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## **PREFACE**

This policy establishes an internal reporting system for staff to report wrongdoing without fear of reprisal. The policy sets out who wrongdoing can be reported to, what can be reported and how reports will be handled.

## **LEGISLATIVE AND COMPLIANCE FRAMEWORK**

*Public Interest Disclosures Act 1994 (PID Act)*

## **POLICY STATEMENT**

The reporting of suspected wrongdoing by staff is vital to the integrity of our office. We are committed to fostering a climate of trust where staff feel confident to report wrongdoing. Staff are encouraged to report suspected wrongdoing in accordance with this policy and the PID Act.

Adverse action will not be taken against staff as a result of any report they make and their identity will remain confidential where possible and appropriate. All reports of wrongdoing are handled thoroughly and impartially and if wrongdoing is found, appropriate action is taken. Staff who make a report will be informed of the progress and outcome of the matter.

We are committed to ensuring managers and supervisors at all levels understand the importance of reporting wrongdoing, are familiar with this policy and are aware of the needs and concerns of those who make a report. We provide resources to encourage reporting, protect and support staff who report, handle reports, manage and address identified workplace issues and train staff.

This policy compliments the normal communication channels between supervisors and staff. Staff are encouraged to raise matters of concern at any time with their supervisors, but also have the option of making a report about a public interest issue in accordance with this policy and the PID Act.

This policy is not intended to be used for staff grievances which are handled in accordance with the grievance management and resolution policy.

### **1. What should be reported?**

Any wrongdoing staff become aware of within our office must be reported. Reports which fall into one of the five categories of serious public interest wrongdoing (corrupt conduct, maladministration, serious and substantial waste of public money, government information contravention and local government pecuniary interest contravention) and which otherwise meet the criteria of a public interest disclosure, will be handled as a public interest disclosure in accordance with this policy and the PID Act.

For more information about what can be reported under the PID Act see below and refer to the public interest disclosures guideline - What can be reported (link at the end of this policy).

All other wrongdoing must be reported to a supervisor or other relevant officer to be dealt with in line with the relevant policies. This might include:

- personal grievances, employment matters and workplace disputes
- bullying, harassment or unlawful discrimination
- workplace health or safety concerns.

Even if these reports are not handled as public interest disclosures, such reports may raise important issues. We will respond to all reports and make every attempt to protect staff who report from reprisal.

Allegations that could amount to a PID and must be reported in accordance with this policy are as follows.

a) Corrupt conduct

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

This could include:

- the improper use of knowledge, power or position for personal gain or advantage of others
- acting dishonestly or unfairly or breaching public trust
- a public official being influenced by a member of the public to use their position in a way that is dishonest, biased or breaches public trust.

b) Maladministration

Maladministration is conduct that involves action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory or based wholly or partly on improper motives. It is more serious than a technical breach of policy or procedures – it must have a significant or widespread negative impact.

This could include:

- failing to provide the subject of the investigation procedural fairness where it has serious consequences for the individual
- investigating a public authority to pursue a personal vendetta against them.

c) Serious and substantial waste of public money

Serious and substantial waste is the uneconomical, inefficient or ineffective use of resources that could result in the loss or wastage of public resources.

This could include:

- not following a competitive tendering process for a large scale contract
- having poor or no processes in place for a system involving large amounts of public funds.

d) Breach of the *Government Information (Public Access) Act 2009* (GIPA Act)

A breach of the GIPA Act is a failure to fulfil functions under the Act properly.

This could include:

- destroying, concealing or altering records to prevent them from being released
- knowingly making decisions that are contrary to the legislation
- directing another person to make a decision that is contrary to the legislation.

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. These include obligations to lodge disclosure of interests returns, lodge written declarations and disclose pecuniary interests at council and council committee meetings.

This could include:

- 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.

## **2. When will a report be treated as a public interest disclosure?**

All reports will be promptly and thoroughly assessed to determine whether the report will be treated as a public interest disclosure.

To be a public interest disclosure, the person making the report must honestly believe on reasonable grounds that the information shows or tends to show wrongdoing of the type described above.

