

Annual report 2012-13

Public Interest Disclosures Steering Committee

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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 a report of the Committee's activities and any recommendations made to the Premier annually.

The PID Act sets out the structure that protects public officials who make reports about wrongdoing within the NSW public sector from the risk of reprisal. Public officials can make public interest disclosures about corrupt conduct, serious maladministration, serious and substantial waste, a failure to properly fulfil the functions under the *Government Information (Public Access) Act 2009* (GIPA Act) and a pecuniary interest contravention under the *Local Government Act 1993*.

FUNCTIONS

The functions of the Public Interest Disclosure 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 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.
- Consult with and provide advice to the Parliamentary Committee on the Independent Commission Against Corruption to inform their review of the PID Act.

Part of the responsibilities of the NSW Ombudsman's Public Interest Disclosures Unit (PID Unit) is to provide assistance to the Steering Committee. A separate annual report details the work of this Unit and includes an overview of statistical reporting from authorities required under section 6CA of the PID Act.

MEETINGS AND MEMBERSHIP

The Steering Committee is chaired by the NSW Ombudsman and includes representatives of the Department of Premier and Cabinet, the Auditor-General, the Independent Commission Against Corruption, the NSW Police Force, the Police Integrity Commission, the Information and Privacy Commission and the Division of Local Government. In June 2013, as a result of an amendment to the PID Act, the Public Service Commissioner also became a member of the Committee.

As noted in the Committee's terms of reference, the Committee met three times during the reporting year, in September, March and June. The September 2012 meeting was held on the papers and conducted electronically.

LEGISLATIVE AMENDMENTS

A key achievement this year was the passing of the Public Interest Disclosures Amendment Bill 2013. These amendments were a result of a submission by the Steering Committee to the Premier in June 2012. The Bill was passed on 26 March 2013 and commenced 3 April 2013.

The recommendations were developed to address issues that had been raised through the work of the PID Unit and its interaction with public authorities. They aim to further clarify and strengthen the protections available under the PID Act for people who come forward to report wrongdoing. The amendments were:

- *Clarifying the definition of a public official*

To remove some ambiguity about the scope of the definition of 'public official', the amendment to section 4A of the Act clarifies that certain people who are in a contractual relationship with a public sector authority are deemed to be public officials for the purposes of the Act. This amendment also removes any doubt that the protections of the Act can extend to various volunteers.

- *Removal of the voluntary requirement*

To remove the requirement that a disclosure must be made voluntarily in order for the public official who made it to be protected under the PID Act. Previously, section 9 provided that a disclosure was not made voluntarily if it was made by a public official in the exercise of a duty imposed on that official by legislation. The removal of this limitation simplified the legislation and extended the protections of the Act to public officials making reports otherwise covered by the Act.

- *Extension of time for instituting proceedings*

To extend the period of time within which proceedings may commence for reprisal action against a person who made a public interest disclosure. The amendments extend the period from two years after the offence is alleged to have been committed to three years. This extension recognises the fact that the investigators are required to collect the evidence needed to prosecute, which can be very time consuming.

- *Inclusion of Public Service Commissioner*

To include the Public Service Commissioner as a member of the PID Steering Committee.

- *Clarity around public officials with reporting responsibilities*

To differentiate between disclosures made as part of a public official's core roles and responsibilities and other disclosures made by public officials outside of their usual roles and responsibilities for the purposes of statistical and annual reporting. This change is to be implemented through an amendment to the Public Interest Disclosures Regulation 2011.

REVIEW OF THE COMMONWEALTH LEGISLATION

Pursuant to s31B of the PID Act, the Steering Committee is required to review any legislation of the Commonwealth that is enacted 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.

In June 2013, the Commonwealth Public Interest Disclosures Bill 2013 passed through Parliament. The review is to be conducted within six months after the enactment of the Commonwealth legislation and the Steering Committee is to provide the Minister with a report on the outcome of the review and any recommendations for reform of this Act arising from the review. The main considerations will be whether there are any provisions or concepts in the Commonwealth legislation that could usefully be incorporated into the NSW legislation.

The review will include:

1. A comparison of the key differences in the Commonwealth legislation against the suggestions set out in *'Best-practice whistleblowing legislation for the public sector: the key principles'*.¹
1. A comparison of the Commonwealth legislation against the NSW legislation to identify any significant areas where the two diverge, including consideration as to whether the inclusion of any such provisions into the NSW Act would likely improve its effectiveness.
2. A review of the form of words used in equivalent provisions to determine whether the form of words used in the Commonwealth legislation are better expressed in terms of simplicity and effectiveness.
3. To identify opportunities for harmonisation of legislation.

FUTURE CONSIDERATION OF OTHER POSSIBLE LEGISLATIVE AMENDMENTS

During the year, the Steering Committee also considered a number of other suggested legislative amendments. The issue of a broader review of the PID Act will be a main topic of consideration of the Committee moving into the next reporting year.

¹ Brown, AJ, Latimer, P, McMillan, J and Wheeler, C 2008, 'Best-practice whistleblowing legislation for the public sector: the key principles', [*Whistleblowing in the Australian public sector: Enhancing the theory and practice of internal witness management in public sector organisations*](#), ANU E Press, Canberra, pp.261-288.