



# ***Public Interest Disclosures Steering Committee***

Annual Report 2015–16

**February 2017**

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**ISBN 978-1-925569-17-9**

**ISSN 2203-5214**

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The Public Interest Disclosures Steering Committee was established under section 6A of the *Public Interest Disclosure Act 1994* (PID Act), following a review of the legislation in 2009. Under this section, the Ombudsman, as chairperson of the Steering Committee, is required to prepare an annual report of the Committee's activities and any recommendations made to the Minister (the Premier) to amend the PID Act.

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.

## Functions

The functions of the Public Interest Disclosures Steering Committee are set out in sections 6A, 31B and 32 of the PID Act, and require the Committee to:

- provide advice to the Premier on the operation of the PID Act and recommend any necessary reform
- receive, consider and provide advice to the Premier on any reports from the Ombudsman in relation to the Ombudsman's functions under the PID Act
- review any Commonwealth legislation that is introduced in response to the 2009 report Whistleblower protection: A comprehensive scheme for the Commonwealth public sector of the House of Representatives Standing Committee on Legal and Constitutional Affairs — this review was completed and a report released in January 2014<sup>1</sup>
- consult with and provide advice to a Parliamentary Joint Committee to inform their review of the PID Act.

## Meetings and membership

Membership of the Steering Committee is established under the PID Act. At the end of 2015–16, the members or their nominated representative were:

- John McMillan      NSW Ombudsman
- Paul Miller          Deputy Secretary, Department of Premier and Cabinet
- Barry Underwood    Executive Manager, Governance, Audit Office of NSW
- Sharon Loder        Executive Director, Investigations Division  
Independent Commission Against Corruption (ICAC)
- Peter Barnett        Acting Director, Complaints and Assessments, Police Integrity Commission
- Elizabeth Tydd      Information Commissioner
- Graeme Head        Public Service Commissioner
- Greg Rolph          Detective Chief Superintendent, Professional Standards Command, NSW Police Force
- Tim Hurst            Acting Chief Executive, Office of Local Government.

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1. Available on the NSW Ombudsman's website: [http://www.ombo.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0003/15195/Review-of-the-Commonwealth-public-interest-disclosure-legislation.pdf](http://www.ombo.nsw.gov.au/__data/assets/pdf_file/0003/15195/Review-of-the-Commonwealth-public-interest-disclosure-legislation.pdf).

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

The Steering Committee met in person three times during the reporting year. Meetings are an opportunity for high level discussion of PID related matters, as senior officials are brought together to ventilate any issues.

The following matters are considered as standing items at meetings:

- **Possible legislative amendments.** The Steering Committee identified matters which were causing difficulties for the operation of the PID legislation. The Committee also identified possible legislative amendments to be considered as part of the broader statutory review of the PID Act.
- **The work of the PID Unit.** A report is provided to members detailing current PID Unit projects, the training and audit programs, forums, agency engagement and other public awareness activities. An overview of each PID reporting period is also provided to the Steering Committee which includes information about the number of PIDs reported to the Ombudsman by public authorities and key trends.
- **Roundtable PID updates.** Members provide updates about PID-related activities.

The following matters were also considered by the Steering Committee during the reporting period:

- The review of the PID Act by a Joint Parliamentary Committee.
- Whether a broader provision is needed for the sharing of information to enable investigating authorities to fulfil their functions under the PID Act, and whether the existing legislation allows information to be shared between authorities.
- The draft amendment to the PID Regulation to provide for a dispute resolution function for the Ombudsman in relation to PIDs. The chairperson provided feedback to the Premier on this amendment on 21 January 2016.
- Outcomes from the Ombudsman's office's audit of allegations of reprisal across the NSW public sector.
- Implications of the unsuccessful prosecution under the PID Act of Mr Murray Kear, former Commissioner of the NSW State Emergency Service.
- Possible consequences of the Law Enforcement Conduct Commission Bill 2016 in relation to the PID Act.
- Whether there should be additional categories of conduct in the PID Act to ensure coverage of disclosures about major issues in the public interest.
- Approval of the Steering Committee's Annual Report 2014–15. The chairperson submitted the report to the Premier for tabling in each House of Parliament on 30 March 2016.
- The Information Commissioner's development of PID guidance material.

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## Legislative amendments

As noted above, the functions of the Steering Committee include providing advice to the Premier on the operation of the PID Act and recommending necessary reform.

### Role of the Steering Committee over time

Though the Steering Committee was established in legislation under section 6A of the PID Act in 2011, the Protected Disclosure Act Implementation Steering Committee had been in existence since July 1996. This former committee was an inter-departmental committee formed by the Premier to address specific needs identified in the ICAC research, Monitoring the impact of the *Protected Disclosures Act 1994* in NSW public sector agencies and local councils.

The former committee was responsible for functions including the provision of training, advice and assistance to public authorities, a role which now sits with the NSW Ombudsman's office. The former committee, as is the current Steering Committee, was active in instituting or supporting legislative changes. Legislative amendments sought by the Steering Committee over time have been detailed in previous year's annual reports.

## Legislative review

During the reporting period, the statutory review under s 32 of the PID Act commenced. The review is being conducted by the Joint Parliamentary Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission. The review is to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

The Steering Committee agreed that the chairperson would write to the Joint Parliamentary Committee in relation to consultation and the timing of the review, and to avoid any duplication of work. The chairperson extended this offer to the Joint Parliamentary Committee on 29 June 2016.

A background paper was prepared by the Ombudsman's office which described the problems and issues with the PID Act that came to the attention of the Steering Committee. It also identified options for legislative change, while noting the benefits and risks of each. A copy of the background paper was submitted to the Joint Parliamentary Committee.



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