

What to consider before you blow the whistle

Good government relies on public officials speaking up when they see or hear about serious wrongdoing in the public sector.

In NSW, the law protects public officials who make a public interest disclosure (PID). The law also requires agencies which receive reports of serious wrongdoing to take appropriate action.

This fact sheet provides guidance for NSW public officials about what they should consider before they report serious wrongdoing.

You can also contact the Whistleblower Support Team at the NSW Ombudsman for confidential and independent support at any stage. Further information can be found at the end of this fact sheet.

Who is a public official?

Most public officials are NSW Government employees such as:

- staff of departments and agencies (both non-executive and executive staff)
- staff employed in the teaching, health and transport services and in the NSW Police Force
- staff employed by parliamentary departments and in electorate offices.

Other categories of public officials include:

- staff of NSW local councils and Aboriginal Land Councils
- staff of public universities in NSW
- people working for an agency as contingent labour
- certain contractors and volunteers and various office holders.

For a complete list see [section 14 of the Public Interest Disclosures Act 2022](#) or contact the Whistleblower Support Team for guidance.

Maintain confidentiality

When you report serious wrongdoing, your identity must be kept confidential by any agency or public official that receives your report.¹ There are also steps you can take yourself to maintain confidentiality.

Keeping the existence of your report confidential can help protect the evidence that may be needed in any investigation. It can also help protect you and other people from being treated unfavourably in reprisal for making a report.

You might decide that the safest approach for you is not to tell anyone, and particularly not work colleagues, that you are planning to report or have reported serious wrongdoing. You should think carefully before sharing your plans even with a trusted colleague, as you can't always be sure what they might do with the information.

Discussions outside the workplace are also best avoided, especially social media posts and comments in group chats about the wrongdoing or those allegedly involved.

If you want to discuss your concerns about wrongdoing before you make a report, you can talk confidentially to Whistleblower Support at the NSW Ombudsman.

1. There are exceptions, including if you consent in writing to the disclosure of your identity, if it is generally known you made a PID as a result of your voluntary self-identification, or if it is reasonably necessary to deal with the disclosure. For a complete list see [section 64\(2\) of the Public Interest Disclosures Act 2022](#).

After you have made a report, if you feel that maintaining confidentiality is affecting you or that the confidentiality of your report has been compromised, you can talk to the contact officer for your PID, speak to your Employee Assistance Program or reach out to Whistleblower Support at any time.

Consider being anonymous

A report of serious wrongdoing can be made anonymously. Some people choose to remain anonymous to help protect their identity or to reduce the risk of being treated differently after their report.

If you choose not to identify yourself, you should consider providing a way for the agency that handles your report to keep in touch with you. For example, you could create a new email address that doesn't identify you in any way.

After you have made a report, you may want the agency to be able to contact you again if:

- you would like to receive updates about how your report is being handled and the outcome
- the agency needs to ask you for further details about your report, or
- there is a risk of someone taking detrimental action against you because of your report.

Whether or not you make your identity known, if there is no reasonably practical way for the agency to communicate with you, your report may be considered 'anonymous' for the purpose of the *Public Interest Disclosures Act 2022* (PID Act). In that case you may want to ensure your report contains all the information you have about the serious wrongdoing, including details of potential witnesses and any relevant documentary evidence (that you are authorised to access).

Secure your communications

When you are preparing to report serious wrongdoing, consider what device to use and be mindful of your surroundings. This includes when reading about the PID process as well as when preparing your report

or communicating with the PID contact officer after you report.

The right choices can reduce the possibility that other people in your workplace discover that you plan to report or have reported. For example, you may want to consider:

- keeping all activity relating to your report away from the workplace or at least out of sight of others
- using a personal device rather than a work-issued device
- hiding your caller ID on your phone, and
- using a private secure email account rather than a workplace email account.

Some whistleblower networks recommend accessing the internet through a Virtual Private Network (VPN) when undertaking report-related activity.

You may want to advise the agency of your preferences about how the agency communicates with you. For example, if you prefer to speak on the phone but do not want to provide your phone number, you could advise the agency of the time when you will call again from a private number.

What is serious wrongdoing?

Serious wrongdoing means one or more of the following:

- a. corrupt conduct
- b. a government information contravention
- c. a local government pecuniary interest contravention
- d. serious maladministration
- e. a privacy contravention
- f. a serious and substantial waste of public money.

For definitions of each term see [Schedule 2 of the Public Interest Disclosures Act 2022](#) or contact the Whistleblower Support Team for guidance.

Consider reasonable grounds

One of the requirements for your report to be a PID is that you honestly, and on reasonable grounds, believe that your disclosure shows or tends to show serious wrongdoing.

You can have reasonable grounds for your belief based on something you have observed yourself or something you have been told by a reliable source. It is not necessary for your report to include conclusive proof of wrongdoing or even relevant documentary evidence.

It can be helpful for your report to outline how you formed your belief. You may also want to keep confidential notes about your observations to assist your recollection.

If the allegations in your report are later disproven or unable to be substantiated, you will still be protected as long as you made your report honestly and had reasonable grounds for your belief at the time you made the report.

However, a report will not be a PID if the public official wilfully makes a false statement to mislead or attempt to mislead the agency or person to whom the report was made. False or misleading statements may also constitute a criminal offence.

Don't investigate or search for evidence

You should not attempt to investigate matters yourself. The role of a whistleblower is to raise a concern about serious wrongdoing, not to investigate it.

