

# Anonymous reporting

## 1. Objectives

- To provide advice to public authorities on how to deal with public interest disclosures (PIDs) that are made anonymously.
- To provide advice to public authorities about assessing and, where appropriate, investigating anonymous reports.

## 2. Why is this important?

Staff may not wish to identify themselves when reporting wrongdoing if they fear reprisal or other negative consequences. By accepting anonymous reports – as well as showing a willingness to take action in response – authorities can encourage risk-averse staff to report wrongdoing when they otherwise would not. If an authority receives a high number of anonymous reports it may indicate a lack of confidence in the management of internal reports.

An anonymous report can usually only be assessed on the information disclosed. Because seeking clarification or additional information from a reporter is not possible, it may be more difficult to evaluate the allegations and therefore less likely to warrant an investigation. Research and experience indicates the chances of a successful outcome are greatly increased when reporters make their identity known at the time they report suspected wrongdoing.<sup>1</sup>

In making the decision about whether to make their identity known or remain anonymous, a reporter should consider how likely it will be to determine that wrongdoing occurred based on the information they provide.

## 3. Legal and management obligations

### 3.1 PID Act

The *Public Interest Disclosures Act 1994* (PID Act) does not refer to anonymous disclosures or impose any obligation on a person to identify themselves when making a disclosure under the Act.

The PID Act is likely to apply where it is clear that an anonymous report has been made by a public official, and it meets the other requirements under the Act. The nature and content of the report should be such that the recipient of the report is satisfied that it was likely to have been made by a public official – as defined in section 4 of the Act. See *Guideline B1: Who can report wrongdoing?*

While it may be difficult to make an assessment as to the honest belief of an anonymous reporter, section 9A of the PID Act states that if a public official asserts their belief in connection with the disclosure it should be presumed that the belief is honest, unless there is evidence to the contrary. This applies even if the assertion is inferred rather than expressed.

Where a reporter claims they made an anonymous report to seek the protections of the PID Act, the reporter must prove to the satisfaction of the relevant authority, court or tribunal that they made the report.

### 3.2 Other legislation

Some pieces of legislation – such as the *Police Act 1990* – contain statutory provisions relating to anonymous complaints which expressly state that a complainant does not need to be identified for the purpose of making a complaint.

Depending on the circumstances, investigating authorities under the PID Act also accept anonymous complaints:

- The NSW Ombudsman accepts anonymous complaints provided sufficient information is contained in the complaint to enable the allegations to be investigated, particularly where the allegations concern a significant public interest issue or a serious abuse of power.
- The Independent Commission Against Corruption accepts anonymous complaints, but will only make an assessment or preliminary inquiries with the permission of the Deputy Commissioner due to the inherent risks of inadvertently revealing the identity of the reporter in doing so.<sup>2</sup>
- The Office of Local Government in the Department of Premier and Cabinet accepts anonymous complaints provided the matter is supported by sufficient information to enable further inquiries to be conducted.

### 3.3 Work health and safety and duty of care requirements

Authorities have work health and safety and duty of care obligations to protect all of their staff – regardless of whether a staff member can show they made an anonymous report. Authorities also need to ensure the safety of any staff believed to be the source of a report, even if they are not.

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 it reasonably can in the circumstances to manage health

and safety risks. All officers who can make decisions that significantly affect their organisation must exercise due diligence to ensure compliance. Failure to comply with health and safety duties is a serious offence that attracts significant penalties – see sections 31–33.

Authorities also have a duty of care under common law to provide a safe workplace for 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 a staff member has become ill or suffered injury – physically or psychologically – as a result.

## 4. What does this mean for public authorities?

### 4.1 Internal reporting policies and procedures

Authorities should address the issue of anonymous reporting in their internal reporting policy and assure staff that while any anonymous reports will be acted upon wherever possible, staff should consider identifying themselves for the following reasons:

- To enable clarification or seek further information about the report.
- The PID Act requires authorities to keep the identity of a person who has made the report confidential, where practical and appropriate.
- There will be no dispute about who made the report, if the reporter wishes to seek the protections of the PID Act at a later date.
- The reporter can be kept up-to-date on how the report is being handled.
- Action can be taken to prevent reprisal.