The report has to be made to one or more of the following:

- the Ombudsman
- the disclosures coordinator
- a disclosures officer
- one of the investigating authorities nominated in the PID Act.

Reports by staff cannot be considered to be public interest disclosures if they:

- mostly question the merits of government policy
- are made with the sole or substantial motive of avoiding dismissal or other disciplinary action.

The disclosures coordinator is responsible for assessing reports in consultation with the Ombudsman, where appropriate. The disclosures coordinator determines whether an investigation should be carried out and how that investigation should be carried out. The disclosures coordinator may decide that the report should be referred elsewhere or that no action should be taken.

## **3. How do I make a report?**

A report can be made in writing or verbally. Staff are encouraged to make a report in writing to help avoid any confusion or misinterpretation. Our office's [Internal reporting form](#) is also available for staff to make a report.

If a report is made verbally, the person receiving the report must make a comprehensive written record of the disclosure and ask the person making the disclosure to sign and date the record. The staff member should keep a copy of the record.

Reports which are received where the staff member does not wish to identify themselves will still be handled. However, staff members are encouraged to identify themselves so we may provide protection and support as needed and feedback about any action to be taken. If we do not know who made the report, it is difficult to identify or put in place strategies to prevent any reprisal.

It is important to understand that making a report anonymously may not necessarily prevent the reporter from being identified.

## **4. Who can receive a report within our office?**

For a report to be a public interest disclosure it must be made to certain public officials. In the Ombudsman's office this is:

- any statutory officer (ie, the Ombudsman, any Deputy Ombudsman or any Assistant Ombudsman)
- any person who heads any Division, branch or unit
- any other person who is a 'Director' or 'Manager' (as stated in their role title)
- any person acting in the above positions.

Any supervisor who receives a report that they believe may be a public interest disclosure must assist the staff member to make the report to one of the positions listed above.

## **5. Who can receive a report outside our office?**

Staff are encouraged to report wrongdoing within our office, but internal reporting is not the only option. Staff may make a report to another investigating authority. This can be done in the first instance, or at any stage after the initial internal report.

If the report is about the Ombudsman, staff should make a report to the ICAC, Auditor-General or Information Commissioner depending on the subject matter.

Staff may also report to a Member of Parliament (MP) or a journalist but only in the limited circumstances referred to in (b) below.

### **a) Investigation authorities**

The PID Act lists a number of investigating authorities in NSW that staff can report wrongdoing to and the categories of wrongdoing each authority can deal with.

For Ombudsman staff the relevant authorities are:

- the Auditor-General – for reports about serious and substantial waste
- the Independent Commission Against Corruption – for reports about corrupt conduct
- the Information Commissioner – for reports about government information contraventions
- the Office of Local Government – for reports about local councils
- the Law Enforcement Conduct Commission (LECC) – for reports about police misconduct
- the Inspector of the Law Enforcement Conduct Commission – for reports about the LECC or its staff
- the Inspector of the Independent Commission Against Corruption – for reports about the ICAC or its staff.

Staff should contact the relevant investigating authority for advice about how to make a disclosure to them. Contact details for each investigating authority are provided at the end of this policy.

Staff should be aware that it is likely the investigating authority will discuss the case with our office. We will make every effort to assist and cooperate with the investigating authority to ensure the matter is dealt with appropriately and there is a satisfactory outcome. We will also provide appropriate support and assistance to staff who report wrongdoing to an investigating authority.

### **b) Members of Parliament or journalists**

To have the protections of the PID Act, staff reporting wrongdoing to a MP or a journalist must have already made substantially the same report to one of the following:

- the Ombudsman
- a person nominated in this policy
- an investigating authority.

**And** our office, or the investigating authority that received the initial report, must have either:

- decided not to investigate the matter
- decided to investigate the matter, but not completed the investigation within six months of the original report
- investigated the matter but not recommended any action as a result
- not told the person who made the report within six months of the report being made whether the matter will be investigated.

**Further and importantly**, to be protected under the PID Act, if a staff member reports wrongdoing to a MP or a journalist they will need to be able to prove that the disclosure is substantially true and they have reasonable grounds for believing that is the case.

c) Other external reporting

If a staff member reports wrongdoing to a person or authority that is not listed above, or makes a report to a MP or a journalist without following the steps outlined above, they will not be protected under the PID Act. This may mean they will have breached legal obligations or our code of conduct in relation to an unauthorised disclosure of information.

