

# **PUBLIC INTEREST DISCLOSURES MANAGEMENT GUIDELINES**

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Implementation document for Public Interest Disclosures Internal Reporting policy

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## 1. **Public Interest disclosures policy**

- 1.1 Every staff member of the department has an ethical responsibility to report suspected unlawful, corrupt, negligent or improper conduct, serious maladministration or serious and substantial waste of public money.
- 1.2 The department's [Public Interest Disclosures Internal Reporting Policy](#) establishes the commitment and framework to support and protect staff who report wrongdoing.
- 1.3 This policy sets out the manner in which the department meets its obligations under the [Public Interest Disclosures Act 1994](#) (PID Act).

## 2. **Guidelines for managing public interest disclosures**

- 2.1 The Public Interest Disclosures Management Guidelines set out the procedures to implement the Public Interest Disclosures Internal Reporting Policy and identify the roles and responsibilities of all department staff in making and/or receiving public interest disclosures.
- 2.2 These Guidelines are based on the principle that any staff member reporting wrongdoing will be supported and protected from reprisal in doing so.

## 3. **Application of these Guidelines**

- 3.1 These Guidelines apply to the following people employed by the department:
  - i. permanent employees, whether full-time or part-time
  - ii. temporary or casual employees
  - iii. consultants
  - iv. individual contractors working for the department.

## 4. **What is a public interest disclosure?**

- 4.1 A public interest disclosure is a report of suspected wrongdoing by a public official, about a public official which has been accepted as meeting all of the following requirements under the PID Act:
  - 4.1.1 The report alleges corruption, serious maladministration, serious and substantial waste or government information contravention.
  - 4.1.2 The person making the report must honestly believe on reasonable grounds that the information shows or tends to show wrongdoing.
  - 4.1.3 The report must be made to one or more of the following:
    - i. a Disclosures Officer as identified in these Guidelines
    - ii. the Disclosures Coordinator (Director Investigations, Employee Performance and Conduct Directorate)
    - iii. the Disclosures Manager (Executive Director, Employee Performance and Conduct Directorate)

- iv. one of the investigating authorities nominated in the PID Act (these agencies are identified at Appendix B of these Guidelines).

4.2 Reports will not be considered to be public interest disclosures if they:

- a. mostly question the merits of government policy; or
- b. are made with the sole or substantial motive of avoiding disciplinary action.

## 5. Who can make a public interest disclosure?

5.1 One of the criteria for a report of wrongdoing to be considered a public interest disclosure is that the report must be made by a public official.

5.2 A public official is defined as being staff of a state government department or agency (including part time or casual staff), staff of a local government authority, an employee of a state owned corporation or a subsidiary of a state owned corporation, a person having a public official function or acting in a public official capacity for the state, or an individual who is engaged by a public authority under a contract to provide services to or on behalf of the public authority.

5.3 In the department the following people are eligible to make a public interest disclosure:

- a. permanent employees, whether full-time or part-time;
- b. temporary or casual employees;
- c. consultants; and
- d. individual contractors.

## 6. Expectation of all staff

6.1 Every person to whom these Guidelines apply has a responsibility to report suspected unlawful, corrupt, negligent or improper conduct, serious maladministration or serious and substantial waste of public money they may be aware of in the department.

6.2 All staff are expected to support those who have made disclosures, as well as protect and maintain their confidentiality. They must not victimise or harass anyone who has made a disclosure.

6.3 Managers and supervisors should make themselves aware of the expectations of the department's Public Interest Disclosures Internal Reporting Policy and these Guidelines to provide support and guidance to any person who confides in them about making a disclosure.

6.4 Those staff responsible for receiving disclosures must:

- a. act expediently and impartially in relation to any disclosure made to them;
- b. consider the risks of reprisal a person making a disclosure may face as a result of their disclosure; and
- c. actively consider the actions required to reduce those risks.

## 7. Principles for the management of public interest disclosures

7.1 Confidentiality is to be maintained as far as possible

7.1.1 The PID Act requires investigating authorities, public authorities and public officials to whom public interest disclosures are made or referred, not to disclose information that might identify or tend to identify the person who made the disclosure. The exceptions to the confidential requirement are:

- a. the person consents in writing to the disclosure of that information; or
- b. it is essential, having regard to the principles of natural justice that the identifying information be disclosed to the respondent; or
- c. disclosure of the identifying information is necessary to investigate the matter effectively; or
- d. disclosure is otherwise in the public interest; or
- e. disclosure is otherwise required by law.

