

Public Interest Disclosure Policy and Procedures

June 2020

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This policy establishes a system for receiving assessing and dealing with protected disclosures of corrupt conduct, maladministration, serious and substantial waste of public money and government information contravention in accordance with the *Public Interest Disclosure Act 1994*.

Policy/Procedure Document Title	Public Interest Disclosure Policy and Procedures
Summary	This document outlines the OCG's commitment to supporting the purposes and objectives of the <i>Public Interest Disclosures Act 1994</i> and provides information and guidelines on the roles and responsibility of staff in relation to public interest disclosures.
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1. Introduction

1.1. Purpose and context of the policy

The *Public Interests Disclosures Act 1994* (PID Act) aims to encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration, serious and substantial waste and government information contravention in the public sector by:

- Enhancing and augmenting established procedures for making disclosures concerning such matters
- Protecting persons from reprisals that might otherwise be inflicted on them because of those disclosures, and
- Providing for those disclosures to be properly investigated and dealt with.

This policy establishes a system for the receiving, assessing and dealing with protected disclosures in accordance with the requirements of the PID Act. The disclosure may relate to the conduct of either the Office of the Children's Guardian (OCG) or any of its employees, or another NSW public agency or investigating authority or any officer of that agency or authority.

This policy is designed to complement normal communication channels between supervisors and staff to the extent that it relates to the conduct of the staff of the OCG. Staff are always encouraged to continue to raise appropriate matters at any time with their supervisors, but as an alternative have the option of making a protected disclosure in accordance with this policy.

1.2. Organisational Commitment

The OCG is committed to the aims and objectives of the PID Act. It recognises the value and importance of the contributions of staff to enhance administrative and management practices and strongly supports disclosures being made by staff that disclose corrupt conduct, maladministration, serious and substantial waste and government information contravention.

This policy applies to all staff of the OCG, members of committees and those working on behalf of the OCG i.e contractors, consultants and voluntary workers. It supports behaviour and values that require integrity, efficiency, economy, honesty and impartiality in decision-making and supports the OCG Code of Conduct.

The OCG will take all reasonable steps to protect staff that make disclosures from any detrimental action in reprisal for making the disclosure.

2. Roles and responsibilities of staff

This Internal Reporting Policy places responsibilities on people at all levels within the OCG.

2.1. Staff of the OCG

Staff of the OCG are encouraged to report known or suspected incidences of corrupt conduct, maladministration, serious and substantial waste and government information contravention in accordance with this policy.

All staff of the OCG have an important role to play in supporting those who have made legitimate disclosures. They must abstain from any activity that is or could be perceived to be victimisation or harassment of persons who make disclosures. Further, they should protect/maintain the confidentiality of persons they know or suspect to have made disclosures.

2.2. Children’s Guardian and Nominated Disclosures Officer

The Children’s Guardian and Nominated Disclosures Officer are responsible for receiving, forwarding and or acting on disclosures in accordance with this policy. The person receiving the disclosure will:

- Clearly explain to persons making the disclosure what will happen in relation to the information received
- When requested, make arrangements to ensure that disclosures can be made privately and discreetly (if necessary, away from the workplace)
- Reduce to writing and date disclosures received orally (and have the person making the disclosure sign the document)
- Deal with disclosures impartially
- Assess the disclosure
- Take all necessary action and reasonable steps to ensure the identity of the persons making the disclosure, and the persons subject of the disclosure, are kept confidential; and
- Support persons who make disclosures and protect them from victimisation, harassment or any other form of reprisal.

The Children’s Guardian, 8219-3600.

The Nominated Disclosure Officer is the Director Corporate Services 8219-3711.

2.3. Disclosures Co-ordinator

The Disclosures Co-ordinator has a pivotal role in the internal reporting system and acts as a clearing house for disclosures. The Disclosures Co-ordinator will:

- Provide an alternative internal reporting channel to the Children’s Guardian and the Nominated Disclosure Officer
- Impartially assess each disclosure to determine:
 - Whether the disclosure appears to be a protected disclosure within the meaning of the PID Act; and
 - The appropriate action to be taken in relation to the disclosure, for example:
 - No action/decline
 - The appropriate person to take responsibility for dealing with the disclosure
 - Preliminary or informal investigation
 - Formal investigation
 - Prosecution or disciplinary action
 - Referral to an investigating authority for investigation or other appropriate cation; or
 - Referral to the police (if a criminal matter) or the ICAC (if the matter concerns corrupt conduct)
- Consult with the Children’s Guardian and Director Business and Executive Services on the recommended course of action
- Be responsible for carrying out or co-ordinating any internal investigation arising from the disclosure, subject to the direction of the Director in carrying out his/her functions

- Report to the Children’s Guardian and Director Business and Executive Services on the findings of any investigation and recommended remedial action
- Take all necessary and reasonable steps to ensure that the identity of the persons who made disclosures, and persons the subject of the disclosure, are kept confidential
- Support persons who make disclosures and actively protect them from victimisation, harassment or any form of reprisal; and
- Report actual or suspected corrupt conduct to the Children’s Guardian and Director Business and Executive Services in a timely manner to enable that officer to comply with the ICAC Act.

