

# External Public Interest Disclosures Policy

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## 1 Policy statement

The Auditor-General has a statutory responsibility to handle public interest disclosures about a serious and substantial waste of public money by NSW Government agencies and local councils or members of their staff. The Audit Office of New South Wales ('the Audit Office') is one of the investigating authorities defined by the *Public Interest Disclosures Act 1994* (the PID Act) for referral of matters by public officials.

The Auditor-General, subject to the provisions of the *Public Finance and Audit Act 1983* (PF&A Act), may conduct an inspection, examination or audit of the 'serious and substantial waste' of public money.

The Audit Office will assess all reports of wrongdoing it receives and will deal with them appropriately. Once wrongdoing is reported, the Audit Office takes ownership of the matter. This means it is up to us to decide whether a report should be investigated, and if so, how it should be investigated and by whom. The Audit Office will deal with all reports of wrongdoing fairly and reasonably, and will respect the rights of people who are the subject of a report.

## 2 Purpose

The purpose of this policy is to establish a reporting system for public officials to report allegations of serious and substantial waste in NSW Government agencies and local councils without fear of reprisal. The policy sets out who you can report to in the Audit Office, what can be reported and how reports will be dealt with by the Audit Office.

## 3 Scope

The policy applies to:

- permanent employees, whether full-time or part-time
- temporary or casual employees
- consultants
- individual contractors working for a state agency or local council
- employees or contractors providing services to a state agency or local council
- other people who perform public official functions whose conduct and activities could be investigated by an investigating authority, including volunteers

who are employed in:

- NSW State Government departments and authorities including statutory bodies, State owned corporations and State universities
- NSW local councils.

This policy does not apply to disclosures by Audit Office staff or to disclosures made about the Audit Office by other public officials. These disclosures are covered by the [Internal Public Interest Disclosures Policy](#).

This policy is just one in the suite of the Audit Office's complaints handling policies. Any disclosures or allegations about the Audit Office itself are covered by the Internal Public Interest Disclosures Policy or the Complaints Management Policy.

## 4 Organisational commitment

The Audit Office:

- is committed to the aims and objectives of the PID Act
- will support public officials who make disclosures to us about the serious and substantial waste of public money

- will take all reasonable steps to avoid identifying officials who make such disclosures, and to provide protection as far as possible to such officials from any detrimental action in reprisal for the making of the disclosure
- will treat all complaints that do not meet the criteria for protection under the PID Act, with similar confidentiality and care.

Disclosures will be dealt with thoroughly and impartially.

## 5 What should be reported?

Under this policy, the Audit Office can only investigate reports of serious and substantial waste about the following organisations and their staff:

- NSW State Government departments and authorities including statutory bodies, State owned corporations and State universities
- NSW local councils.

In the first instance, you should report your concerns about serious and substantial waste to the agency, university or local council concerned. If this is not possible then you can report to the Audit Office in the first instance.

### 5.2 Disclosures concerning serious and substantial waste

Serious and substantial waste refers to the uneconomical, inefficient or ineffective use of resources, authorised or unauthorised, which results in a waste of public funds or resources.

In addressing any complaint of serious and substantial waste the Audit Office will have regard to the nature, scale and materiality of the waste.

Waste can take many forms, for example:

- misappropriation or misuse of public property
- the purchase of unnecessary or inappropriate goods and services
- incurring costs which might otherwise have been avoided
- programs not achieving their objectives and therefore the costs being clearly ineffective and inefficient.

Waste can result from such things as:

- the absence of appropriate safeguards to prevent the theft or misuse of public property
- purchasing procedures and practices which fail to ensure that goods and services are necessary and adequate for their intended purpose
- purchasing practices where the lowest price is not obtained for comparable goods or services without appropriate justification.

### 5.3 Other serious maladministration

Reports of any suspected maladministration about corrupt conduct, maladministration, a breach of the *Government Information (Public Access) Act 2009* (the GIPA Act) or a local government pecuniary interest contravention are outside of the Audit Office's mandate and should be made to the appropriate investigating authority set out in section 19.

### 5.4 Referral of disclosures to another investigating authority

There may be occasions where it will be necessary to refer the disclosure to another investigating authority or other public authority. The Audit Office must refer such a disclosure if it is not authorised to investigate the matter concerned under the PID Act.

A referral can be made before or after the matter is investigated and whether or not any investigation is complete.

