




Public Interest Disclosures Steering Committee Annual Report 2021–22

23 December 2022



The Public Interest Disclosures Steering Committee (the Committee) is established under section 6A of the *Public Interest Disclosure Act 1994* (PID Act). Under this section, the Ombudsman, as chairperson of the Committee, is required to prepare an annual report of the Committee's activities and any recommendations made to the Minister (the Premier and the Attorney General).

The PID Act sets out the framework for protecting public officials who make reports about wrongdoing from the risk of reprisal.

Public officials can make public interest disclosures (PIDs) about corrupt conduct, serious maladministration, serious and substantial waste of public money, a government information contravention or a local government pecuniary interest contravention.

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Functions

The functions of the Public Interest Disclosures Steering Committee (the Committee) are set out in sections 6A and 32 of the *Public Interest Disclosures Act 1994* (PID Act). They require the Committee to:

- provide advice to the Premier and the Attorney General on the operation of the PID Act, and recommend any reform; and
- receive, consider and provide advice to the Premier and the Attorney General on any reports from the Ombudsman in relation to the exercise of the Ombudsman's functions under the PID Act.

Membership

Membership of the Committee is prescribed by the PID Act.

During the reporting year, the members or their nominated representative were:

- Paul Miller, NSW Ombudsman (Chair)
- Kate Boyd, Deputy Secretary, General Counsel, Department of Premier and Cabinet (DPC); Matt Richards, Executive Director, Legal Branch, (DPC)
- Roy Waldon, Executive Director, Legal Division, Independent Commission Against Corruption (ICAC)
- Elizabeth Tydd, Information Commissioner
- Sarah Sandstad, General Counsel, Public Service Commission (PSC)
- Liz Basey, Executive Director Professional Services, Audit Office of NSW
- Kiersten Fishburn, Coordinator General, Planning Delivery and Local Government, Department of Planning, Industry & Environment (DPIE) Kimberly Everett, Director, Sector Performance & Intervention, DPIE [September 2021 meeting]; Grant Gleeson, Director Legal, Office of Local Government (OLG), DPIE [from September 2021]
- Robert Tumeth, Lawyer, Law Enforcement Conduct Commission (LECC) [to July 2022]; Susan Raice, Lawyer, LECC [from July 2022]
- Paul Pisanos, Assistant Commissioner, Commander Professional Standards Command, NSW Police Force (NSWPF) [to February 2022]; David Driver, Assistant Commissioner, Commander Professional Standards Command, NSWPF [February – July 2022]; Assistant Commissioner Joseph Cassar

Given the Privacy Commissioner will be an Integrity Agency and member of the PID Steering Committee under the yet to be commenced *Public Interest Disclosures Act 2022*, the Committee, at its April 2022 meeting, resolved to invite the Privacy Commissioner to attend and observe future Committee meetings.

The Ombudsman's Public Interest Disclosures Unit (PID Unit) provides secretariat support to the Committee.

Meetings

The Committee met twice, remotely, during the reporting year. These meetings were held on 9 September 2021 and 7 April 2022.

The June meeting was postponed and held remotely on 21 July 2022.

Members of the Committee also discussed issues out-of-session throughout the year.

The Committee approved, out-of-session, the Committee's *Annual Report 2020–21* on 13 October 2021. The chairperson submitted the report to the Minister on 21 October 2021 and it was tabled in Parliament on 9 November 2021.¹

Matters of significance considered by the Steering Committee

Public Interest Disclosures Act 2022

During the reporting period, the Committee continued to provide ongoing consideration to and advice on the Public Interest Disclosures Bill 2021 (the Bill).

On 14 October 2021, the Bill was introduced into the Legislative Council by the Hon. Don Harwin MLC, then Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts.

On 19 October 2021, the Bill was referred to Portfolio Committee No. 1 - Premier and Finance (the Portfolio Committee) for inquiry and report.

The NSW Ombudsman made two submissions to the Portfolio Committee: the Special report by the *NSW Ombudsman on the Public Interest Disclosures Bill 2021*² (Special Report) and a supplementary submission comprising the Committee's *Annual Report 2020–21*.³ The NSW Ombudsman advised the Portfolio Committee that the Annual Report 2020-21 outlined the PID Steering Committee's advice to the Government on the Bill, including the following assessment of the Bill:

Although the Bill retains the broad substance of the current Public Interest Disclosures Act 1994, the Bill has been prepared by way of a complete re-write of that Act. In doing so the Bill also implements numerous substantive amendments and clarifications, as well adopting a clearer and more logical structure. The new Bill addresses many of the weaknesses in the existing PID Act:

- *it is simpler and easier to navigate*
- *it contains fewer trip hazards for would-be whistleblowers, including by expanding the permissible recipients of PIDs to include a person's manager, and by protecting PIDs even if they are made to the wrong agency*

1. [Report of the Public Interest Disclosures Steering Committee 2020-21](#)

2. [NSW Ombudsman submissions to the Inquiry into Public Interest Disclosures Bill 2021.pdf](#)

3. [NSW Ombudsman supplementary submissions to the Inquiry into Public Interest Disclosures Bill 2021.pdf](#)

- *it provides more comprehensive protections, including for witnesses and those involved in investigating PIDs*
- *there is a clearer duty on agencies to take appropriate steps to deal with the disclosures they receive*
- *it also introduces enhanced measures to encourage a 'speak up culture' within agencies, for example by enhanced requirements around policies and training*
- *it facilitates more comprehensive and meaningful reporting of data about PIDs.*

The Portfolio Committee reported back on 23 November 2021.⁴ The Inquiry did not recommend any specific amendments to the Bill but recommended that the Legislative Council address the stakeholder concerns identified in the Report in debate.

