



Public Interest Disclosures Steering Committee

Annual Report 2014–2015

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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 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, government information contravention, and 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 Minister (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. The report can be viewed on the NSW Ombudsman website.
- Consult with and provide advice to a joint Parliamentary Committee to inform their review of the PID Act.

Meetings and membership

Membership of the Steering Committee is established under the PID Act. During 2014-2015, the members or their nominated representative were:

- Bruce Barbour NSW Ombudsman
- Paul Miller General Counsel, Department of Premier and Cabinet
- Barry Underwood Executive Manager, Governance, Audit Office of NSW
- Theresa Hamilton Deputy Commissioner, Independent Commission Against Corruption
- Allan Kearney Director, Prevention and Information, Police Integrity Commission
- Elizabeth Tydd Information Commissioner
- Graeme Head Public Service Commissioner
- Greg Rolph Detective Chief Superintendent, Professional Standards Command, NSW Police Force
- Steve Orr Acting Chief Executive, Office of Local Government.

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

The Committee met three times during the reporting year either in person or on the papers whereby meetings are conducted electronically. 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 has identified a number of issues to focus on when a broader review of the PID Act is undertaken. The Steering Committee resolved to seek amendments only in response to more urgent matters which cause difficulties for the operation of the PID legislation (see further below under the heading 'Legislative amendments').
- **The work of the PID Unit.** A report is provided to Members detailing current PID Unit projects, the training and audit program, forums, agency engagement and other public awareness activities.

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

- Ways in which Members could promote the 20th anniversary of the PID legislation. For example, the Office of Local Government issued a Circular to all General Managers in support of the PID Act and reminding officers of their obligations under the legislation.
- An overview of the data provided by public authorities in their PID reports to the Ombudsman for the periods 1 January 2014 to 30 June 2014 and 1 July 2014 to 31 December 2014.
- The role of the Steering Committee and the purpose of meetings. The Steering Committee resolved that its primary role is to monitor and review how the PID Act is operating and make any necessary recommendations for amendment to the government. In considering this, the Committee noted its role under the PID Act and the actions taken to date to meet that purpose including the following legislative amendments which have been implemented:
 - Extending the time period for the prosecution of matters under the PID Act.
 - Providing clarity around whether the PID Act covers contractors and volunteers as public officials.
 - Including the Public Service Commissioner as a member of the Steering Committee.
 - Introducing specific categories of PIDs for the purpose of reporting to enable more meaningful oversight of whether the PID Act is achieving its purpose of encouraging and facilitating reporting of wrongdoing.
 - Changing the PID Act to allow some information sharing between investigating authorities.
 - Changing the PID Act to allow for certain public authorities to be exempted for reporting purposes.
- Approval of the *PID Steering Committee Annual Report 2013–2014*.
- Possible further amendments to the PID Act. For example, in this context the Public Service Commissioner raised the need for a mechanism enabling the return to work of a person who has had their employment unlawfully terminated as a result of detrimental action taken substantially in reprisal for the making of a PID.

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.

Recommendations

The Ombudsman wrote to the Premier on behalf of the Committee in June 2014 recommending legislative amendments to address operational issues in the PID legislation. Below is the status of these amendments to the PID Act and Regulation. For further information about the reasoning to support the recommendations, please refer to the *PID Steering Committee Annual Report 2013–2014* available on the NSW Ombudsman website.

1. Amending the PID Regulation to confer a dispute resolution function on the Ombudsman.

The Committee recommended this amendment in order to bring into effect a section of the PID Act which envisaged the Ombudsman having a dispute resolution role in relation to PIDs.

The Committee will consider the draft regulation in the 2014–2015 reporting period.

2. Expanding the PID Act to allow information sharing between investigating authorities.

The Committee became aware of a matter in which the same allegations were made by a reporter to three different investigating authorities which had some overlap in terms of their respective jurisdictions. A recommendation was made to enable the general exchange of information for the purpose of the PID Act. This was seen to be of considerable benefit, particularly where investigating authorities are dealing with interconnected aspects of the same matter.

The *Ombudsman and Public Interest Disclosures Legislation Amendment Act 2014* included an amendment providing for information exchange or arrangements between investigative authorities for the purpose of deciding whether to refer a matter under the PID Act. The amendment is as follows:

Section 25 Referral of disclosures by investigating authorities

Omit 'An investigating authority referring a matter to another investigating authority may enter into arrangements with the other authority:' from section 25 (7).

Insert instead "Despite any other Act or law (including section 22), an investigating authority referring, or considering whether to refer, a matter to another investigating authority may exchange information or enter into arrangements (or both) with the other authority:".

The explanatory note to the amendment states:

Item [2] enables an investigating authority referring, or considering whether to refer, a matter to another investigating authority to exchange information or enter into arrangements with the other investigating authority. In particular, the investigating authority may exchange information or enter into arrangements with the other authority to avoid duplication of action, to allow the efficient and effective use of both authorities' resources and to ensure that action is taken in a manner providing the most effective result.

As the amendments formed part of the final session of Parliament for 2014, a more substantive amendment as was originally sought by the Steering Committee was not achievable at that time. The Committee is considering whether a broader information sharing provision is required to enable investigating authorities to fulfil their functions under the PID Act.

The Act commenced on 28 November 2014.

3. Amending the PID Act to exempt certain public authorities for reporting purposes.

The *Ombudsman and Public Interest Disclosures Legislation Amendment Act 2014* included an amendment providing for the making of regulations exempting specified public authorities or any specified class of public authorities from the reporting requirements under sections 6CA and 31 of the PID Act. The amendments are as follows:

Section 6CA Reports to Ombudsman by public authorities

Insert after section 6CA (4):

(4A) The regulations may exempt any specified public authority (or any specified class of public authorities) from the requirements of this section.

Section 31 Reports to Parliament by public authorities

Insert after section 31 (3):

(3A) The regulations may exempt any specified public authority (or any specified class of public authorities) from the requirements of this section.

The Act commenced on 28 November 2014.

Under the PID Act, all public authorities – including those with few or no staff – must regularly report to the Ombudsman and Parliament about their compliance with the PID Act. The amendment was recommended by the Committee to address this perceived anomaly and in recognition that reporting can be a burdensome administrative task for very small public authorities. In its discussions to date however, the Committee has noted the importance of the reporting requirements. At this time, no exemptions from reporting requirements for public authorities have been sought.

Legislative review

Under section 32 of the PID Act a review to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives is to be carried out by a joint Parliamentary Committee. The statutory review is due to be undertaken after November 2015. The legislative review will be the focus of the Committee in the next reporting period.

The Steering Committee has previously agreed that a recommendation will be made to re-write the PID Act. The Committee has identified the below list of issues as requiring further consideration:

- Additional categories of conduct, such as risk to public health and the environment.
- Additional investigating authorities, such as the Health Care Complaints Commission.
- Extension of the PID Act to members of the public.
- Expanding legislative protections for those officers investigating disclosures.
- PID reporting requirements, including amending reporting categories in the Regulation to require information from all authorities about referrals.
- General information sharing between investigating authorities.

The above list is not exhaustive and the Committee may consider other issues and possible amendments. There will be a period of consultation with public authorities about any issues they have encountered in their experience with the PID Act which may inform the work of the Committee.

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