Disclosures Co-ordinator is the Manager Corporate and Strategic Coordination, 8219-3636.

3. What should be reported?

You should report any wrongdoing you see within the OCG. Reports about the four categories of serious wrongdoing - corrupt conduct, maladministration, serious and substantial waste and government information contravention – will be dealt with under the PID Act as protected disclosures and according to this policy. See 3.5 for guidance on how to report and other type of wrongdoing.

3.1. Corrupt conduct

Corrupt conduct is the dishonest or partial exercise of official functions by a public official. For example, this could include:

- 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 or trying to influence a public official to use their position in a way that is dishonest, biased or breaches public trust.

3.2. 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. For example, this could include:

- Making a decision and/or taking action that is unlawful
- Refusing to grant someone a license for reasons that are not related to the merits of their application.

3.3. Serious and substantial waste of public money

Serious and substantial waste of public money is the uneconomical, inefficient or ineffective use of resources that could result in the loss or wastage of public resources. For example, this could include:

- Not following competitive tendering process for a large-scale contract
- Having bad or no processes in place for a system involving large amounts of public funds.

3.4. Government information contravention

A government information contravention is a failure to properly fulfil functions under the Government Information (Public Access) Act 2009 (GIPA Act). For example, 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.

For more information about corrupt conduct, maladministration, serious and substantial waste and government information contravention see the NSW Ombudsman's guideline on what can be reported.

3.5. Other wrongdoing

Although reports about the previous four categories of conduct can attract the specific protections of the PID Act you should report all activities or incidents that you believe are wrong. For example, these could include:

- Harassment or unlawful discrimination
- Reprisal against a person who has reported wrongdoing
- Practices that endanger the health or safety of staff or the public.

These types of issues should be reported to a supervisor in line with the OCG's relevant policies including Grievance Policy and Procedures and Conflict Management Policy.

Even if these reports are not dealt with as protected disclosures the OCG will consider each matter and make every attempt to protect the staff member making the report from any form of reprisal.

4. When will a report be protected?

The OCG will support staff who report a wrongdoing. For a report to be considered a protected disclosure it must meet all the requirements of the PID Act. These requirements are:

- The person making the disclosure must honestly believe on reasonable grounds that the information shows or tends to show wrongdoing.
- The report must be made to one or more of the following:
 - A person nominated in this policy
 - The Children's Guardian
 - One of the investigating authorities nominated in the PID Act – see section 8 below.

Reports by staff will not be considered a protected disclosure if they:

- Mostly question the merits of government policy
- Are made with the sole or substantial motive of avoiding dismissal or other disciplinary action
- Are vexatious.

5. How to make a report

You can report wrongdoing in writing or verbally. You are encouraged to make a report in writing as this can help to avoid any confusion or misinterpretation.

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

If you are concerned about being seen making a report, ask to meet in a discreet location away from the workplace.

The people to whom disclosure can be made in accordance with the PID Act and this policy are:

- The Children's Guardian, 8219-3600
- Nominated Disclosures Officer: Director Corporate Services, 8219-3711
- Disclosures Co-ordinator: Manager Corporate and Strategic Coordination, 8219-3636.

6. Can a report be anonymous?

There will be some situations where you may not want to identify yourself when you make a report. Although these reports will still be dealt with by the OCG it is best if you identify yourself. This allows us to provide you with the necessary protection and support as well as feedback about the outcome of any investigation into the allegations.

It is important to realise that an anonymous disclosure may not prevent you from being identified. If we do not know who made the report, it is difficult for us to prevent any reprisal action.

7. Maintaining confidentiality

The OCG realises many staff will want their report to remain confidential. This can help to prevent any action being taken against you for reporting wrongdoing. We are committed to keeping your identity, and the fact that you have reported wrongdoing confidential. However, there may be situations where this may not be possible or appropriate. We will discuss with you whether it is possible to keep your report confidential.

If confidentiality cannot be maintained, we will develop a plan to support and protect you from reprisal. You will be involved in developing this plan.

If you report wrongdoing you should only discuss your report with those dealing with it. This will include the Disclosures Co-ordinator and the Children's Guardian.

8. Who can receive a report outside of the OCG?

Staff are encouraged to report a wrongdoing within the OCG, but internal reporting is not your only option. If you follow the guidance below your report can still be a protected disclosure.

