is a legitimate and serious workplace concern and may result in a staff member sustaining a serious injury.

The *Work Health and Safety Act 2011* states that a person conducting a business or undertaking – which includes public

sector departments, authorities and councils – has a primary duty of care to ensure the health and safety of workers and others. An authority can fulfil this obligation by doing what they reasonably can in the circumstances to manage health and safety risks. All officers who can make decisions that significantly affect the authority must exercise due diligence to ensure compliance. Failure to comply with health and safety duties is a serious offence that attracts significant penalties (ss.31-33).

Authorities also have a duty of care under common law to provide a safe workplace for their staff. This means that managers and supervisors are responsible for taking all reasonable steps to prevent inappropriate behaviour at work – which includes harassment, bullying, discrimination and victimisation. Organisations have been successfully sued for compensation for breaching this duty of care where the staff member has become ill or suffered injury – physically or psychologically – as a result.

4. What does this mean for public authorities?

4.1 Outlining responsibilities

A public authority should identify the staff who are responsible for:

- ensuring the authority meets its statutory obligations under the PID Act
- supporting staff who make or are the subject of a report of wrongdoing.

An internal reporting policy and supporting procedures should contain a description of the roles and responsibilities for all staff involved in receiving, assessing and dealing with PIDs. This will depend on factors such as the size and governance framework of the authority.

An authority may wish to consider including these responsibilities in the performance agreements and position descriptions of staff.

4.2 All staff

All staff have a responsibility to:

- report known or suspected wrongdoing within the authority
- assist those dealing with a report, including supplying information on request and cooperating with any investigation
- treat any staff member or person dealing with a report of wrongdoing with courtesy and respect
- support staff who report wrongdoing
- respect the rights of any person the subject of a report
- keep the identity of a reporter and anyone who is the subject of a report confidential, if known.

Staff must not:

- make false or misleading reports of wrongdoing (s.28)

- take detrimental action against another staff member, who they know or suspect has reported wrongdoing, in reprisal for making the report (s.20).

4.3 Staff reporting wrongdoing

Staff reporting wrongdoing have a responsibility to:

- provide clear, accurate and factual information
- provide all supporting documents or other evidence at the time of making the report or as early as possible
- assist any staff member or person dealing with the report, including supplying information on request and cooperating with any investigation
- raise any concerns they have about potential reprisal or ongoing workplace conflict at the time of making the report
- notify the disclosures coordinator or principal officer immediately if they believe they are being subjected to reprisal as a result of reporting wrongdoing
- treat any staff member or person dealing with a report of wrongdoing with courtesy and respect
- only discuss the matter with authorised people and not alert anyone who is the subject of a report that a report has been made
- be honest in all communications with the authority in relation to their report.

4.4 Disclosures officers

Disclosures officers are frontline points of contact within the internal reporting system who can provide advice about the system and the internal reporting policy, receive reports of wrongdoing and assist staff to make reports. Disclosures officers should be accessible to staff and appropriately trained in their responsibilities.

The number of disclosure officers, and their position within the authority depends on factors such as the size and structure of the authority, the geographic distribution of work locations, and the volume and type of PIDs received. [See *Guideline B4: Reporting pathways*].

Disclosures officers have a responsibility to:

- receive reports of wrongdoing, both verbally and in writing
- deal with all reports of wrongdoing professionally, fairly and impartially
- document in writing any reports received verbally, and have the document signed and dated by the reporter
- make arrangements to ensure reporters can make reports privately and discreetly when requested, if necessary away from the workplace
- discuss with the reporter any concerns they may have about reprisal or workplace conflict
- carry out a preliminary assessment and forward reports to the disclosures coordinator or principal officer for further assessment
- keep the identity of a reporter and anyone who is the subject of a report confidential, where this is practical and appropriate (s. 22).

4.5 The disclosures coordinator

The disclosures coordinator has a central role in the authority's internal reporting system. The disclosures coordinator is responsible for receiving, assessing and managing reports, and is the primary point of contact in the authority for the reporter.

The authority should appoint a disclosures coordinator who has the relevant experience and skills for the position, and the adequate authority to properly deal with reports. The position nominated as coordinator should not conflict with the responsibilities of the individual's substantive role, for example human resources manager or principal legal officer. Be mindful that these types of positions may need to be involved in the PID process in some other capacity than the coordinator.