### 4.2 Making an anonymous report

An authority should provide staff with information about anonymous reporting so they can consider the following when deciding whether to report anonymously:

- whether they wish to be kept informed about the progress of the matter and how this can be achieved – for example, through the use of pseudonyms or codewords
- if they can access support mechanisms
- the likelihood that their identity will still become known – either through the investigation process itself, speculation or some other circumstance
- the possibility that one of their colleagues might be erroneously identified as the source of the report

- whether they have adequate evidence to show they made the report, if they wish to seek the protections of the PID Act at a later date.

Staff can also be provided with options for making anonymous reports. For example, where a number of staff are aware of the wrongdoing, they could provide details of all relevant staff members, including themselves. If the authority contacts each of those people to seek more information, it may be harder to identify the reporter. This approach also enables other staff that may be reluctant to come forward to raise their concerns.

### 4.3 Receiving an anonymous report

Disclosures officers and other staff who receive reports can maximise the usefulness of anonymous reports by:

- If the report is received over the phone, asking the caller for a pseudonym or codeword and obtaining a private number or email address via which they can be contacted – possibly at a designated time – in order to gain additional information if needed throughout the course of the investigation.
- Explaining to the reporter the benefits of having ongoing contact with the authority, such as being able to prevent reprisal, and provide updates about how their report is being investigated or advice about the outcome at the conclusion of any investigation.
- Encouraging callers who do not wish to leave any details or assume a pseudonym or use a codeword to call back at certain times for the same purposes as outlined above.

Reporters may initially contact an authority anonymously, but reveal their identity once assured of discretion and confidentiality.

### 4.4 Assessing an anonymous report

Anonymous reports of wrongdoing should be assessed to determine:

- if the report is a PID
- how the report should be progressed – whether or not it is a PID
- the risks to the reporter, the relevant workplace and the authority.

See *Guideline C3: Assessing and streaming internal reports*.

#### a) Is the report a PID?

The nature and content of the report must be such that the recipient of the report is satisfied that it was made by a public official. See *Guideline B1: Who can report wrongdoing?*

Another consideration is whether the person who made the anonymous report honestly believed on reasonable grounds that the information shows or tends to show wrongdoing. An

authority should assume the belief of the reporter is honest, unless there is evidence to show otherwise.

An authority does not have the same obligations that are ordinarily required under the PID Act to communicate with an anonymous reporter. For example, it is not possible to:

- provide the reporter with a written acknowledgement and a copy of the internal reporting policy within 45 days of the report being made
- notify the reporter of the action taken or proposed to be taken on the report within six months of the report being made.

### b) How should the report be progressed?

An authority should consider the available evidence and decide on the most appropriate action to take in response, in line with any criteria established for this purpose. If the report contains sufficient information to warrant further inquiries or an investigation, they should be conducted.

Of course, the fact that the report has been made anonymously may affect the ability to effectively investigate the matter – especially if insufficient detail has been given in the report.

### c) What risks to the reporter can be assessed?

If the identity of the reporter is known at the outset, relevant risk assessments can be conducted to determine the levels of support and protection necessary.

Anonymous reports make it difficult for authorities to ensure the safety of the reporter. Even if the authority does not know who made the report, a risk assessment should be conducted on receipt to determine whether:

- anyone has indicated their intention to report or has complained about the issue before
- the information or issues raised can readily be attributed to a staff member
- the identity of the reporter may be inadvertently discovered when dealing with the report
- staff may speculate – correctly or otherwise – about who made the report
- the subjects of the report or other staff members may inadvertently – or perhaps deliberately – discover the identity of the reporter
- a staff member who did not make the report – but is believed to be its source – is at risk of reprisals
- the reporter may come forward at any stage during the handling of the report.