For more information about reporting wrongdoing outside our office, contact the disclosures coordinator or specialist PID staff of the office.

## **6. Feedback to staff who report wrongdoing**

Staff who report wrongdoing will be kept informed about what is happening in response to their report.

a) Acknowledgement

When a report is received we will contact the staff member who made the report to confirm it has been received and to advise:

- the timeframe within which further updates can be expected
- the name and contact details of the people who can provide updates or handle any concerns that may arise.

Once a decision has been made about how the report will be dealt with, the reporter will be sent a letter providing:

- information about the action that will be taken in response to the report
- the likely timeframes for any investigation or other action
- information about available internal and external support services.

This information will be provided within ten working days from the date the report is made. Staff will be provided with a copy of this policy as required by the PID Act and advised whether the report will be treated as a public interest disclosure.

b) Progress updates

While a report is being dealt with the staff member who made the report will be given:

- information about the progress of any investigation or other enquiries
- reasons for any delay
- advice of any decision not to proceed with the matter
- advice if their identity needs to be disclosed for the purposes of investigating the matter or making enquiries and an opportunity to talk about this.

c) Feedback

Once the matter has been finalised the staff member who made the report will be given:

- enough information to show whether adequate and appropriate action was taken and/or is proposed to be taken in response to their disclosure and any problems that were identified
- advice about whether they will be involved as a witness in any further matters such as disciplinary or criminal proceedings.

## **7. Maintaining confidentiality**

Our office understands that reporters may want their identity and the fact that they have made a report to remain confidential. This can help to prevent any reprisal being taken against them.

Where possible and appropriate we put in place steps to keep the identity and the fact that a staff member has reported wrongdoing confidential. We discuss this with the staff member and whether it is possible to do so. If confidentiality cannot be maintained, a plan is developed in consultation with the staff member to support and protect them from reprisal.

Staff who report wrongdoing must only discuss their report with those responsible for dealing with it. This includes the disclosures coordinator and the Ombudsman. The fewer people who know about the report before and after it is made, the more likely it is that the staff member can be protected from any reprisal.

Any staff involved in the investigation or handling of a report, including witnesses, must also maintain confidentiality and not disclose information about the process or allegations to any person except for those people responsible for handling the report.

## **8. Managing the risk of reprisal and workplace conflict**

When a staff member reports wrongdoing, the disclosures coordinator undertakes a thorough risk assessment to identify the risk to the staff member of detrimental action in reprisal for reporting, as well as indirect but related risks of workplace conflict or difficulties. The risk assessment will also identify strategies to deal with those risks and determine the level of appropriate protection and support.

Depending on the circumstances our office may:

- relocate the reporter or the staff member who is the subject of the allegation within the current workplace
- transfer the reporter or the staff member who is the subject of the allegation to another position for which they are qualified
- grant the reporter or the staff member who is the subject of the allegation leave of absence during the investigation of the disclosure.

These courses of action are not punishment and will only be taken in consultation with the reporter.

## **9. Protection against reprisals**

Our office will not tolerate any reprisal against staff who report wrongdoing or are believed to have reported wrongdoing.

The PID Act provides protection for staff who have made a public interest disclosure by imposing penalties on anyone who takes detrimental action against another person substantially in reprisal for that person making a public interest disclosure. These penalties also apply to cases where a person takes detrimental action against another because they believe or suspect the other person has made or may have made a public interest disclosure, even if they did not.

Detrimental action means action causing, comprising or involving any of the following:

- injury, damage or loss
- intimidation or harassment
- discrimination, disadvantage or adverse treatment in relation to employment
- dismissal from, or prejudice in, employment
- disciplinary proceedings.

A person who is found to have committed a reprisal offence may face criminal penalties such as imprisonment and/or fines and may be required to pay the victim damages for any loss suffered as a result of the detrimental action. Taking detrimental action in reprisal is also misconduct which may result in disciplinary action.