7.1.2 References to the disclosure that might be read by persons other than those involved in conducting the investigation, should not unnecessarily reveal the identity of the reporter.

7.1.3 Some people who need to know of the matter do not need to know the identity of the reporter, and care needs to be taken to observe this distinction.

7.1.4 To ensure confidentiality, all documents relating to public interest disclosures should be stored securely. Access to these documents should be strictly controlled. Their movement and eventual destruction must also be secure.

7.2 The matter is to be properly acted on.

7.2.1 There are a number of available options for action ranging from no action to referral to the police. Appropriate action will depend on a number of factors including the seriousness of the matter and what previous investigation or review has occurred.

7.2.2 Generally, decisions about action taken, whether an investigation is required and who investigates the matter are made by the Disclosures Coordinator. In some cases it may be appropriate for the Disclosures Manager to make these decisions.

7.3 Steps are to be taken to minimise the risk of reprisals against reporters

7.3.1 Steps to be taken include:

- a. educating all staff that the department does not tolerate corruption, serious maladministration or serious and substantial waste and supports the making of disclosures;
- b. investigating anonymous allegations where this is feasible;
- c. educating all staff that a person shown to have taken reprisal action against an officer for making a disclosure will be guilty of a breach of discipline and also will be guilty of an offence under the PID Act which may be punishable by imprisonment;
- d. advising reporters of their rights;
- e. encouraging reporters to refrain from telling others (who are not involved) that they have made a disclosure;
- f. reminding those who are aware that a disclosure has been made of the need to support and protect the reporter(s);
- g. discouraging those who speculate on the identity of the reporter(s) (whether or not the complaint was anonymous);

- h. providing positive support to reporters who need special arrangements to protect their confidentiality or wellbeing; and
- i. reporting detrimental action that is suspected to have occurred as a reprisal for making a disclosure, to the Disclosures Co-ordinator or Disclosures Manager so that appropriate action can be taken.

## 8. What should be reported?

8.1 Staff should report wrongdoing they identify within the department. Reports about the four categories of serious wrongdoing – corrupt conduct, serious maladministration, serious and substantial waste of public money, and government information contravention – may be dealt with under the PID Act as public interest disclosures and according to these Guidelines.

### 8.2 Corrupt conduct

Corrupt conduct is the dishonest or partial exercise of official functions by a public official. For example, this could include:

- a. the improper use of knowledge, power or position for personal gain or the advantage of others
- b. acting dishonestly or unfairly, or breaching public trust
- c. a member of the public influencing or trying to influence a public official to use their position in a way that is dishonest, biased or breaches public trust.

### 8.3 Serious maladministration

Serious 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. For example, this could include:

- a. making a decision and/or taking action that is unlawful
- b. refusing to approve something for reasons that are not related to the merits of the matter.

### 8.4 Serious and substantial waste of public money

Serious and substantial waste is the uneconomical, inefficient or ineffective use of resources that could result in the loss or wastage of public resources. For example, this could include:

- a. not following a competitive tendering process for a large scale contract
- b. having poor or no processes in place to manage programs involving large amounts of public funds.

### 8.5 Government information contravention

A government information contravention is a failure to properly fulfil functions under the Government Information (Public Access) Act 2009 (GIPA Act). For example, this could include:

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

### 8.6 Other wrongdoing

- 8.6.1 Staff should report all activities or incidents that they believe are wrong. While reports that do not satisfy the requirements of a public interest disclosure are not covered by these Guidelines, it is important that staff report wrongdoing so that the actions of staff involved can be addressed. For example, this could include:
- a. harassment or unlawful discrimination
  - b. reprisal action against a person who has reported wrongdoing which is not a public interest disclosure
  - c. practices that endanger the health or safety of staff or the public.
- 8.6.2 These types of issues should be reported to a supervisor, in line with the department's Complaints Handling Policy.
- 8.6.3 Even if these reports are not dealt with as public interest disclosures, every attempt will be made to protect the staff member making the report from any form of reprisal.

## 9. **Can a report be anonymous?**

- 9.1 There may be some situations where staff may not want to identify themselves when making a report. Although these reports will still be dealt with by the department and considered to be a public interest disclosure, it is best if staff identify themselves. This allows the department to provide the necessary protection and support, as well as feedback about the outcome of any investigation into the allegations.