The disclosures coordinator has a responsibility to:

- receive reports of wrongdoing directly from the reporter (see relevant responsibilities of disclosures officers above)
- deal with all reports of wrongdoing professionally, fairly and impartially
- acknowledge reports and provide progress updates and feedback to reporter
- provide/coordinate support for those involved, including:
 - › ensuring the reporter, subject officer and other staff members involved in the process have access to appropriate support
 - › referring staff members to the authority's employee assistance provider, or if required, appointing a support person to assist the staff member
 - › ensuring that any support person appointed is independent of the investigation and decision-making process
- assess reports to determine whether or not a report should be treated as a PID
- decide how a report will be dealt with, in consultation with the principal officer if necessary, including whether an investigation should be carried out or the report should be referred elsewhere
- keep the identity of a reporter and anyone who is the subject of a report confidential, where this is practical and appropriate (s.22)
- assess and manage the risk of reprisal and workplace conflict related to or likely to arise out of a report of wrongdoing, including:
 - › assessing whether it is possible and appropriate to keep the reporter's identity confidential
 - › assessing the risk of the reporter being exposed to detrimental action in reprisal for having made a report
 - › assessing the risk of workplace conflict related to the report
 - › developing a strategy for managing the risk of reprisal or related workplace conflict if necessary
 - › reviewing the assessment and strategies developed at regular intervals
- coordinate the authority's response to the report, including:
 - › coordinating any fact finding or other investigation arising from a report, subject to the direction of the principal officer

- › ensuring that any investigation is carried out by an appropriately qualified or experienced staff member or contractor
- coordinate the authority's compliance with PID Act, including:
 - › implementing and maintaining an up to date internal reporting policy (s.6D)
 - › reporting on the authority's compliance with the PID Act in its annual report and providing this report to the NSW Ombudsman (s.31)
 - › reporting on the authority's compliance with the PID Act every six months to the NSW Ombudsman (s.6CA)
- ensure that a written acknowledgement and copy of the internal reporting policy is provided to the reporter within 45 days of the authority receiving a PID, as provided for in the internal reporting policy (s.6D, (1A))
- ensure that written advice is provided to the reporter about the action the authority has taken or intends to take in response to the report within six months of the report being received (s.27).

4.6 Principal officers

The authority needs to identify who its principal officer is under the PID Act. For state government, this may be the secretary of a department or the chief executive of a related or separate agency. For local government, this is the general manager.

The principal officer has ultimate responsibility for maintaining the internal reporting system and workplace reporting culture, and ensuring the authority complies with the PID Act.

The principal officer has a responsibility to:

- establish and maintain a working environment that encourages staff to report wrong doing and supports them when they do
- receive reports directly from the reporter (see relevant responsibilities of disclosures officers above)
- ensure that all reports of wrongdoing are dealt with professionally, fairly and impartially
- assess any reports they receive to determine whether or not the report should be treated as a PID and how it will be dealt with (see relevant responsibilities of disclosures coordinator above)
- keep the identity of a reporter and anyone who is the subject of a report confidential, where this is practical and appropriate (s.22)
- ensure effective management of the workplace, particularly where there is a risk of reprisal, including:
 - › ensuring that strategies are in place to manage the risk of reprisal or related workplace conflict if necessary
 - › taking appropriate action against anyone who threatens or takes reprisal against a person for reporting wrongdoing
- make decisions following any investigation, or appointing an appropriate decision-maker
- take appropriate remedial action where wrongdoing is substantiated or systemic problems are identified and ensure such action is adequately resourced

- oversight the authority's internal reporting system, and ensure the authority complies with the policy and the provisions of the PID Act, including:
 - implementing and maintaining an up to date internal reporting policy (s.6D)
 - ensuring staff are aware of the internal reporting policy and the protections of the PID Act through staff awareness and training (s.6E)
 - reporting on the authority's compliance with the PID Act annually and providing this report to the NSW Ombudsman (s.31)
 - reporting on the authority's compliance with the PID Act every six months to the NSW Ombudsman (s.6CA)
- refer any evidence of an offence under section 20 of the PID Act to the Commissioner of Police or the Independent Commission Against Corruption (ICAC)
- notify the ICAC of any matter where they have reasonable grounds to suspect corrupt conduct (s.11, *ICAC Act 1988*).

4.7 Managers and supervisors

Supervisors and line managers play an important role in maintaining a healthy workplace reporting culture and managing the immediate workplace of those involved in or affected by the internal reporting process.

Managers and supervisors have a responsibility to:

- ensure they and their staff are aware of the authority's internal reporting policy and their roles within that policy
- maintain a local work environment where staff are comfortable and confident about reporting wrongdoing
- encourage staff to report known or suspected wrongdoing if they are aware of or suspect it occurring within the authority
- support staff who have reported known or suspected wrongdoing
- identify reports made to them in the course of their work which could be PIDs, and assist the staff member to make the report to an officer authorised to receive PIDs under the internal reporting policy
- implement local management strategies, in consultation with the disclosures coordinator, to minimise the risk of reprisal being taken against a reporter or related workplace conflict
- notify the disclosures coordinator or principal officer immediately if they believe a staff member is being subjected to reprisal as a result of reporting wrongdoing
- keep the identity of a reporter and anyone who is the subject of a report confidential, where this is practical and appropriate (s.22).

