

Changes to the public interest disclosures system – information for public authorities

What are the changes?

The *Protected Disclosures Act 1994* is renamed the *Public Interest Disclosures Act 1994* (PID Act). The PID Act sets out the system under which people working within the NSW public sector can make reports about the functioning of the public sector in a way that minimises the risk of reprisal. The things people can make public interest disclosures about are corrupt conduct, serious maladministration, serious and substantial waste, a failure to properly fulfil functions under the *Government Information (Public Access) Act 2009*, and pecuniary interest contravention under the *Local Government Act 1993*.

Two Bills containing amendments to the PID Act were passed by Parliament in October 2010 and September 2011. These amendments have or will come into effect in four stages: on proclamation of the first Bill (3 March 2011), on 1 July 2011, on proclamation of the second Bill (1 November 2011) and on 1 January 2012.

Do the changes affect your organisation?

The PID Act applies to all public authorities in NSW, including state government agencies, councils, state-owned corporations and universities.

What changes affect your organisation at what time

On 3 March 2011

1. The name of the Act is now the *Public Interest Disclosures Act 1994*.
2. Public interest disclosures are now able to be made internally about a failure to properly fulfil functions under the *Government Information (Public Access) Act 2009*, as well as to the Information Commissioner.

On 1 July 2011

1. Public authorities had three months (by 1 October 2011) to develop a policy and procedures for receiving, assessing and dealing with public interest disclosures. Public authorities must have regard to the NSW Ombudsman's guidelines in formulating their policy. We have also developed model internal reporting policies for [organisations](#) and [local government](#).

2. The threshold test for protection changed. A report is protected by the PID Act if the person making it honestly believes on reasonable grounds that their information shows or tends to show one of the types of conduct that public interest disclosures can be made about (e.g. corrupt conduct, maladministration).
3. Individuals who are engaged as contractors by a public authority are included in the new definition of a public official who can make a public interest disclosure or be the subject of one.
4. New provisions relating to reprisals came into effect:
 - If a person takes detrimental action against someone for making a public interest disclosure, this is not only a criminal offence but also constitutes misconduct that justifies the taking of disciplinary action. This also applies to a situation where a person takes reprisals against a person whom they mistakenly believe made the public interest disclosure.
 - Any person who takes detrimental action is liable in damages for any loss suffered by a person who made the public interest disclosure.
 - An investigating authority, or public authority with the consent of the Attorney-General, may apply to the Supreme Court for an injunction to prevent detrimental action being carried out.
 - If a person is convicted of the offence of detrimental action in reprisal for a PID being made, the maximum penalty has doubled to 100 penalty units or two years gaol or both.
5. A public authority can no longer decline to investigate a public interest disclosure solely on the grounds that it was made frivolously or vexatiously.
6. The NSW Ombudsman's new oversight role commenced. We established a Public Interest Disclosures Unit to perform our new functions. Initially, our focus is to assist public authorities to implement the changes by providing guidelines, model policies, training and being available to give advice. In the future we will audit, monitor or investigate the way public interest disclosures are handled, including the systems that have been established. We also have the power to require public authorities to provide us with information.

Changes to the public interest disclosures system – information for public authorities

On 1 November 2011

1. Reports of wrongdoing made in accordance with the PID Act are known as *public interest disclosures*.
2. The head of a public authority must ensure that:
 - the authority has a public interest disclosures policy
 - the policy designates at least one officer of the authority as being responsible for receiving public interest disclosures on behalf of the authority
 - the staff of the authority are aware of the contents of the policy and the protections under the PID Act
 - the authority complies with the policy and the authority's obligations under the PID Act.
3. Each public authority's policy for receiving, assessing and dealing with public interest disclosures must ensure that a person who makes a public interest disclosure receives, within 45 days of making the disclosure, a copy of the policy and a written acknowledgment of receipt of the disclosure.
4. Public authorities are to refer any evidence of an offence of reprisal for a public interest disclosure to the Commissioner of Police or the Independent Commission Against Corruption. After completing an investigation and forming the opinion that an offence has been committed, these bodies are to refer the matter by providing a brief of evidence to the Director of Public Prosecutions.
5. Public interest disclosures may be made to the Division of Local Government (DLG) in the Department of Premier and Cabinet in relation to corrupt conduct, maladministration, government information contraventions and pecuniary interest contraventions in local councils. Previously, public interest disclosures could only be made to the DLG about serious and substantial waste of local government money.

On 1 January 2012

Public authorities will be required to start collecting data about public interest disclosures they have dealt with in order to:

- prepare an annual report on their compliance with the PID Act and provide a copy of this report to the NSW Ombudsman
- provide six monthly data to the NSW Ombudsman on their compliance with the PID Act.

The information to be collected and the form in which it needs to be reported will be outlined in a regulation, which is in the process of being developed, and will be gazetted by 1 January 2012.

Contact us for more information

Our business hours are: Monday to Friday, 9am–5pm (*Inquiries section closes at 4pm*)

If you wish to visit us, we prefer you make an appointment. Please call us first to ensure your complaint is within our jurisdiction and our staff are available to see you.

Level 24, 580 George Street
Sydney NSW 2000

Email pid@ombo.nsw.gov.au
Web www.ombo.nsw.gov.au

General inquiries 02 9286 1000
Facsimile 02 9283 2911

Toll free (outside Sydney metro) 1800 451 524
Tel. typewriter (TTY) 02 9264 8050

Telephone Interpreter Service (TIS): 131 450
We can arrange an interpreter through TIS or you can contact TIS yourself before speaking to us.

For some public authorities, the first annual report will be for the period 1 January to 31 December 2012. For other public authorities, the first annual report will only need to include information for the period 1 January to 30 June 2012. The first biannual report to the NSW Ombudsman will be for the six month period ending 30 June 2012.

Public authorities will be assisted by guidance material and advice from the NSW Ombudsman.

What does your organisation need to do about the changes?

There are three main things to keep in mind.

Firstly, you need to handle any public interest disclosure made after 1 July 2011 in accordance with the changed system. You should determine who in your organisation will have particular responsibility for understanding and implementing the changed system and responding to any public interest disclosures you receive.

Secondly, you need to have a policy and procedures in place by 1 October 2011 for receiving, assessing and dealing with public interest disclosures.

Finally, by 1 January 2012, you will need to have processes and systems in place for collecting and reporting data about the public interest disclosures your organisation receives.

What is available to help your organisation?

The NSW Ombudsman has developed new guidelines and new model internal reporting policies for [organisations](#) and [local government](#).

You can also ring us on (02) 9286 1000 or email us for advice at pid@ombo.nsw.gov.au.

We have begun a comprehensive program to raise awareness of the issues, assist, educate and train practitioners and managers about the system. Please visit our [website](#) where information will be regularly updated.