## 10. **How to make a report**

- 10.1 Reports of wrongdoing may be made in writing or orally. Staff are encouraged to make a report in writing as this can help to avoid any confusion or misinterpretation.
- 10.2 If a report is made orally, the person receiving the report must make a comprehensive record of the disclosure and, if possible, ask the reporter to sign this record. The reporter should keep a copy of this record.
- 10.3 It is not necessary for a person making a disclosure to be aware of the PID Act or to identify their complaint or allegation as a public interest disclosure. If the person receiving the disclosure believes that it satisfies the requirements of a public interest disclosure, the disclosure can be considered one without the reporter requesting.

## 11. **Prompt reporting of public interest disclosures and suspected corrupt conduct**

- 11.1 All public interest disclosures and cases of suspected corrupt conduct must be reported promptly to the [Employee Performance and Conduct Directorate](#) by the Disclosure Officer who receives the disclosure.
- 11.2 The Employee Performance and Conduct Directorate will assess the matter to:
- a. determine if it satisfies the requirements of a public interest disclosure;



- b. assess the need for investigation and the manner in which that investigation will be undertaken;
  - c. monitor the investigation; and/or
  - d. undertake the investigation.
- 11.3 Instances of reportable conduct by a staff member in relation to students are to be reported to the Employee Performance and Conduct Directorate, which reports relevant child protection matters to the Ombudsman. Reportable conduct which may be a public interest disclosure is to be referred to the Disclosures Coordinator to determine whether the report satisfies the criteria of a public interest disclosure.

## 12. Protection against legal action

- 12.1 Staff who make a disclosure in accordance with the PID Act, will not be subject to any liability and no action, claim or demand can be taken against them for making the disclosure. Reports will not have breached any confidentiality or secrecy obligations and they will have the defence of absolute privilege in defamation.
- 12.2 False or misleading disclosures however can incur penalties under the PID Act including fines and up to 12 months imprisonment or both. Disciplinary action may also be taken in such cases.

## 13. Roles and responsibilities under the Public Interest Disclosures Act

These procedures place responsibilities upon staff at all levels within the department.

### 13.1 Staff

- 13.1.1 Staff should report known or suspected incidents of corrupt conduct, serious maladministration or serious and substantial waste in accordance with these procedures.
- 13.1.2 All staff of the department have an important role to play in supporting those who have made legitimate disclosures. They must not victimise or harass people who make disclosures. Further, they should protect the confidentiality of persons they know or suspect to have made a disclosure.
- 13.1.3 Line supervisors (such as school principals) should also assist a person to report to a Disclosure Officer if they believe the matter would be a public interest disclosure.
- 13.1.4 It is important to note that it is the person who reports to the Disclosure Officer who is granted the protection. A person cannot gain protection if a matter is reported on their behalf.

### 13.2 Disclosure Officers

- 13.2.1 Disclosure Officers (listed in Appendix A) are responsible for receiving, forwarding and acting upon disclosures in accordance with these Guidelines.
- 13.2.2 Disclosure Officers are required to:
- a. acknowledge the disclosure in writing (preferably within 5 working days) and explain to the reporter what action they will take (eg: referral to the Disclosures Coordinator);
  - b. when requested, make arrangements so that disclosures can be made privately and discreetly (if necessary away from the workplace);

- c. prepare a written version of any disclosure received orally (and have the reporter sign the document where possible);
- d. provide the reporter a copy of the department's Public Interest Disclosures Internal Reporting Policy and Guidelines for the Management of Public Interest Disclosures within 45 days of the report being made;
- e. deal with disclosures impartially;
- f. treat the reporter and any respondent fairly, and ensure that any real or perceived conflict of interest is properly managed;
- g. mark all relevant correspondence as confidential and ensure staff preparing, sending or receiving such correspondence are aware of their responsibility to maintain confidentiality and to implement high standards of security;
- h. forward disclosures to the Disclosures Co-ordinator (Director Investigations, Employee Performance and Conduct Directorate) so that its public interest disclosure status can be assessed and the appropriate course of action determined;
- i. assess the risk that the identity of the reporter could become known or detrimental action taken in reprisal, and, with the investigator, take all necessary and reasonable steps to keep the identity of the reporter confidential and minimise the risks of reprisal;
- j. take steps to protect the privacy of any respondent(s);
- k. advise the reporter of the Reporter and Witness Support Program or the support available to reporters and witnesses through the Employee Performance and Conduct Directorate.