It is important for staff to understand the nature and limitations of the protection provided by the PID Act. The PID Act protects staff from detrimental action being taken against them because they have made, or are believed to have made, a public interest disclosure. It does not protect staff from disciplinary or other management action where our office has reasonable grounds to take such action.

#### a) Responding to reprisals

If a staff member believes that detrimental action has been or is being taken against them or someone else in reprisal for reporting wrongdoing, they should immediately tell their supervisor, the disclosures coordinator or the Ombudsman.

All supervisors must immediately notify the disclosures coordinator or the Ombudsman if they suspect that reprisal against a staff member is occurring or has occurred, or if any such allegations are made to them.

If our office becomes aware of, or suspects that reprisal is being or has been taken against a staff member who has made a report, we will:

- assess the report of reprisal to decide whether it should be treated as a public interest disclosure and whether the matter warrants investigation or if other action should be taken to resolve the issue
- ensure any investigation undertaken into a reprisal allegation is conducted by a senior and experienced member of staff
- take all steps possible to stop that activity and protect the reporter
- take appropriate disciplinary action against anyone proven to have taken or threatened any action in reprisal for making a disclosure
- refer any evidence of an offence under section 20 of the PID Act to the ICAC or the NSW Police Force.

If a staff member alleges that they have been subjected to reprisal, they will be kept informed of the progress and outcome of any investigation or other action taken in response to the allegation.

If a staff member has reported wrongdoing, and is experiencing reprisal which they believe is not being dealt with effectively, they should contact the ICAC.

#### b) Protection against legal action

If a staff member makes a public interest disclosure, they will not be subject to any liability and no action, claim or demand can be taken against them for having made the public interest disclosure. They will not have breached any confidentiality or secrecy obligations and will have the defence of absolute privilege in defamation.

### **10. Support for those reporting wrongdoing**

Our office ensures that staff who have reported wrongdoing, regardless of whether their report is treated as a public interest disclosure, are provided with access to any professional support they may need as a result of the reporting process.

Managers and directors will support those who report wrongdoing. They are responsible for initiating and coordinating support, particularly to those who are suffering any form of reprisal. This includes offering counselling services in accordance with our Employee Assistance Program.

Access to support may also be available for other staff involved in the internal reporting process where appropriate. Reporters and other staff involved in the process can discuss their support



options with the disclosures coordinator. A personalised support plan may be developed in consultation with the staff member.

### **11. Sanctions for making false or misleading disclosures**

It is a criminal offence under the PID Act to wilfully make a false or misleading statement when reporting wrongdoing. Our office will not support staff who wilfully make false or misleading reports. Such conduct may also be a breach of the code of conduct and will be handled in accordance with the code of conduct policy.

### **12. The rights of persons the subject of a report**

Our office is committed to ensuring staff who are the subject of a report of wrongdoing are treated fairly and reasonably. This includes keeping the identity of any person the subject of a report confidential, where this is practical and appropriate.

Staff who are the subject of a report will be advised of the allegations made against them at an appropriate time and before any adverse findings. We provide them with:

- advice about their rights and obligations under our policies and procedures
- progress updates in relation to any investigation
- a reasonable opportunity to respond to the allegations made against them
- information about the outcome of any investigation including any decision made about whether or not further action will be taken against them.

Staff who are the subject of a report may use counselling services available in accordance with our Employee Assistance Program.

### **13. Relevant investigating authorities**

The contact details for external investigating authorities that staff can make a public interest disclosure to or seek advice from are listed below.

- a) For disclosures about corrupt conduct contact the Independent Commission Against Corruption [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au)
- b) For disclosures about serious and substantial waste contact the Auditor-General of the NSW Audit Office - [www.audit.nsw.gov.au](http://www.audit.nsw.gov.au)
- c) For disclosures about breaches of the GIPA Act contact the Office of the Information Commissioner - [www.oic.nsw.gov.au](http://www.oic.nsw.gov.au)
- d) For disclosures about police contact the Law Enforcement Conduct Commission - [www.lecc.nsw.gov.au](http://www.lecc.nsw.gov.au)
- e) For disclosures about local councils contact the Office of Local Government - [www.dlg.nsw.gov.au](http://www.dlg.nsw.gov.au)

## **ROLES AND RESPONSIBILITIES**

### **Ombudsman**

The Ombudsman is responsible for ensuring our office complies with the PID Act. The Ombudsman must ensure:

- our office has a policy in place in accordance with section 6D of the PID Act
- all staff are aware of the contents of this policy and the protections under the PID Act for a person who makes a public interest disclosure
- our office complies with the policy and our obligations under the PID Act

- the policy designates at least one officer as being responsible for receiving public interest disclosures on behalf of the office.