The agency which receives a report has a duty to deal with it in accordance with the PID Act. Any investigation would be conducted by a person who is specifically authorised by the agency to undertake that function.

If you were to investigate or search for evidence yourself, there is a risk that those activities could expose you as the whistleblower and/or undermine any official investigation by the agency.

If you already have authority to access relevant evidence, you could consider attaching copies to your

report. If your report is anonymous, you may want to carefully review the evidence you attach, to ensure it doesn't give away your identity.

As an alternative to providing copies, you could explain in your report where relevant evidence can be located. You may also want to take steps to satisfy yourself that the evidence is safe from being deleted or altered by others.

If you need to disclose confidential information when making a voluntary PID, you are protected from civil and/or criminal liability or disciplinary action for breaching a duty of confidentiality or other restriction on the disclosure of information.

However, if you were to access, copy or share information otherwise, and without proper authority, you may not be protected from civil/criminal liability or disciplinary action. For this reason you should not seek out information that you are not authorised to access in the ordinary course of your employment duties.

Read the agency's PID Policy

Before you report, you should look up the Public Interest Disclosure (PID) Policy of the agency to which you intend to make your report. A copy should be available on the agency's intranet and/or public website.

The PID Policy should set out the agency's procedures for:

- acknowledging receipt of reports and dealing with reports
- providing information to public officials who make reports
- maintaining confidentiality and protecting the identity of reporters
- assessing and minimising the risk of detrimental action
- taking corrective action in response to findings of serious wrongdoing or other misconduct.

It should also include a list of the agency's disclosure officers and how they can be contacted.

What is a voluntary PID?

A report is a voluntary public interest disclosure (PID) if it:

1. is made by a public official, and
2. discloses information that the public official honestly and on reasonable grounds believes, shows or tends to show serious wrongdoing, and
3. is made to a person in one or more of the roles specified in the PID Act (which include the public official's manager or a disclosure officer for the agency), and
4. is made either in writing or orally (but must be in writing if made to a Minister or member of a Minister's staff), and
5. is made voluntarily (ie, not as a mandatory or witness PID).

Decide where to report

There are many options for NSW public officials to report serious wrongdoing. You can report it to:

- your manager, or
- the head of your agency, or
- a disclosure officer in the agency that you work for
 - o if you are a contractor, subcontractor or a volunteer, this includes the agency you provide services to or exercise functions on behalf of, or
- a disclosure officer in another NSW public sector agency, or
- a disclosure officer in a NSW integrity agency (such as the NSW Ombudsman or the Independent Commission Against Corruption)², or
- a Minister or a member of a Minister's staff (but only in writing).

You cannot make a report to a member of Parliament or to a journalist unless you have previously made substantially the same disclosure to one of the abovementioned entities and also complied with all of the requirements set out in [section 28\(1\) of the PID Act](#).

If you would like help understanding and exploring your options, contact Whistleblower Support at the NSW Ombudsman.

Understand available protections

There are legal protections for a public official who makes a voluntary PID. The protections include:

- a prohibition on the disclosure of information that may identify a person as the maker of a voluntary PID³
- an offence for taking detrimental action against a person based on a suspicion, belief or awareness that a person has made, may have made or may make a PID
- a right to seek compensation if detrimental action does occur
- the ability to seek a court injunction to prevent or remedy detrimental action
- immunity from liability in certain circumstances.

The protections apply from the time the public official first makes the report, even if it takes some time for an agency to determine that the report is a PID.

There are limitations to the protections. Making a PID does not protect a public official from any and all workplace decisions which they may consider unfavourable to them. For example, an agency can still take reasonable management action (such as performance management or suspension) in relation to a PID maker where warranted. For more information about PID protections, contact Whistleblower Support.

2. A list of integrity agencies is in [section 19 of the Public Interest Disclosures Act 2022](#).

3. There are exceptions, including if you consent in writing to the disclosure of your identity, if it is generally known you made a PID as a result of your voluntary self-identification, or if it is reasonably necessary to deal with the disclosure. For a complete list see [section 64\(2\) of the Public Interest Disclosures Act 2022](#)

Prioritise your own wellbeing

When you decide to report serious wrongdoing, it can be difficult to foresee the way that subsequent events will play out. For example, your physical and/or mental wellbeing may be affected at some stage. From the outset you should:

- take steps to ensure you will get adequate rest, nutrition and respite
- pay attention to any signs that your wellbeing is affected
- consider accessing your personal support network of close family or friends
- where necessary, seek help from expert professionals.

Before or after you make a report, you can seek professional support for your wellbeing by contacting:

- your agency's Employee Assistance Program, or
- the Whistleblower Support Team at the NSW Ombudsman, for referral to free and confidential wellbeing support and counselling services which are designed to meet the needs of whistleblowers.

Contact Whistleblower Support

As a NSW public official, you can reach out to the Whistleblower Support Team at the NSW Ombudsman at any time before or after you speak up.

Whistleblower Support can provide information about the PID process and help you explore your options at each stage. You can remain anonymous, and you can discuss your concerns about wrongdoing without unintentionally making a PID.

We're independent and we'll keep your enquiry confidential.

Our contact details are:

Email whistleblowersupport@ombo.nsw.gov.au

Web www.ombo.nsw.gov.au/complaints/whistleblower-support

Phone 1800 716 766 (available 10am to 4pm Monday to Friday, excluding public holidays).

We're also available for phone consultations by prior appointment. You can email us to make an appointment.

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