### 13.3 Disclosures Coordinator (Director Investigations, Employee Performance and Conduct Directorate)

#### 13.3.1 The Disclosures Coordinator has a pivotal position in the internal reporting system and acts as a clearing house for disclosures. The Disclosures Coordinator is required to:

- a. provide staff with an alternative reporting option that they can use if they do not wish to report to a Disclosures Officer;
- b. ensure the reporter has been provided a copy of the department's Public Interest Disclosures Internal Reporting Policy and Guidelines for the Management of Public Interest Disclosures within 45 days of the report being made;
- c. impartially assess each disclosure to determine:
  - i. whether the disclosure meets the requirements of a public interest disclosure; and
  - ii. the appropriate action to be taken in relation to the disclosure, for example:
    - preliminary investigation;
    - full investigation;
    - referral to an investigating authority for investigation or other appropriate action;
    - referral to the police (if a criminal matter) or
    - no action.
- d. if a matter is to be investigated, decide who will conduct the investigation;
- e. monitor any internal investigation arising out of a disclosure;
- f. take all necessary and reasonable steps to keep the identity of reporters and any respondents confidential;
- g. arrange for investigations to be conducted in ways that support reporters and minimise the risk of reprisal against them;
- h. advise reporters of the actions taken and the final outcome when it is known;
- i. (where any respondent is aware of an investigation) notify the respondent of the outcome;
- j. prepare a report of actual or suspected corrupt conduct to the Secretary for matters to be notified to the Independent Commission Against Corruption.

- 13.4 Disclosures Manager, (Executive Director, Employee Performance and Conduct Directorate)
- 13.4.1 The Disclosures Manager is responsible for the department's overall management of public interest disclosures and compliance with the PID Act, including reporting.
- 13.4.2 The Disclosures Manager is also a person to whom a report may be made to meet the requirements of the PID Act.
- 13.4.3 If a report is made to the Disclosures Manager they may determine what action is to be taken in relation to the report or refer the report to the Disclosures Coordinator for consideration.

## 14. Rights of respondents

- 14.1 The following actions are to be taken to protect the rights of respondents:
- a. disclosures will be assessed and acted on impartially, fairly and reasonably;
  - b. officers who receive disclosures are required to:
    - i. maintain the confidentiality of the identity of respondents as far as possible;
    - ii. assess disclosures impartially; and
    - iii. act fairly towards respondents;
  - c. disclosures will be investigated as discreetly as possible, with a strong emphasis on maintaining confidentiality about the identity of both reporters and respondents;
  - d. if the matter proceeds to disciplinary or court action which could affect their rights, interests or legitimate expectations, the respondents have the right to:
    - i. be informed as to the substance of the allegations which has led to the disciplinary or court action;
    - ii. be given a reasonable opportunity to put their case to the persons undertaking the disciplinary or court process;
  - e. where the allegations in a disclosure have been investigated, and the respondent is aware of the substance of the investigation, he or she must be formally advised as to the outcome of the investigation.

## 15. Feedback to staff who report wrongdoing

- 15.1 Staff who report wrongdoing will be told what is happening in response to their report. When they make a report, reporters will be given:
- a. an acknowledgement that their disclosure has been received; and
  - b. the name of the person who they can contact for information about their disclosure and how it is to be managed.
- 15.2 After a decision is made about how a report will be dealt with, the reporter will be given:
- a. information about the action that will be taken in response to their report
  - b. information about the resources and support available within the department
  - c. information about external support services.
- 15.3 During any investigation, reporters will be given:
- a. information about the progress of the investigation

- b. advice if their identity needs to be disclosed for the purposes of investigating the matter, and an opportunity to discuss this.

15.4 At the end of an investigation, reporters will be advised of the outcome and what action was taken and/or is proposed to be taken in response to their disclosure. The advice provided will be sufficient information to enable the report to consider whether they believe their report has been dealt with appropriately. Not all the details of the investigation will be provided.

## 16. Protection against reprisals

16.1 The PID Act provides protection for people reporting wrongdoing by imposing penalties on anyone who takes detrimental action substantially in reprisal for them making the public interest disclosure.