4.8 Investigator

Whether internal or external to the public authority, the investigator has to conduct a fair, effective investigation. They need to work within the scope of the terms of reference for the investigation and the approved investigation plan. It is important they remain discreet and keep the disclosures coordinator informed of the progress of the investigation and the findings.

See *Guideline C5: Investigating public interest disclosures*.

4.9 Support people

When staff report wrongdoing, a person may be appointed to provide support to the reporter. A support person may also be made available to anyone who is the subject of the report if appropriate or requested. People internal to the authority should be available to provide support in addition to external sources of support such as employee assistance services or unions.

The support person should be independent of the investigation and the resulting decision-making process. The appointment of a support person should be made in consultation with the person receiving support.

An authority should determine how it will provide support to reporters or anyone who is the subject of a report. An authority may choose to nominate and train 'disclosures support people' or draw on already established mentor, peer support officer or confidante networks. These networks may include managers and supervisors, and staff from the personnel or human resources area.

Support people have a responsibility to:

- initiate and coordinate appropriate action to support the staff member, particularly those who are at risk of, or subjected to, detrimental action in reprisal for reporting wrongdoing
- ensure the supported staff member has access to any necessary professional support and make referrals to services where appropriate
- monitor the workplace for reprisal or related conflict
- notify the disclosures coordinator or principal officer immediately if they suspect that reprisal against a reporter is occurring or has been threatened
- treat any staff member or person dealing with a report of wrongdoing with courtesy and respect
- keep the identity of a reporter and anyone who is the subject of a report confidential.

4.10 Staff who are the subject of a report

Staff who are the subject of a report of wrongdoing have a responsibility to:

- only discuss the matter with authorised people
- not seek to identify the reporter if the reporter's identity is being kept confidential
- assist those dealing with the report, including supplying any information on request
- if necessary, seek support from their manager or supervisor or any available external organisations and services
- not take detrimental action against another staff member, who they know or suspect has reported wrongdoing, in reprisal for making the report (s.20).

5. Your questions answered

How do the responsibilities differ for local government?

Local councils should nominate a disclosures coordinator to manage reports of wrongdoing made by staff and councillors. The principal officer for local councils is the general manager.

Local councils should also ensure that systems are in place to deal with situations where the Mayor receives a report from a staff member about the general manager which meets the criteria of a PID. The Mayor can receive complaints about the general manager under the council's adopted code of conduct. In this capacity the Mayor should also be authorised under the internal reporting policy to receive PIDs about the general manager.

Where a Mayor receives a report about wrongdoing by the general manager, the Mayor should assess the report to determine whether or not it should be treated as a PID, and decide how it will be dealt with. All reports made under the council's code of conduct must be dealt with in accordance with the council's adopted code of conduct procedures. Additionally, the Mayor should ensure that all reports they receive about the general manager are dealt with appropriately, and referred to an investigating authority where necessary.

Although the Mayor may not be able to take management action to manage the risk of reprisal or workplace conflict, they should liaise with the disclosures coordinator to ensure strategies are in place to support reporters, protect reporters from reprisal and manage workplace conflict related to a report.

What are the responsibilities of public authorities if the report is not a public interest disclosure?

While some reports of wrongdoing attract the protections of the PID Act, staff should be encouraged to report all wrongdoing and authorities should ensure that all reports of wrongdoing are dealt with appropriately. The difference with matters under the PID Act is that the public official who made the report is provided with certain statutory protections.

Authorities will have policies and guidance about what should be reported and how it should be reported. Disclosures officers and other staff who receive reports of wrongdoing under the internal reporting policy should be trained to refer reporters to other appropriate policies if they raise concerns that do not fall within the scope of the PID Act.

6. Additional resources

- *Model internal reporting policy - state government*
- *Model internal reporting policy - local government*
- *Guideline B4: Reporting pathways*
- *Guideline C5: Investigating public interest disclosures*
- *Government Sector Employment Act 2013*
- *Local Government Act 1993*
- *Work Health and Safety Act 2011*
- *Public Interest Disclosures Act 1994*
- *Code of Conduct and Ethics for Public Sector Executives*
- *Model Code of Conduct for Local Councils in NSW*
- *Standard Contract of Employment for General Managers of Local Councils in New South Wales*
- *Standard Contract of Employment for Senior Staff (Other Than General Managers) of Local Councils in New South Wales*

7. Last updated

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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 nswombo@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

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