On 29 March 2022, the Attorney General, the Hon. Mark Speakman SC MP's, second reading speech for the Bill, included that:

The steering committee has met on 11 occasions since December 2017 to consider the proposed reforms and various drafts of the bill. The steering committee has advised the Government that it:

... unanimously welcomes the PID Bill, and believes it will represent a significant enhancement to whistle blower protections in NSW, helping to ensure that reports of wrong-doing are acted upon, and that reporters are encouraged to come forward and are protected when they do. The Bill addresses many of the weaknesses in the existing PID Act.


The Government is grateful to steering committee members for contributing their time and expertise to the development of the bill. The committee's work has greatly improved the bill. I note that on 19 October 2021 the NSW Ombudsman, Mr Paul Miller, PSM, tabled a report in Parliament entitled Special report by the NSW Ombudsman on the *Public Interest Disclosures Bill 2021*. I refer members to that report, which helpfully provides a detailed assessment of the bill against the recommendations made by the Ombudsman committee and the ICAC committee in their respective October 2017 and November 2017 reports. The Ombudsman indicates that he is "confident that the bill will better ensure that reports of wrongdoing are acted upon, and that reporters will be safer and feel more encouraged to come forward", describing the bill as "a colossal improvement on the current PID Act". I thank and acknowledge the Ombudsman and his office for their careful consideration of the bill and preparation of the report.

The Committee's contributions to specific provisions were also referred to in the second reading speech, as follows:

Clause 3 sets out the objects of the bill. Members will note that, on the advice of the steering committee, the objects have been expanded when compared with the objects of the current Act, including promoting a culture in which public interest disclosures are encouraged.

...

4. [Report No 56-PC 1-Public Interest Disclosures Bill 2021](#)



The "no wrong door" approach is a novel policy concept developed by the steering committee. I commend them for their ingenuity to enhance the recommendations of the Ombudsman committee and to further simplify the PID scheme.

...

The steering committee has indicated to the Government:

... although some of the members of the PID Steering Committee are of the view that the PID Bill could be further improved ... all are unanimous that the PID Bill as currently drafted is a positive reform and a significant improvement to the current PID Act. The PID Steering Committee would support the PID Bill being passed in its current form.

...

The bill continues five types of protections and remedies available under the existing Act: first, an offence prohibiting the taking of detrimental action against a PID maker; second, a right for the PID maker to recover damages for detrimental action; third, the availability of an injunction to restrain detrimental action; fourth, protection from liability for making the disclosure; and fifth, prohibitions against disclosures by agencies of information tending to identify a PID maker, subject to exceptions. Each of these protections and remedies has been enhanced in response to the recommendations of the Ombudsman committee and following consultation with the steering committee.

The Attorney General thanked the members of the Public Interest Disclosures Steering Committee for their contributions to the development of the bill.

On 13 April 2022, the *Public Interest Disclosures Act 2022* (the PID Act 2022) received assent after the Bill passed Parliament on 29 March 2022.

The PID Act 2022 provides for the PID steering committee to be established as per its current form, but with the addition of the Privacy Commissioner as a member.

The Committee has since been working to support the PID Act 2022's implementation, through:


- supporting the Ombudsman's office to develop new guidelines
- endorsing a proposal to Government that the PID Act 2022 be proclaimed to commence on 1 October 2023
- considering legal issues raised in the Ombudsman's Special Report.

The Committee will continue to provide support to the Ombudsman's office as it develops new public and agency guidelines, reporting tools, templates and training for the PID Act 2022.

Considerations of reports of the NSW Ombudsman

The Ombudsman's Special Report raised several issues, including potential reforms to the legislation, for consideration by the PID Steering Committee. Those issues include:

- whether the categories of 'serious wrongdoing' that can be the subject of a PID should be expanded or simplified

- 
- whether the definition of ‘maladministration’ should be clarified and/or expanded
 - whether greater clarity is required in respect of the definition of ‘public official’ when applied in the context of contracted-out services.

The Steering Committee has agreed to focus its current efforts on supporting the Ombudsman in preparation for the commencement of the PID Act 2022, with consideration of those possible future reforms to be considered later.

Recommendations to the Minister

The Committee did not make formal recommendations during the reporting year but did provide advice to Government on the Bill, including its overall assessment as reported in its Annual Report 2021/22 (noted above).