16.2 The department will not tolerate any reprisal action against staff who report wrongdoing. The criminal penalties that can be imposed include imprisonment of up to 2 years or fines or both.

16.3 Detrimental action is also misconduct that justifies disciplinary action. Staff who take detrimental action against a reporter can also be required to pay damages for any loss suffered by the reporter.

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

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

## 17. Responding to reprisals

17.1 The department will act to protect reporters from reprisals.

17.2 When a report is received, a thorough risk assessment will be conducted to identify any risks to the reporter, as well as strategies to deal with those risks.

17.3 If a reporter believes that detrimental action has been or is being taken against them in reprisal for making a report, they should tell their supervisor, the Disclosures Coordinator or the Disclosures Manager immediately.

17.4 All supervisors must report any suspicions they have that reprisal action against a staff member is occurring, or any reports of reprisal that are made to them. These reports should be made to the Disclosures Coordinator.

17.5 If the Disclosures Coordinator or Disclosures Manager receives a report of reprisal against a reporter, they will:

- a. take all steps possible to stop that alleged reprisal and protect the reporter;
- b. take action to investigate the suspected reprisal;

- c. establish whether reprisal has occurred;
- d. if reprisal is found to have occurred, arrange for the matter to be dealt with as a disciplinary matter.

17.6 If reprisal action is found to have occurred the department must refer this matter to the Independent Commission Against Corruption or Police as required by the PID Act. Referrals to the Independent Commission Against Corruption will be made by the Secretary based on the findings of any disciplinary investigation. Referrals to the Police will be made by the Disclosures Coordinator if required.

## 18. Minimising the risk of reprisal

18.1 Action which may be taken to help protect against reprisals includes:

- a. issuing warnings to those alleged to have taken reprisal action against the reporter;
- b. relocating the reporter or the respondent within the current workplace, if feasible;
- c. transferring the reporter or the respondent to another position for which they are qualified, if feasible;
- d. allowing the reporter or the respondent to use their accrued leave during the investigation of the report.

18.2 These actions should only be taken following consultation with the reporter to establish whether such action will assist them.

18.3 It is important that if any of these actions are taken it is made clear to other staff that this was done in consultation with the relevant staff, with management support and is not a punishment. Notifying other staff will require a degree of tact and diplomacy to balance the rights of the individuals involved and maintaining as much confidentiality as possible.

18.4 Any staff member who has reported reprisal and believes it is not being dealt with effectively, should discuss this with the Disclosures Coordinator in the first instance. If this does not resolve the reporter's concerns it would be appropriate for them to discuss this with the Disclosures Manager.

## 19. Reporter and Witness Support

19.1 The department has established services for staff who make disclosures under the Public Interest Disclosures Act or who are witnesses in these matters.

19.2 Reporters and witnesses in other public interest disclosures can obtain support through the [Employee Assistance Program \(EAP\)](#).

19.3 A number of support program advisers have been engaged as part of the program. Support program advisers will assist members of staff by providing them with advice and making representations on their behalf about issues arising in relation to their working conditions.

19.4 Neither support program advisers, nor the manager of the program, will receive or investigate complaints or make decisions about matters related to a public interest disclosure.

- 19.5 Services under the Employee Assistance Program (EAP) are provided on a confidential basis.
- 19.6 Reporters and witnesses in public interest disclosures who wish to seek assistance can find information at <https://education.nsw.gov.au/epac/support/managers-and-employees>
- 19.7 Staff are also able to seek confidential counselling services through the department's [Employee Assistance Program \(EAP\)](#).

## 20. **Government Information (Public Access) Act 2009 (GIPA) exemption**

- 20.1 Information which discloses or may disclose the identity of a reporter of a public interest disclosure is exempt from release under the Government Information (Public Access) Act 2009.

