

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 seen as a regular and normal part of working for a public sector organisation. 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 person employed under the *Public Sector Employment and Management Act 2002*
- 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 – referred to in this section as an independent contractor to the public authority.

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

- a division of the government service
- 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 Department of Parliamentary Services, the Department of the Legislative Assembly and the Department of the Legislative Council.

b) Categories of wrongdoing

The PID can concern one of five specific categories of wrongdoing outlined in the PID 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 internal 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 one of these five categories of wrongdoing.

4. What does this mean for your organisation?

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

- 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 internal reporter has an honest belief based on reasonable grounds that the information they have shows or tends to show the alleged wrongdoing.

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.

What should be reported?

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

a) Honest belief

A belief is more than a suspicion. This means that you are more likely to accept the idea that wrongdoing occurred than reject it.

An honest belief is a belief that is genuinely held.

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 animosity or prejudice.

c) Shows or tends to show

This means there must be sufficient information to indicate that the wrongdoing has happened or is happening. This may include:

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

There should be no alternative explanations for the conduct or activities observed that can be easily thought of.

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.

The person assessing the report may need to seek further information or conduct preliminary inquiries before deciding whether a report meets this criteria. They might examine any source documentation and perhaps talk with the internal reporter.

However, it is not necessary for the internal 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 small 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. Despite this, no action appears to be being taken against the pub. 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 Independent Commission Against Corruption.

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
- a member of the public influencing staff to use their position in a way that is dishonest, biased or breaches public trust.

b) Maladministration

Maladministration 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
- unreasonable, unjust, oppressive or improperly discriminatory
- based wholly or partly on improper motives.

Some examples are:

- awarding contracts and tenders to private parties that are related by family, friendship or association
- failing to make a decision in accordance with official policy for no appropriate reason
- refusing to grant a person a licence for reasons that do not relate to the merits of their application
- issuing an order against a person without giving them procedural fairness.

More information and examples can be found in the NSW Ombudsman's [public sector agency fact sheet on maladministration](#).

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.

Serous and substantial waste can be:

- Absolute – where the waste is regarded as significant.
- Systemic – where the waste indicates a pattern that results from a weakness within an organisation's systems.
- Material – where the waste is about the organisation's expenditure or a particular item of expenditure, or is to such an extent that it affects an organisation'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.

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 or referred to the Division of Local Government (DLG), Department of Premier and Cabinet for assessment and any necessary action. Potentially, the DLG may be required to formally investigate the matter and then refer a report of the investigation to the Pecuniary Interest and Disciplinary Tribunal.

Some examples are:

- 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 DLG'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 organisation where they are taking place. They can impact on public trust in government as well as trust within an organisation.

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 in your organisation 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 in their organisation, they should report it. Most organisations will have policies and guidance about what should be reported and how it should be reported.

Depending on their organisation, staff should approach a supervisor or senior staff member with their concerns. Disclosures officers and other staff who receive reports of wrongdoing under an organisation's internal reporting policy should be trained to refer internal 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 their organisation's occupational 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.

What should be reported?

6. Additional resources

- [Guideline B1: Who can report wrongdoing?](#)
- NSW Ombudsman's [public sector agency fact sheet on maladministration](#)
- DLG's [Pecuniary interest guidelines](#) and their website www.dlg.nsw.gov.au
- [Government Information \(Public Access\) Act 2009](#)
- [Independent Commission Against Corruption Act 1988](#)
- [Local Government Act 1993](#)
- [Public Interest Disclosures Act 1994](#)
- [Public Sector Employment and Management Act 2002](#)

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 21, 133 Castlereagh 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 police misconduct:

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 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 wrongdoing in local government:

Division 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: dlg@dlg.nsw.gov.au
Web: www.dlg.nsw.gov.au

Address: 5 O'Keefe Avenue
Nowra NSW 2541

To report breaches of the GIPA Act:

Information Commissioner

Toll free: 1800 463 626
Facsimile: 02 8114 3756

Email: oiinfo@oic.nsw.gov.au
Web: www.oic.nsw.gov.au

Address: Level 11, 1 Castlereagh Street
Sydney NSW 2000

7. Last updated

November 2011

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.