



Public Interest Disclosures Steering Committee

Annual Report 2016–17

October 2017



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. They 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 2014¹
- consult with and provide advice to a Parliamentary Joint Committee to inform their review of the PID Act.

Membership

Membership of the Steering Committee is established under the PID Act.

At the end of 2016–17, the members or their nominated representative were:

- John McMillan Acting NSW Ombudsman
- Karen Smith Deputy Secretary, Department of Premier and Cabinet
- Barry Underwood Executive Manager, Governance, Audit Office of NSW
- Roy Waldon Executive Director, Legal 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.

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.

On 30 June 2017, the Police Integrity Commission ceased operations and the Law Enforcement Conduct Commission commenced on 1 July 2017. The membership of the Steering Committee will therefore change in the next financial year.

Meetings

The Steering Committee met in person twice 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:

- **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:

- What is meant by the term 'public authority' in the context of the PID Act, in particular the status of NSW Local Aboriginal Land Councils.
- The need for clearer guidance on the circumstances in which a report about bullying and harassment in the workplace should be treated as a PID as opposed to being addressed through the workplace grievance policy.
- Updates to the Committee's terms of reference, which set out the responsibilities of members and the secretariat.
- The recommendations contained in the review of the Commonwealth *Public Interest Disclosures Act 2013* conducted by Philip Moss, the Queensland Ombudsman's review of the *Public Interest Disclosure Act 2010* (Qld), and the Victorian Parliament Independent Broad-based Anti-Corruption Commission Committee's report *Improving Victoria's whistleblowing regime: a review of the Protected Disclosure Act 2012* (Vic).
- The development of guidance material by the NSW Ombudsman to assist public authorities assess the risk of reprisal when a PID is made and respond to allegations of reprisal appropriately.
- Approval of the Steering Committee's Annual Report 2015–16. The chairperson submitted the report to the Premier for tabling in each House of Parliament on 10 February 2017.

The webpage for the Steering Committee, hosted on the website of the NSW Ombudsman, was updated during the year. The revised terms of reference are available here: www.ombo.nsw.gov.au/what-we-do/coordinating-responsibilities/pid-steering-committee.

Parliamentary review of the PID Act

In 2011, significant reforms were made to the PID scheme. This included establishing the PID Steering Committee in legislation and giving the NSW Ombudsman responsibility for overseeing its implementation by the public sector.

The PID Act provides that, after the reforms had been in place for five years, a statutory review should be conducted to:

- determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for meeting those objectives

- consider the effectiveness of the amendments that commenced in 2011
- consider whether the structures in place to support the operation of the scheme remain appropriate
- consider the need for further review of the Act.

The Parliamentary Joint Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission (JPC) started the statutory review of the PID Act in June 2016. 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. A number of Steering Committee member agencies made submissions to the JPC and gave evidence at public hearings in October 2016.

To assist the JPC's deliberations, the NSW Ombudsman prepared a background paper identifying some of the major challenges faced by public sector staff who want to report wrongdoing and by public authorities in implementing the PID Act. The paper was also provided to members for reference and to assist with the preparation of individual submissions, where appropriate. This paper was based on a review of the PID-related complaints and enquiries the Ombudsman had received, the findings and recommendations of audits of public authorities completed by the NSW Ombudsman, the views of public authorities (including at two consultation forums we convened focusing on the review of the legislation), a comparison of PID-related legislation across Australia and the experience of similar oversight agencies, and a review of relevant research.

The paper discussed four key issues that the Steering Committee resolved should be considered in strengthening the operation of the current regime:

- **Simplifying the Act** – many of the provisions are unduly complex, technical and create barriers to the Act achieving its objective to encourage and facilitate disclosures of public interest wrongdoing and provide broad protection to those who make them.
- **Encouraging prevention** – the primary focus of the current legislation is on providing legal mechanisms to remedy reprisal, rather than on preventing adverse outcomes by ensuring authorities have strong, proactive systems in place.
- **Reducing administrative burdens** – the legislation should not place unnecessary burdens on public authorities, and any amendments should be able to be implemented in practice.
- **Ensuring accountability** – it is important that information is collected about the use of the PID Act, implementation is monitored, and there is coordination between investigating and other key authorities.

Recommendations to the Premier

Pending the outcome of the review of the PID Act, the Committee does not have any advice or recommendations for the Premier.

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