## 21. **Who can receive a report outside of the department?**

- 21.1 Staff are encouraged to report wrongdoing within the department, but internal reporting is not the only option. Staff can choose to make a report to an investigating authority. This can be done first, or at any stage after the initial report to the department.
- 21.2 Reports can also be made to a Member of Parliament or a journalist, but only in limited circumstances.
- 21.3 Investigating authorities
  - 21.3.1 The PID Act lists a number of investigating authorities in NSW that staff can report wrongdoing to and the categories of wrongdoing each authority can deal with. These authorities are:
    - a. the Auditor-General — for serious and substantial waste
    - b. the Independent Commission Against Corruption (ICAC) — for corrupt conduct
    - c. the Ombudsman — for serious maladministration
    - d. the Law Enforcement Conduct Commission (LECC)— for police misconduct
    - e. the Inspector of the LECC — for disclosures about the LECC or its staff
    - f. the Division of Local Government, Department of Premier and Cabinet — for serious and substantial waste in local government agencies
    - g. the ICAC Inspector — for disclosures about the ICAC or its staff
    - h. the Information Commissioner — for disclosures about a government information contravention.
  - 21.3.2 Staff should contact the relevant authority for advice about how to make a disclosure to them. Contact details for each investigating authority are provided at Appendix B of these Guidelines.
  - 21.3.3 Staff should be aware that it is very likely the investigating authority will discuss the case with the department. The department will make every effort to assist and cooperate with the investigating authority to ensure the matter is dealt with appropriately and there is a satisfactory outcome. The department will also provide appropriate support and assistance to staff who report wrongdoing to an investigating authority.
- 21.4 Members of Parliament or journalists

- 21.4.1 To have the protections of the PID Act, staff reporting wrongdoing to a Member of Parliament (MP) or a journalist must have already made substantially the same report to one of the following:
- a. a person nominated in these Guidelines; or
  - b. an investigating authority in accordance with the PID Act.
- 21.4.2 Also, the department or investigating authority that received the report must have:
- a. decided not to investigate the matter; or
  - b. decided to investigate the matter, but not completed the investigation within six months of the original report; or
  - c. investigated the matter but not recommended any action as a result; or
  - d. not told the person who made the report, within six months of the report being made, whether the matter will be investigated.
- 21.4.3 Most importantly, to be protected under the PID Act, if staff report wrongdoing to an MP or a journalist they will need to be able to prove that they have reasonable grounds for believing that the disclosure is substantially true and that it is in fact substantially true.
- 21.5 If staff report wrongdoing to a person or an organisation that is not listed above, they will not be protected under the PID Act. This may mean staff will be in breach of legal obligations or the department's Code of Conduct, by for example, disclosing confidential information.
- 21.6 For more information about reporting wrongdoing outside the department, contact the Disclosures Coordinator or the NSW Ombudsman's Public Interest Disclosures Unit. Their contact details are provided at the end of this document.

## **22. Reporting crimes to the Police**

- 22.1 Alleged corruption, serious maladministration or waste which involves a criminal offence will also need to be reported to the Police when the responsible manager is reasonably certain that the alleged behaviour actually occurred.
- 22.2 Normally it is the responsibility of the manager of the section that has suffered the loss or detriment to report to the Police. Before reporting a matter which has arisen through a public interest disclosure to the Police, managers should discuss these issues with the Disclosures Coordinator.
- 22.3 It is an offence not to report a serious criminal offence. A serious criminal offence is one which is punishable by imprisonment for five years or more.
- 22.4 In conducting any investigation into allegations arising from public interest disclosures which may involve a serious crime, consideration will always be given to ensuring that any action by the department will not interfere with or compromise a police investigation.

## Glossary

**Corrupt conduct** (corruption) - Corrupt conduct is defined in sections 8 and 9 of the *Independent Commission Against Corruption Act 1988*. Corrupt conduct includes the dishonest or partial exercise of official functions by a public official. The conduct of a person who is not a public official, when it adversely affects the impartial or honest exercise of official functions by a public official, also comes within the definition. Some examples are:

- the improper use of knowledge, power or position for personal gain or the advantage of others
- acting dishonestly or unfairly, or breaching public trust
- a member of the public influencing or trying to influence staff to use their position in a way that is dishonest, biased or breaches public trust.

To be corrupt conduct the behaviour must be sufficiently serious to constitute a disciplinary offence or a criminal offence or grounds for dismissal.

**Disclosures Co-ordinator** – this role is the responsibility of the Director Investigations, Employee Performance and Conduct Directorate. Disclosures Coordinator has a pivotal position in the internal reporting system and acts as a clearing house for disclosures.

**Disclosures Manager** – this role is the responsibility of the Executive Director, Employee Performance and Conduct Directorate. The Disclosures Manager is responsible for the department's management of its public interest disclosure and compliance with the PID Act.