Section 25 of the PID Act provides circumstances where arrangements can be made for managing each referred disclosure.

The Audit Office has a [Memorandum of Understanding](#) in place with the Office of Local Government and a [Memorandum of Understanding](#) with the NSW Ombudsman to cover the referral and sharing of information about PIDs and complaints.

## 6 Assessment of reports

All reports will be promptly and thoroughly assessed to determine what action will be taken to deal with the report.

The Disclosures Coordinator is responsible for assessing reports. All reports will be assessed on the information available to the Disclosures Coordinator at the time. It is up to the Disclosures Coordinator to decide whether an investigation should be carried out and how that investigation should be carried out. In assessing the report, the Disclosures Coordinator may decide that the report should be referred elsewhere or that no action should be taken on the report.

The Disclosures Coordinator may discuss the report with the agency or local council concerned.

## 7 When will a report be treated as a PID?

The Audit Office will treat a report as a PID if the report meets the criteria of a disclosure in the PID Act. The disclosure must be:

- made by a public official as defined in section 4A of the PID Act
- reported to the Auditor-General or nominated officers listed in this policy
- about serious and substantial waste or one of the other four categories of wrongdoing (serious maladministration, corrupt conduct, breach of the GIPA Act, or a local government pecuniary interest contravention). Note the Audit Office only has the authority to investigate allegations of serious and substantial waste.
- based on an honest belief, on reasonable grounds that the information shows or tends to show wrongdoing.

Reports are not PIDs if they:

- mostly question the merits of government policy
- are made solely or substantially to avoid dismissal or other disciplinary action
- are made frivolously or vexatiously
- are made by people who are not (or are no longer) public officials.

## 8 Who can receive a report within the Audit Office?

Disclosures about serious and substantial waste of public money should be addressed to one of the following:

- the Auditor-General
- the Disclosures Coordinator – Governance Manager (Legal)
- Disclosures Officers:
  - Deputy Auditor-General
  - Director, Office of the Auditor-General
  - Managers, Governance
  - Directors, Financial Audit
  - Principal Analysts, Performance Audit.

and can be made either:

- by email – [governance@audit.nsw.gov.au](mailto:governance@audit.nsw.gov.au)

- in writing – The Audit Office of NSW, GPO Box 12, Sydney NSW 2001
- by fax – 02 9275 7200
- by phone – 02 9275 7100
- visiting our Office at Level 15, 1 Margaret St, Sydney NSW 2000.

### **8.1 The Principal Officer – responsibilities**

The Auditor-General has ultimate responsibility for maintaining the reporting system and a workplace reporting culture and ensuring the Audit Office complies with the PID Act. The Auditor-General can receive reports and has a responsibility to:

- ensure there are strategies in place to support reporters and to protect reporters from reprisal as far as possible
- make decisions following any investigation or appoint an appropriate decision maker
- take appropriate remedial action where wrongdoing is substantiated or systemic problems identified
- refer reports to the Disclosures Coordinator for action
- refer actual or suspected corrupt conduct to the Independent Commission Against Corruption (ICAC)
- refer any evidence of a reprisal offence under section 20 of the PID Act to the Commissioner of Police or the ICAC.

### **8.2 The Disclosures Coordinator – responsibilities**

The Disclosures Coordinator has a central role in the Audit Office's reporting system. The Disclosures Coordinator can receive and assess reports, and is the primary point of contact in the Audit Office for the reporter. The Disclosures Coordinator has a responsibility to:

- assess reports to determine whether or not a report should be treated as a public interest disclosure, and to decide how each report will be dealt with
- coordinate the Audit Office's response to a report
- acknowledge reports and provide updates and feedback to the reporter
- assess whether it is possible and appropriate to keep the reporter's identity confidential
- assess the risk of reprisal and workplace conflict related to or likely to arise out of a report, and develop strategies to manage any risk identified
- where required, provide or coordinate support to people involved in the reporting or investigation process
- ensure the Audit Office complies with the PID Act
- provide six-monthly reports to the NSW Ombudsman in accordance with section 6CA of the PID Act.

The nominated Disclosures Coordinator is the Governance Manager (Legal).

### **8.3 The Disclosures Officers – responsibilities**

Disclosures Officers are additional points of contact within the internal reporting system. They can provide advice about the system, receive reports of wrongdoing and assist people to make reports. A Disclosures Officer has a responsibility to:

- document in writing any reports received verbally, and have the document signed and dated by the reporter if possible (refer to Appendix 1 for the External report form)
- make arrangements to ensure reporters can make reports privately and discreetly when requested, if necessary away from the workplace
- discuss with the reporter any concerns they have about reprisal or workplace conflict
- refer the report to the Disclosures Coordinator for action.