You can choose to make your report to an investigating authority. You can do this first, or at any stage after your initial report to the OCG. If your report is about the Children's Guardian, you should make it to an investigating authority.

You can also choose to make a report to a Member of Parliament or to a journalist but only in limited circumstances.

8.1. Investigating authorities

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

- The Auditor-General for serious and substantial waste
- The Independent Commission Against Corruption (ICAC) for corrupt conduct
- The Ombudsman for maladministration
- The Police Integrity Commission (PIC) for police misconduct
- The PIC Inspector for disclosures about the PIC or its staff
- The Office of Local Government for serious and substantial waste in local government agencies
- The ICAC Inspector for disclosures about ICAC or its staff
- The Information Commissioner for disclosures about a government information contravention.

You should contact the relevant 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.

You should be aware that it is very likely the investigating authority will discuss the case with the OCG. We will make every effort to assist and cooperate with the investigating authority to ensure that 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.

8.2. Members of Parliament or journalists

To have protection of the PID Act staff reporting wrongdoing to a Member of Parliament (MP) or a journalist must have already made substantially the same report to one of the following:

- The Children’s Guardian
- A person nominated in this policy
- An investigating authority in accordance with the PID Act.

Also, the OCG or investigating authority that received the 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.

Most importantly, to be protected under the PID Act, if you report wrongdoing to an MP or a journalist you will need to provide that you have reasonable grounds for believing that the disclosure is substantially true and that it is in fact substantially true.

If you report wrongdoing to a person or an organisation that is not listed above, you will not be protected under the PID Act. This means you will be in breach of legal obligations or the OCG Code of Conduct by, for example, disclosing confidential information.

For more information about reporting wrongdoing outside the OCG contact the Disclosures Co-ordinator or the NSW Ombudsman’s Public Interest Disclosures Unit. Their details are provided at the end of this policy.

9. Feedback to staff who report wrongdoing

Staff who report wrongdoing will be told what is happening in response to their report. When you make a report, you will be given:

- An acknowledgement that your disclosure has been received
- The timeframe for when you will receive further updates
- The name and contact details of the people who can tell you what is happening.

This information will be given to you within two working days from the date you make the report.

After a decision is made about how your report will be dealt with you will be given:

- Information about the action that will be taken in response to your report
- Likely timeframes for any investigations
- Information about the resources available within the OCG to handle any concerns you may have
- Information about external agencies and services you can access for support.

This information will be given to you within 10 working days from the date you make the report.

During the investigation you will be given:

- Information on the ongoing nature of the investigation
- Information about the progress of the investigation and reasons for any delay
- Advice if your identity needs to be disclosed for the purposes of investigating the matter and an opportunity to talk about this.

At the end of the investigation you will be given:

- Enough information to show that adequate and appropriate action was taken and/or is proposed to be taken in response to your disclosure and any problem that was identified
- Advice about whether you will be involved as a witness in any further matters, such as disciplinary or criminal proceedings.

10. Protection against reprisals

The PID Act provides protection for people reporting wrongdoing by imposing penalties on anyone who takes detrimental action in reprisal for them making a protected disclosure.

The OCG will not tolerate any reprisal action against staff who report wrongdoing. The criminal penalties that can be imposed include imprisonment or fines. Detrimental action is also misconduct that justifies disciplinary action. People who take detrimental action against someone who has made a disclosure can also be required to pay damages for any loss suffered by that person.

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

- Injury, damage or loss
- Intimidation or harassments
- Discrimination, disadvantage or adverse treatment in relation to employment
- Dismissal from, or prejudice in, employment
- Disciplinary proceedings.

10.1. Responding to reprisals

The OCG will act to protect staff who report wrongdoing from reprisals. When a report is received we will ensure that a thorough risk assessment is conducted. This will identify any risks to the member of staff who reported the wrongdoing as well as strategies to deal with those risks.

If you believe that detrimental action has been taken against you or someone else who has reported

the wrongdoing in reprisal for making a report you should tell your supervisor, the Disclosures Co-ordinator or the Children's Guardian immediately.

All supervisors must report any suspicions they have that reprisal action against a staff member is occurring, or any reports that are made to them, to the Disclosures Co-ordinator or the Children's Guardian.

If the Disclosures Co-ordinator becomes aware of reprisal action against a person who has made a disclosure they will:

- Ensure a senior and experienced member of staff, who has not been involved in dealing with the initial disclosure, will investigate the suspected reprisal
- Give the results of that investigation to the Children's Guardian for a decision
- If it has been established that reprisal action is occurring against someone who has made a disclosure, take all steps possible to stop that activity and protect the member of staff who made the disclosure
- Take appropriate disciplinary or criminal action against anyone proven to have taken or threatened and action in reprisal for making a disclosure.

