



Public Interest Disclosures – new requirements and implications

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Thank you, Kath

I am very pleased to have the opportunity to speak with you today about changes to the public interest disclosures landscape, the additional requirements on agencies and the implications flowing from the changes.

As I am sure many of you already know, what was called the Protected Disclosures Act, now the Public Interest Disclosures Act, has been the subject of a range of amendments in the last six months. This is particularly important legislation as it aims to encourage and facilitate the disclosure, in the public interest, of wrongdoing in the public sector. The Act as amended last year and yesterday in Parliament is in my view Australian best practice for public interest disclosures type legislation.

In the public sector, the question that is the theme of today's conference, "Who Knew?" can be answered very quickly. Public servants often know. They often know when their colleague is doing the wrong thing. They certainly know when the systems in place in their agency are not working as they should and they know when their agency is wasting public funds.

However, if they do not come forward and tell someone, then very likely they will be the only ones who know.

The Public Interest Disclosures Act is aimed at encouraging them to do just that. To come forward, to tell someone. The Act also provides them with an improved level of support and protection when they do come forward. This is why the legislation is so important, and it is why we have to make sure we get it right.

The Act has been around since 1994, but it has been far from ideal. It didn't always achieve its aim, and I think many public servants didn't even know it existed. No agency was responsible to make sure the legislation was working or tasked with reviewing if it was operating properly. I am very pleased to report that the changes that have been made following a Parliamentary Committee review will make real improvements to this situation.

The first and most obvious change has been a name change, from the Protected Disclosures Act to the Public Interest Disclosures Act. This new name is important as it reflects the objective of the legislation, whereas the old title only reflected the means to achieve that objective.

Role of the Ombudsman

Another major change is an increase in responsibilities for our office.

Our office has had a long relationship with protected disclosures/public interest disclosures. We have been an avenue of reporting since the Act first came into force and have published guidelines for agencies on how to manage disclosures and the people who make them. Our roles and responsibilities were expanded significantly on 1 July this year.

The Ombudsman is now responsible for promoting public awareness and understanding of the objects of the PID Act, as well as providing advice and guidance to those who can make a disclosure and those who can receive a disclosure.

We will do this through education and training, as well as targeted publications. We have prepared a model internal reporting policy to provide the foundation for each agency's internal systems. This will be accompanied by guidelines aimed at helping everyone involved in making, assessing, handling, investigating, and managing disclosures. All of our guidance is available at our website, and several of our publications are available at the table just outside the auditorium.

The model policy is a baseline against which we would encourage agencies to develop and review their own policies and procedures. If they wish to build on it, that would be a good thing. We have taken a slightly different approach with our new guidance materials to our previous manual. Rather than preparing one single manual, we are providing a pack of approximately 30 short, targeted practice notes. Each part will deal with a particular issue. This will allow those tasked with dealing with public interest disclosures, and this includes general managers and mayors, to use them as a reference tool. This format also allows us to update our guidance quickly and easily, both to reflect any developments in our thinking as well as any legislative changes.

Finally, we will be offering free education and training to organisations to help them meet their obligations under the PID Act. The initial face-to-face training will be targeted at nominated disclosures coordinators and disclosures officers. We are also close to finalising an e-learning program. While we will be trying to get out and speak with as many public sector staff as possible, we just can't reach everyone. E-learning will allow us to provide some clear and concise information to public officials across the public sector to improve their awareness of the Act. We will also be developing specific e-learning modules for supervisors, disclosures officers and disclosures coordinators.

The second new area of responsibility for our office involves making sure the system is working as it should. Legislation is only one part of a successful system. It is vital to ensure the objects of the legislation are being achieved in practice.

In order to measure the success of the system, we now have responsibilities to monitor, audit and report on how public authorities handle disclosures. We will be reporting findings from our monitoring work once a year and the outcomes of our auditing work at least once a year, and more often if necessary.

We will continually assess the effectiveness of the PID Act in line with what comes out of our auditing and monitoring work, as well as our investigations and other research, so that we can make informed recommendations for changes when they are needed. This information will be communicated to the Premier as the responsible Minister, as well as being built into our various public interest reports to Parliament.

This is an exciting and challenging new responsibility for our office, and the Ombudsman has established a dedicated Public Interest Disclosures Unit to make sure we perform our role properly. The Unit has four clear objectives, which are:

- to increase awareness of the procedures for making public interest disclosures and the protections provided by the PID Act
- to improve handling of disclosures and the protection and support for people who make them
- to improve identification and remedying of problems and deficiencies revealed by disclosures
- to ensure an effective statutory framework is in place for the making and management of disclosures and the protection and support for people who make them.

This is an ambitious list. Staff from the Unit are working hard to provide agencies with advice and guidance around the changes, and they will continue to work towards ensuring we have the best possible system for handling public interest disclosures in NSW.

Agency responsibilities

Not all of the additional responsibilities sit with our office. If the system is truly going to work, the drive has to come from agencies. Reporting wrongdoing, and dealing with those reports, has to become an everyday administrative process rather than something that is seen as extraordinary or abnormal.

There have also been a number of important changes to the roles and responsibilities of agencies. Under the former Act there used to be only two express requirements for agencies. They had to tell

the person who made the disclosure what they were doing about it within six months of the disclosure. The second is that they had to try to keep the identity of the person making the disclosure confidential. I have always argued that these carried with them another responsibility – they had to actually read and assess the disclosure!

The recent amendments mean agencies now have to:

- have internal reporting policy and procedures in place by 1 October this year. In developing these policies and procedures, agencies have to have regard to our office's model policy.
- report to Parliament annually on their obligations under the Act, and provide a copy of that report to our office. This requirement will not come into effect until 1 January 2012, but it is something that you should start thinking about now. How you are going to record and register disclosures, collect data, record and report it.
- report statistical information to our office every six months, and
- to include a requirement in their internal reporting policy to acknowledge receipt of disclosures within 45 days. This is not ideal operationally and our model policy suggests that in practice agencies should acknowledge reports within 2 working days.

Principal officers of agencies are also now obliged:

- to ensure the agency complies with the policy and its obligations under the Act, and
- to ensure there is an internal reporting policy and that staff are aware of the policy and the protections under the Act.

This last requirement has actually been in the standard contracts for CEOs and General Managers, and for senior public sector executives and Council staff for some time. Including it in the body of the legislation brings the requirement front and centre. It also sends the right message to staff within agencies. But they will need to see a real commitment, not just lip service.

The title for my session this morning mentioned new requirements, but it also mentioned implications. If the changes to the system are going to have any impact, they need to be viewed as presenting opportunities. These will include opportunities to improve systems, to identify and correct problems. But there is also a real opportunity to strengthen the relationship between agencies and their staff. People who trust their organisation to treat them fairly and ethically, to support them and protect them when they do the right thing and report wrongdoing will be happier, and I believe they will be more productive.

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