Nominated Disclosure Officers are listed at section 8 above.

## 8.4 Audit staff – responsibilities

Audit Office staff undertaking the audits of local and State Government agencies have an important role internal reporting process. They have a responsibility:

- to identify reports made to them in the course of their work which could be a PID, and
- assist the public official to make a report to an officer authorised to receive PIDs under this policy.

## 9 Who can receive a report outside of the Audit Office?

You are encouraged to make a report about serious and substantial waste directly to the agency or council concerned. You can also make a PID to:

- another investigating authority listed in the PID Act
- a member of Parliament or a journalist, but only in the limited circumstances outlined below.

### 9.1 Investigating authorities

The PID Act lists a number of investigating authorities in NSW that public officials can report wrongdoing to and the type of wrongdoing each authority can deal with. In certain circumstances, it may be preferable to report to an investigating authority in the first instance, for example any report about the principal officer of an agency.

You should contact the relevant authority for advice about how to make a disclosure to them. Contact details for each investigating authority are provided in section 19 of this policy.

You should be aware that the investigating authority may discuss the report with the agency or council concerned.

### 9.2 Members of Parliament or journalists

Section 19 of the PID Act provides that reports of wrongdoing made to MPs or journalists are only PIDs if the following conditions are met:

- the reporter must have made substantially the same disclosure to an investigating authority, public authority or appropriate officer of a public authority
- the investigating authority, public authority or an officer to whom the disclosure was made or referred either:
  - decided not to investigate the matter
  - decided to investigate but did not complete their investigation within six months of the disclosure being made
  - recommended not taking any action after investigating the matter
  - failed to tell the reporter whether the matter was to be investigated within six months of the disclosure being made
- the reporter has reasonable grounds for believing that the disclosure is substantially true
- the disclosure must be substantially true.

Therefore, if you report wrongdoing to an MP or a journalist you will need to be able to prove that you have reasonable grounds for believing that the disclosure is substantially true and that it is in fact substantially true.

If you report wrongdoing to a person or an organisation that is not listed above, or make a report to an MP or journalist without following the steps above, you will not be protected under the PID Act. This may mean you may be in breach of legal obligations or other requirements, for example, by disclosing confidential information.

## 10 How to make a report

You can report wrongdoing in writing or verbally to the people named in section 8. You are encouraged to make a report in writing as this can help to avoid any confusion or misinterpretation. The Audit Office's External report form is available in Appendix 1.

If a report is made verbally, the person receiving the report must make a comprehensive record of the disclosure and ask the person making the disclosure to sign this record where possible. The reporter should keep a copy of this record.

## 11 Can a report be anonymous?

There will be some situations where you may not want to identify yourself when you make a report. Although these reports will still be dealt with by the Audit Office it is best if you identify yourself. This allows us to provide you with any necessary protection and support, as well as feedback about the outcome of any investigation.

It is important to realise that an anonymous disclosure may not prevent you from being identified by the subjects of your report or your colleagues. If we do not know who made the report, it is very difficult for us to prevent any reprisal action.

If you indicate that you wish to remain anonymous we will respect this even if you have provided the means for us to identify you, e.g. an anonymous report emailed to us from an identifiable address.

## 12 Feedback to reporters

People who report wrongdoing will be told what is happening in response to their report.

### 12.1 Acknowledgment

When you make a report, the Audit Office will contact you within ten working days to confirm your report has been received and you will be given:

- the timeframe for when you will receive further updates
- the names and contact details of the people who can tell you what is happening or handle any concerns you have
- a copy of this policy (if your disclosure is being treated as a PID)
- information about the action that will be taken in response to your report
- likely timeframes for any investigation if applicable
- information about the resources available to handle any concerns you may have
- information about external agencies and services you can access for support.

### 12.2 Progress updates

While your report is being dealt with, such as by investigation or making other enquiries, you will be given:

- information about the progress of the investigation or other enquiries
- advice of any decision by the Audit Office not to proceed with the matter
- advice if your identity needs to be disclosed for the purposes of investigating the matter or making enquiries, and an opportunity to talk about this.