The Ombudsman is responsible for ensuring our office maintains an internal reporting system and fostering a workplace reporting culture.

The Ombudsman can receive reports directly from staff or via referral from the disclosures coordinator or a disclosures officer. When a report is received the Ombudsman must:

- assess the report and determine whether it should be treated as a public interest disclosure and how it will be dealt with
- ensure appropriate strategies are in place to support the reporter, protect them from reprisal and manage any workplace conflict that may arise
- make decisions following any investigation or appoint an appropriate decision maker
- take appropriate remedial action where wrongdoing is substantiated or systemic problems are identified
- refer actual or suspected corrupt conduct to the Independent Commission Against Corruption (ICAC)
- refer any evidence of a reprisal offence under section 20 of the PID Act to the Commissioner of Police or the ICAC.

### **Disclosures coordinator**

The disclosures coordinator for our office is the Deputy Ombudsman & Community and Disability Services Commissioner. They are the primary point of contact for staff within the office who have made a report.

The disclosures coordinator can receive reports directly from staff or via referral from a disclosures officer. When a report is received the disclosures coordinator must undertake and brief the Ombudsman on the following:

- assess the report and determine whether it should be treated as a public interest disclosure and how it will be dealt with
- coordinate the response to a report
- acknowledge reports and provide updates and feedback to the reporter
- assess whether it is possible and appropriate to keep the reporter's identity confidential
- assess the risk of reprisal and workplace conflict related to or likely to arise out of a report, and develop strategies to manage any risk identified
- provide or coordinate support to staff involved in the reporting or investigation process, including protecting the interests of any staff member the subject of a report.

The disclosures coordinator is responsible for reviewing internal policies and systems in place in relation to public interest disclosures, and for preparing reports in accordance with section 6CA of the PID Act.

### **Disclosures officers**

Disclosures officers are additional points of contact within the internal reporting system. They can provide advice about the system and the internal reporting policy, receive reports of wrongdoing and assist staff to make reports.

Our disclosures officers are:

- any statutory officer (ie., any Deputy Ombudsman or Assistant Ombudsman)
- any person who heads any Division, branch or unit
- any other person who is a 'Director' or 'Manager' (as stated in their role title)
- any person acting in the above positions.

Disclosures officers must:

- document in writing any reports received verbally and have the document signed and dated by the reporter
- make arrangements to ensure staff can make reports privately and discreetly when requested 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 Ombudsman for full assessment.

### **Supervisors**

All supervisors must familiarise themselves with this policy and support an environment where staff are comfortable and confident about reporting wrongdoing.

They must:

- encourage staff to report suspected wrongdoing and support staff when they do
- identify reports made to them in the course of their work which could be public interest disclosures and assist staff to report the matter to the appropriate officer
- implement local management strategies in consultation with the disclosures coordinator, to minimise the risk of reprisal or workplace conflict in relation to a report
- notify the disclosures coordinator or Ombudsman immediately if they believe a staff member is being subjected to reprisal as a result of reporting wrongdoing.

### **Staff**

All staff must:

- report suspected wrongdoing
- support others who have made reports of wrongdoing
- assist those dealing with the report, including supplying information on request, cooperating with any investigation and maintaining confidentiality
- treat any staff member or person dealing with a report of wrongdoing with courtesy and respect
- respect the rights of staff members the subject of reports.

Staff must not:

- victimise or harass anyone who has made a report
- make false or misleading reports of wrongdoing.

Staff must act in accordance with the code of conduct.

### **RESOURCES**

[Public interest disclosures guideline - What can be reported](#)

### **OMBUDSMAN APPROVAL**



Michael Barnes  
**OMBUDSMAN**