If the identity of the reporter does become known at any stage, the risks associated with the report may escalate or require certain prevention or mitigation strategies to be implemented. See *Guideline C4: Managing risk of reprisals and conflict*.

## 4.5 Dealing with the subjects of an anonymous report

If any people who are the subjects of a report are aware that a report has been made anonymously, this may cause them to treat all colleagues with suspicion or contempt, and may require proactive management strategies to be implemented. See *Guideline C7: Confidentiality*.

In such a situation, consider whether it is possible not to disclose to the subjects either that a report under the PID Act has been made or that it has been made anonymously, provided this does not conflict with the principles of procedural fairness or cause unreasonable prejudice. See *Guideline C1: People the subject of a report*.

## 5. Your questions answered

### What is the difference between anonymity and confidentiality?

Anonymity refers to the reporter not revealing their identity to the person or authority when they make the report.

Confidentiality refers to the recipient of the report or other people involved in handling the report withholding either the existence of the report or the identity of the reporter from other parties.

### Can anyone in an authority require that they be told the identity of the reporter?

If a reporter has disclosed their identity to a disclosures officer or coordinator on the proviso that it not be revealed to anyone else, this means that the report has been made confidentially, rather than anonymously.

If someone in the authority – including a senior manager, internal auditor or the head of the authority – requires that a disclosures officer or coordinator disclose the identity of the reporter, it may be pertinent for the disclosures officer or coordinator to ask why this information is required. If the reasoning sounds valid – for example, because it is critical to the proper investigation of the report – the disclosures officer or coordinator should explain the situation to the reporter and ask whether they would feel comfortable for their identity to be revealed for this purpose.

If the reporter does not provide consent to their identity being revealed, their wishes should be respected where practical and appropriate. See *Guideline C7: Confidentiality*.

### Can an authority's corruption hotline accept anonymous PIDs?

Some authorities have a dedicated in-house phone number for the purpose of enabling staff to report wrongdoing anonymously. These can provide staff with a safe and accessible reporting option, and can benefit both the reporter and the authority. Some authorities use externally contracted hotlines.

However, the PID Act clearly intends that reports should be made to public authorities or investigating authorities, except in the limited circumstances when the Act applies to reports to Members of Parliament or journalists. The Act will only apply to a report of wrongdoing made to a hotline if the person receiving the report is an officer of the same public authority as the reporter or is an officer of the public authority that the report is about – see section 14(2) of the Act. The person must also be nominated in the authority's internal reporting policy.

This means that reports of wrongdoing made to hotline operators employed by external providers are not PIDs under the PID Act, even if they are then referred to the authority to handle.

To ensure the PID Act applies to all relevant reports of wrongdoing made by staff, an authority should outline in its internal reporting policy how staff can contact disclosures officers or the disclosures coordinator if they wish to disclose anonymously. For example, establish and promote an in-house hotline staffed by a disclosures officer or coordinator.

If necessary, any external hotline staff should be trained to readily identify a report that may be a PID and refer the reporter directly to a disclosures officer or coordinator within the authority who is nominated to receive PIDs under the internal reporting policy.

## 6. Additional resources

- *Model internal reporting policy*
- *Model internal reporting policy (local government)*
- *Guideline B1: Who can report wrongdoing?*
- *Guideline C1: People the subject of a report*
- *Guideline C3: Assessing and streaming internal reports*
- *Guideline C4: Managing risk of reprisals and conflict*
- *Guideline C7: Confidentiality*
- *Police Act 1990*
- *Public Interest Disclosures Act 1994*
- *Work Health and Safety Act 2011*

## Endnotes

- 1 Roberts, P, Brown, AJ & Olsen, J 2011, *Whistling while they work: A good-practice guide for managing internal reporting of wrongdoing in public sector organisations*, ANU E Press, Canberra, p. 51.
- 2 Independent Commission Against Corruption 2013, *Annual Report 2012-2013*, p.17.

## 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.

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