### 12.3 Final decision

Once the matter is finalised, you will be given:

- enough information to show that adequate and appropriate action was taken and/or is proposed to be taken in response to your disclosure and any problem that was identified – see below for the limitations on the information we are able to provide.



- advice about whether you will be involved as a witness in any further matters, such as disciplinary or criminal proceedings.

Depending on the nature of the disclosure, we may be able to provide a final response within the initial 10-day period.

We deal with the majority of the PIDs by making enquiries as part of our financial audits. We are prevented by the secrecy provisions of the PF&A Act from releasing the detail of information obtained during our audits. In practice, this means that there is very limited information we are able to provide to reporters.

## **13 Maintaining confidentiality**

The Audit Office realises reporters may want their identity and the fact they have made a report to remain confidential. This can help to prevent any action being taken against you for reporting wrongdoing.

Where possible and appropriate we will take steps to keep your identity and the fact you have reported wrongdoing confidential. We will discuss with you whether it is possible to keep your identity confidential.

If you report wrongdoing, you should only discuss your report with those dealing with it. This includes the Disclosures Coordinator and the Principal Officer. The fewer people who know about your report, before and after you make it, the more likely it will be we can protect you from any reprisal.

## **14 Protection under the PID Act**

### **14.1 Protection against reprisals**

The PID Act provides protection for reporters who have made a PID by imposing penalties on a person who takes 'detrimental action' against another person substantially in reprisal for that person making a PID. These penalties also apply to cases where a person takes detrimental action against another because they believe or suspect the other person has made or may have made a PID, even if they did not.

Detrimental action means action causing, comprising or involving any of the following:

- injury, damage or loss
- intimidation or harassment
- discrimination, disadvantage or adverse treatment in relation to employment
- dismissal from, or prejudice in, employment
- disciplinary proceedings.

A person who is found to have committed a reprisal offence may face criminal penalties such as imprisonment and/or fines and may be required to pay the victim damages for any loss suffered as a result of the detrimental action. Taking detrimental action in reprisal is also misconduct which may result in disciplinary action.

It is important to understand the nature and limitations of protections provided by the PID Act. The PID Act protects staff from detrimental action being taken against them because they have made or are believed to have made a PID. It does not protect staff from disciplinary or other management action where the agency or council concerned has reasonable grounds to take such action.

The Audit Office is further limited in its role as an investigating agency as we do not have the same ability to take practical steps to protect a reporter who is employed by a different agency or local council.

If you believe that detrimental action has been or is being taken against you or someone else in reprisal for reporting wrongdoing, you should advise the Audit Office immediately.

## 14.2 Protection against legal action

If you make a public interest disclosure in accordance with the PID Act, you will not be subject to any liability and no action, claim or demand can be taken against you for having made the PID. You will not have breached any confidentiality or secrecy obligations and you will have the defence of absolute privilege in defamation.

## 15 Support for those reporting wrongdoing

The Audit Office will support public officials, as far as possible, who make disclosures to us about the serious and substantial waste of public money.

## 16 Sanctions for making false or misleading statements

It is important all reporters are aware it is a criminal offence under the PID Act to wilfully make a false or misleading statement when reporting wrongdoing. The Audit Office will not support people who wilfully make false or misleading reports.

## 17 Support for the subject of a report

The Audit Office is committed to ensuring public officials who are the subject of a report of wrongdoing are treated fairly and reasonably. This includes keeping the identity of any person the subject of a report confidential, where this is practical and appropriate.

If you are the subject of the report, you will be advised of the allegations made against you at an appropriate time and before any adverse findings. At this time you will be:

- advised of the details of the allegation
- told of your rights and obligations under the relevant related policies and procedures
- kept informed about the progress of an investigation
- given a reasonable opportunity to respond to any allegation made against you
- told the result of any investigation, including any decision made about whether or not further action will be taken against you.

Where the reported allegations against the subject officer are clearly wrong, or have been investigated and unsubstantiated, details of the allegations and any investigation will be kept confidential by the Audit Office unless otherwise agreed to by the subject officer.

## 18 More information

Reporters can access advice and guidance from the Disclosures Coordinator and the NSW Ombudsman's website at [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au).

## 19 Contact details for investigating authorities

The contact details are listed below for investigating authorities that can receive PIDs or provide advice on making a PID.

