

Parliamentary Counsel's Office

Public Interest Disclosures Policy

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Policy Owner / Contact

Corporate Services

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1. Overview

The *Public Interest Disclosures Act 1994* (PID Act)¹ sets out a system under which people working within the NSW public sector can report serious wrongdoing in a way that gives them protection from reprisal action and liability. People may make a public interest disclosure about corrupt conduct, serious maladministration, serious and substantial waste, a failure to properly fulfil functions and responsibilities under the *Government Information (Public Access) Act 2009* (GIPA Act), and a pecuniary interest contravention under the *Local Government Act 1993*.

The *PID Act* requires that the head of each agency ensure compliance with the *PID Act*, including establishing an internal reporting system for employees to report wrongdoing without fear of reprisal. This policy sets what wrongdoing should be reported at the Parliamentary Counsel's Office (PCO), the process for reporting wrongdoing, and how reports of wrongdoing will be handled. This policy applies to all employees, including permanent, temporary, and part-time employees, contractors and consultants.

PCO must report on its obligations under the *PID Act*. PCO provides statistical information about public interest disclosures in its annual report and to the NSW Ombudsman every six months.

2. Roles and responsibilities

Role	Key responsibility
Parliamentary Counsel	Maintaining the internal reporting system and workplace reporting culture and ensuring PCO complies with the <i>PID Act</i> .
Disclosures Officer (Director, Corporate Services)	Ensures PCO complies with the <i>PID Act</i> . The primary point of contact for a reporter and receives and assesses reports. Co-ordinates PCO's response to a report. Provide advice about the system and the internal reporting policy.
Managers	Create a local work environment where employees are comfortable and confident about reporting wrongdoing. Assist employees to make a report to an authorised officer that could be a public interest disclosure.
PCO Employees	Be aware of what can and should be reported and how to report these. Assist those dealing with a report, upon request.

¹ Note that the *PID Act 2022* was assented to on 13 April 2022 and will come into force up to 18 months after assent. This policy will be updated once the new legislation comes into effect.

3. Definitions

In this policy –

GIPA Act means the [Government Information \(Public Access\) Act 2009](#).

ICAC means the Independent Commission Against Corruption.

PID Act - the [Public Interest Disclosures Act 1994](#).

Manager - anyone with official management responsibility for other employees within PCO.

4. Policy

4.1 The *Public Interest Disclosures Act 1994*

The *PID Act* sets out a system under which people working within the NSW public sector can report serious wrongdoing in a way that gives them protection from reprisal action and liability. People may make a public interest disclosure about corrupt conduct, serious maladministration, serious and substantial waste, a failure to properly fulfil functions and responsibilities under the *GIPA Act*, and a pecuniary interest contravention under the *Local Government Act 1993*.

The internal reporting system established under this policy is not intended to be used for staff grievances, which should be raised through the PCO's Grievance and Dispute Resolution Procedures.

4.2 Reporting public interest disclosures

Employees are encouraged to raise matters of concern at any time with their managers, but also have the option of making a report about a public interest issue in accordance with this policy and the *PID Act*.

PCO has a responsibility to support employees who report wrongdoing, including keeping the identity of reporters confidential, if practical and appropriate, and taking steps to protect reporters from reprisal and manage workplace conflict.

If an employee reports wrongdoing, PCO will assess the report and determine whether the report should be investigated, and if so, how it should be investigated and by whom. PCO commits to dealing with all reports of wrongdoing fairly and reasonably and respect the rights of any officers who are the subject of a report.

4.3 Obligations of PCO employees

All employees play an important role in contributing to a workplace in which known or suspected wrongdoing is reported and dealt with appropriately. All employees should:

- report known or suspected wrongdoing and support those who have made reports of wrongdoing,
- if requested, assist those dealing with the report, including supplying information on request, cooperating with any investigation and maintaining confidentiality,

- treat any employee or person dealing with a report of wrongdoing with courtesy and respect,
- respect the rights of officers who are the subject of reports.

Employees must not:

- victimise or harass anyone who has made a report,
- make false or misleading reports of wrongdoing.

Additionally, all employees involved in the internal reporting process are obliged to adhere to PCO's *Code of Conduct*. A breach of the Code could result in disciplinary action.

The Parliamentary Counsel has a responsibility to:

- assess reports received by, or referred to, them to determine whether the report should be treated as a public interest disclosure, and to decide how the report will be dealt with,
- ensure there are strategies in place to support reporters, protect reporters from reprisal and manage workplace conflict that may arise in relation to a report,
- make decisions following any investigation or appoint an appropriate decision-maker,
- take appropriate remedial action if wrongdoing is substantiated, or systemic problems are identified,
- refer actual or suspected corrupt conduct to ICAC,
- refer any evidence of a reprisal offence under section 20 of the *PID Act* to the Commissioner of Police or ICAC.