If you report reprisal action you will be kept informed of the progress of any investigation and the outcome.

The Children's Guardian may issue specific directions to help protect against reprisals including:

- Issuing warnings to those alleged to have taken reprisal action against the member of staff who made the disclosure
- Relocating the member of staff who made the disclosure or the subject officer of the allegation within the current workplace
- Transferring the member of staff who made the disclosure or the staff member who is the subject of the allegation to another position for which they are qualified
- Granting a member of staff who made the disclosure or the subject officer leave of absence during the investigation of the disclosure.

These directions will only be taken if the member of staff who made the disclosure agrees to it. The Disclosures Co-ordinator will make it clear to other staff that this cation was taken in consultation with the staff member and with management support and is not a punishment.

If you have reported wrongdoing and feel that any reprisal action is not being properly dealt with, contact the Ombudsman or ICAC, depending on the type of wrongdoing you reported. Contact details for these investigating authorities are included at the end of this policy.

10.2. Protection against legal action

If you make a disclosure in accordance with the PID Act, you will not be subject to any liability and any action, claim or demand can be taken against you for making the disclosure. You will not have breached any confidentiality or secrecy obligations and you will have the defence of absolute privilege in defamation.

11. Support for those reporting wrongdoing

The OCG will make sure that staff who have reported wrongdoing, regardless of whether they have made a protected disclosure, are provided with access to any professional support they made need as a result of the reporting process – such as stress management, counselling services, legal or career advice.

We also have staff who will support those who report wrongdoing. They are responsible for initiating and coordinating support, particularly to those who are suffering any form of reprisal.

All supervisors must notify the Disclosures Co-ordinator of they believe a staff member is suffering any detrimental action as a result of disclosing wrongdoing.

12. Sanctions for making false or misleading disclosure

It is important that all staff are aware that it is a criminal offence under the PID Act to wilfully make a false or misleading statement when reporting wrongdoing.

13. Support for the subject of a report

The OCG is committed to ensuring that staff who are the subject of a report of wrongdoing are treated fairly and reasonably. If you are the subject of a report, you will be:

- Treated fairly and impartially
- Told your rights and obligations under our policies and procedures
- Kept informed during any investigation
- Given the opportunity to respond to any allegation made against you
- Told the result of any investigation.

14. Review

This policy will be reviewed by the OCG every two years or whenever there are changes to the PID Act.

15. More information

Staff can access more information, advice and guidance relating to protected disclosures from either the Disclosures Co-ordinator or from the NSW Ombudsman's website at www.ombo.nsw.gov.au.

16. Resources

For disclosures about corrupt conduct

Independent Commission Against Corruption (ICAC)

Phone: 02 8281 5999

Toll free: 1800 463 909

Tel typewriter (TTY): 02 8281 5773

Fax: 02 9264 5364

Email: icac@icac.nsw.gov.au

Web: www.icac.nsw.gov.au

Address: Level 7, 255 Elizabeth Street, Sydney NSW 2000

For disclosures about maladministration

NSW Ombudsman

Phone: 02 9286 1000

Toll free: 1800 451 524

Tel typewriter (TTY): 02 9264 8050

Fax: 02 9283 2911

Email: nswombo@ombo.nsw.gov.au

Web: www.ombo.nsw.gov.au

Address: Level 24, 580 George Street, Sydney NSW 2000

For disclosures about serious and substantial waste

Auditor-General of the NSW Audit Office

Phone: 02 9275 7100

Fax: 02 9275 7200

Email: mail@audit.nsw.gov.au

Web: www.audit.nsw.gov.au

Address: Level 15, 1 Margaret Street Sydney NSW 2000

For disclosures about serious and substantial waste in local government agencies

Office of Local Government

Phone: 02 4428 4100

Tel typewriter (TTY): 02 4428 4209

Fax: 02 4428 4199

Email: olg@olg.nsw.gov.au

Web: www.olg.nsw.gov.au

Address: 5 O'Keefe Avenue, Nowra NSW 2541

For disclosures about police misconduct

Police Integrity Commission (PIC)

Phone: 02 9321 6700

Toll free: 1800 657 079

Fax: 02 9321 6799

Email: contactus@pic.nsw.gov.au

Web: www.pic.nsw.gov.au

Address: Level 3, 111 Elizabeth Street Sydney NSW 2000

For disclosures about breaches of the GIPA Act

Information Commissioner

Toll free: 1800 472 679

Fax: 02 8114 3756

Email: ipcinfo@ipc.nsw.gov.au

Web: www.ipc.nsw.gov.au

Address: Level 17, 201 Elizabeth Street Sydney NSW 2000

Office of the Children's Guardian

www.ocg.nsw.gov.au

Switchboard: (02) 8219 3600

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