### For disclosures about corrupt conduct:

Independent Commission Against Corruption  
(ICAC)

Phone: 02 8281 5999  
Toll free: 1800 463 909  
Tel. typewriter (TTY): 02 8281 5773  
Facsimile: 02 9264 5364  
Email: [icac@icac.nsw.gov.au](mailto:icac@icac.nsw.gov.au)  
Web: [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au)  
Address: Level 7, 255 Elizabeth Street, Sydney  
NSW 2000

### For disclosures about maladministration:

NSW Ombudsman  
Phone: 02 9286 1000  
Toll free (outside Sydney metro): 1800 451 524  
Tel. typewriter (TTY): 02 9264 8050  
Facsimile: 02 9283 2911  
Email: [nswombo@ombo.nsw.gov.au](mailto:nswombo@ombo.nsw.gov.au)  
Web: [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)  
Address: Level 24, 580 George Street, Sydney  
NSW 2000

**For disclosures about serious and substantial waste:**

Auditor-General of the Audit Office of NSW  
Phone: 02 9275 7100  
Fax: 02 9275 7200  
Email: [governance@audit.nsw.gov.au](mailto:governance@audit.nsw.gov.au)  
Web: [www.audit.nsw.gov.au](http://www.audit.nsw.gov.au)  
Address: Level 15, 1 Margaret Street, Sydney NSW 2000

**For disclosures about local councils:**

Office of Local Government  
Phone: 02 4428 4100  
Fax: 02 4428 4199  
Email: [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au)  
Web: [www.olg.nsw.gov.au](http://www.olg.nsw.gov.au)  
Address: 5 O'Keefe Avenue, Nowra NSW 2541

**For disclosures about the Police Integrity Commission or its staff**

The Inspector of the PIC  
Phone: 02 9232 3350  
Fax: 02 8243 9471  
Email: [pic\\_executive@oipic.nsw.gov.au](mailto:pic_executive@oipic.nsw.gov.au)  
Web: [www.oipic.nsw.gov.au](http://www.oipic.nsw.gov.au)  
Address: GPO Box 5341, Sydney NSW 2001

**For disclosures about breaches of the GIPA Act:**

Information Commissioner  
Toll free: 1800 472 679  
Fax: 02 8114 3756  
Email: [ipcinfo@ipc.nsw.gov.au](mailto:ipcinfo@ipc.nsw.gov.au)  
Web: [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)  
Address: Level 11, 1 Castlereagh Street, Sydney, NSW 2000

**For disclosures about police misconduct:**

Police Integrity Commission (PIC)  
Phone: 02 9321 6700  
Toll free: 1800 657 079 Fax: 02 9321 6799  
Email: [contactus@pic.nsw.gov.au](mailto:contactus@pic.nsw.gov.au)  
Web: [www.pic.nsw.gov.au](http://www.pic.nsw.gov.au)  
Address: Level 3, 111 Elizabeth Street, Sydney NSW 2000

**For disclosures about the ICAC or its staff**

The Inspector of the ICAC  
Phone: 02 9228 5260  
Email: [oiicac\\_executive@oiicac.nsw.gov.au](mailto:oiicac_executive@oiicac.nsw.gov.au)  
Web: [www.oiicac.nsw.gov.au](http://www.oiicac.nsw.gov.au)  
Address: PO Box 5341, Sydney NSW 2001

## 20 Contact point

The contact for this policy is the Governance Manager (Legal), [governance@audit.nsw.gov.au](mailto:governance@audit.nsw.gov.au).

## 21 Review

The External Public Interest Disclosures policy will be reviewed every two years. The next review is due in November 2019.

## Appendix 1: External report form



### External report form

To be completed and submitted to a nominated Disclosures Officer

Details of reporter <i>(If an anonymous report was made leave this section blank)</i>		
Name:		
Position:		
Division/Unit:		Preferred method of contact
Telephone:		<input type="checkbox"/> Telephone
Email:		<input type="checkbox"/> Email
Postal address:		<input type="checkbox"/> Post
Details of the wrongdoing being reported		
Description: <ul style="list-style-type: none"> <li>• <i>What happened?</i></li> <li>• <i>Where did this happen?</i></li> <li>• <i>When did this happen?</i></li> <li>• <i>Is it still happening?</i></li> </ul> <i>[Attach an additional page if required]</i>		
How did the reporter become aware of this?		
Name and position of people involved in the wrongdoing:	Name	Position
Attach any additional relevant information or indicate where supporting evidence may be found:	Supporting evidence	Attached
		<input type="checkbox"/>
Name and position of other people who may have additional information:	Name	Position