The Disclosures Co-ordinator has a central role in PCO's internal reporting system. The Disclosures Co-ordinator can receive and assess reports and is the primary point of contact at PCO for the reporter. The Disclosures Co-ordinator at PCO is the Director, Corporate Services.

The Disclosures Co-ordinator has a responsibility to:

- assess reports to determine whether a report should be treated as a public interest disclosure and to decide how each report will be dealt with,
- co-ordinate PCO'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,
- if required, provide or co-ordinate support to employees involved in the reporting or investigation process, including protecting the interests of any officer the subject of a report.

The Disclosures Officer is an additional point of contact within the internal reporting system. The Officer can provide advice about the system and the internal reporting policy, receive reports of wrongdoing, and assist employees to make reports. The Disclosures Officer at PCO is the person with day-to-day responsibility for risk and governance.

The Disclosures Officer has a responsibility to:

- document any reports received verbally, and have the document signed and dated by the reporter,
- make arrangements to ensure employees can make reports privately and discreetly when requested, if necessary, away from the workplace,
- discuss with the reporter any concerns they may have about reprisal or workplace conflict,
- carry out a preliminary assessment and forward reports to the Disclosures Co-ordinator or Parliamentary Counsel for full assessment.

Supervisors play an important role in managing the immediate workplace of those involved in or affected by the internal reporting process. Supervisors should be aware of the internal reporting policy and are responsible for creating a local work environment where employees are comfortable and confident about reporting wrongdoing.

Supervisors have a responsibility to:

- encourage employees to report known or suspected wrongdoing within the organisation and support employees when they do,
- identify reports made to them in the course of their work that could be public interest disclosures and assist employees to make reports to an officer authorised to receive public interest disclosures under this policy,
- implement local management strategies, in consultation with the Disclosures Co-ordinator, to minimise the risk of reprisal or workplace conflict in relation to a report,
- notify the Disclosures Co-ordinator or Parliamentary Counsel immediately if they believe an employee is being subjected to reprisal as a result of reporting wrongdoing.

5. What should be reported?

Any suspected wrongdoing within PCO, or any activities or incidents within PCO that an employee believes are wrong (but not including grievances or bullying and harassment, which are covered by other policies).

Reports about the following five categories of serious misconduct, which otherwise meet the criteria of a public interest disclosure, will be dealt with under the *PID Act* and according to this policy:

1. Corrupt conduct
2. Maladministration
3. Serious and substantial waste of public money
4. Breach of the *GIPA Act*
5. Local government pecuniary interest contravention

More information about what can be reported under the *PID Act* can be found in the NSW Ombudsman's Guideline B2: What should be reported?

5.1 Corrupt conduct

Corrupt conduct is the dishonest or partial exercise of official functions by a public official.

5.2 Maladministration

Maladministration is conduct that involves action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory or based wholly or partly on improper motives.

5.3 Serious and substantial waste of public money

Serious and substantial waste is the uneconomical, inefficient or ineffective use of resources that could result in losing or wasting public money.

5.4 Breach of the GIPA Act

The *GIPA Act* provides for public access to government held information.

The object of the *GIPA Act* is to open government information to the public by:

- giving members of the public a legally enforceable right to access government information,
- ensuring that access to government information is restricted only when there is an overriding public interest against releasing that information,
- authorising and encouraging the proactive release of information by NSW public sector agencies.

It is noted that most PCO documents cannot be released as they are Cabinet documents or documents attracting legal professional privilege and there is an overriding public interest against disclosing these documents to the public. However, one of PCO's key objectives is to facilitate public access to legislation (namely, legislation that has been enacted, introduced into Parliament or released for public consultation) and PCO actively provides free public access to that legislation and as much information about legislation as possible.

A breach of the *GIPA Act* is a failure to properly fulfil functions under that Act. For example, this could include:

- destroying, concealing, or altering records to prevent them from being released,
- knowingly making decisions that are contrary to the legislation,
- directing another person to make a decision that is contrary to the legislation.

Any request or queries in relation to GIPA and the PCO should be directed to the Director of Corporate Services.

5.5 Local government pecuniary interest contravention

This section may be relevant to a non-local government authority such as PCO. For example, if an employee makes a report about the conduct of a council officer with whom the employee interacts.

A local government pecuniary interest contravention is a failure to comply with requirements under the *Local Government Act 1993* relating to the management of pecuniary interests. These include obligations to lodge disclosure of interests returns, disclose pecuniary interests at council and council committee meetings, and to leave a meeting while a relevant matter is being discussed. A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person.

5.6 PID Internal reporting form

Available on [Gulbarra](#).