**Disclosure Officer** – position nominated by the department whose incumbent can receive disclosures from staff which may be public interest disclosures. These positions are identified at Appendix A.

**Government information contravention** – a failure to properly fulfil functions under the *Government Information (Public Access) Act 2009* (GIPA Act). Some examples are:

- intentionally overlooking documents that are clearly covered by an access application
- destroying, concealing or altering records to prevent them from being released
- knowingly making decisions that are contrary to the GIPA Act
- directing another person to make a decision that is contrary to the GIPA Act.

**Maladministration** – is defined in s.11 of the [Public Interest Disclosures Act](#) as conduct that involves action or inaction of a serious nature, that is, either:

- contrary to law
- unreasonable, unjust, oppressive or improperly discriminatory
- based wholly or partly on improper motives.

Some examples are:

- awarding contracts and tenders to private parties that are related by family, friendship or association
- failing to make a decision in accordance with official policy for no appropriate reason
- refusing to grant a person a licence for reasons that do not relate to the merits of their application



- issuing an order against a person without giving them procedural fairness
- 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.

**Public interest disclosure** – an allegation of corruption, serious maladministration, serious and substantial waste or government information contravention by a public official, about a public official, to a Disclosure Officer or other specified person, made in accordance with the *Public Interest Disclosures Act 1994*.

**Public official** – staff of a state government department or agency (including part time or casual staff), staff of a local government authority, an employee of a state owned corporation or a subsidiary of a state owned corporation, a person having a public official function or acting in a public official capacity for the state or an individual who is engaged by a public authority under a contract to provide services to or on behalf of the public authority

**Reporter** – a person who makes a public interest disclosure

**Reprisal** – 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; or
- disciplinary proceeding.

**Respondent** – the person who is the subject of an allegation or other concern about suspected corrupt conduct, serious maladministration or serious and substantial waste

**Serious and substantial waste of public money** – a serious and substantial waste of public money is any uneconomical, inefficient or ineffective use of resources, authorised or unauthorised, which results in a loss of public funds or resources.

Serious and substantial waste can be:

- Absolute – where the waste is regarded as significant.
- Systemic – where the waste indicates a pattern that results from a weakness within an organisation's systems.
- Material – where the waste is about the organisation's expenditure or a particular item of expenditure, or is to such an extent that it affects an organisation's capacity to perform its primary functions.

Some examples are:

- misappropriation or misuse of public property
- the purchase of unnecessary or inadequate goods and services

- staff being remunerated for skills that they do not have, but are required to have under the terms or conditions of their employment.

Waste can result from such things as:

- insufficient safeguards to prevent the theft or misuse of public property
- purchasing practices that do not ensure goods and services are necessary and adequate for their intended purpose.

## Appendix A – Department disclosure officers

People fulfilling the roles of the positions listed below within the department are identified as Disclosure Officers for the purposes of the Public Interest Disclosures Management Guidelines.

- All Deputy Secretaries
- All Executive Directors
- All Directors
- All General Managers, General Counsel
- Chief Financial Officer
- Chief Information Officer
- [Chief Executive School Infrastructure](#)
- Manager, Corruption Prevention, Audit Directorate
- All Employee Performance and Conduct Directorate Investigators.

In addition the following positions which play a role in the administration of public interest disclosures within the Department are also considered Disclosure Officers:

- Director Investigations, Employee Performance and Conduct Directorate (Disclosures Coordinator)
- Executive Director, Employee Performance and Conduct Directorate (Disclosures Manager).

## **Appendix B – Public interest disclosures external investigating authorities**

The contact details for external investigating authorities that staff can make a public interest disclosure to or seek advice from are listed below.

### **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 21, 133 Castlereagh Street, Sydney NSW 2000

### **For disclosures about serious 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 NSW Audit Office

Phone: 02 9275 7100

Facsimile: 02 9275 7200

Email: [mail@audit.nsw.gov.au](mailto:mail@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 breaches of the GIPA Act**

Information Commissioner

Toll free: 1800 463 626

Facsimile: 02 8114 3756

Email: [oicinfo@oic.nsw.gov.au](mailto:oicinfo@oic.nsw.gov.au)

Web: [www.oic.nsw.gov.au](http://www.oic.nsw.gov.au)

Address: Level 11, 1 Castlereagh Street, Sydney NSW 2000