

**Submission  
No 1**

## **REVIEW OF THE CODE OF CONDUCT FOR MEMBERS, 57TH PARLIAMENT**

**Organisation:** Ombudsman New South Wales

**Date Received:** 19 April 2022

19 April 2022

**Contact:** Danielle Moon

**Email:** [REDACTED]

Peter Sidgraves MP  
Chair, Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics  
NSW Parliament  
Parliament House  
SYDNEY NSW 2000

By email: [Ethics.Committee@parliament.nsw.gov.au](mailto:Ethics.Committee@parliament.nsw.gov.au)

Dear Mr Sidgraves

**Submission to the Review of the Code of Conduct for Members of the NSW Parliament.**

Thank you for inviting us to make a submission to the review of the Code of Conduct for Members of the NSW Parliament.

The conduct of Parliament and its members and officers are excluded from the Ombudsman's ordinary complaints-handling and investigations jurisdiction by Schedule 1 of the Ombudsman Act 1974. Our jurisdiction covers most other NSW public authorities and public officials.

However, the NSW Ombudsman also has a function of overseeing the *Public Interest Disclosures Act 1994* (PID Act), which does apply to Parliament, its members and officers.

Our functions under the PID Act include promoting public awareness of the Act and providing information, advice, assistance, and training to public authorities.

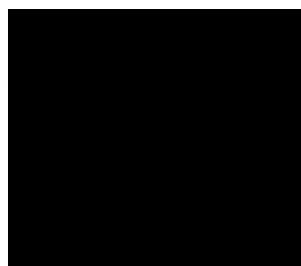
We note that the Code of Conduct does not currently refer directly to the PID Act, although in some circumstances a report or allegation of a breach of that Code may constitute a public interest disclosure to which the PID Act applies.

We have therefore prepared a brief submission (attached), outlining the application of the PID Act to Members of the NSW Parliament and the intersection between the Code of Conduct and the PID legislation. You will also be aware that a new Public Interest Disclosure Act 2022 has recently passed Parliament, and is expected to commence around mid 2023.

There is further information about the PID Act on our website [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au).

If you would like to discuss our submission or if we can assist in any other way, please do not hesitate to contact us at [REDACTED]

Yours sincerely



Paul Miller  
**NSW Ombudsman**

## **Attachment – Submission from the NSW Ombudsman concerning the Review of the Code of Conduct for Members of the NSW Parliament and its intersection with the PID regime**

### **Background: the application of the PID Act to Members of the NSW Parliament**

The object of the *Public Interest Disclosures Act 1994* (PID Act) is to encourage and facilitate the disclosure, in the public interest, of wrongdoing in the public sector. The types of wrongdoing that can be the subject of a PID are:

- a) corrupt conduct, as defined in the Independent Commission Against Corruption Act 1998
- b) maladministration in the exercise of administrative functions, being an 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
- c) a serious and substantial wasting of public money
- d) government information contravention
- e) local government pecuniary interest contravention.<sup>1</sup>

The PID Act sets out the requirements for a report to be classified as a PID, which trigger the protections provided under the Act, including those related to confidentiality (s22) and protection from reprisal (s20).

Parliament (including the Department of Parliamentary Services, the Department of the Legislative Assembly and the Department of the Legislative Council, as well as Members of Parliament and their staff) comes within the remit of the public interest disclosures (PID) scheme established by the PID Act. It is therefore possible that a complaint or report that a Member of Parliament has breached the Code of Conduct might also constitute a PID. If it does, then the provisions of the PID Act will apply, including certain protections afforded to the maker of the PID as well as certain obligations on Parliament and other agencies in relation to their handling and reporting on the PID.

It is important that those receiving and investigating Code of Conduct complaints or reports are aware of the need to consider whether these complaints may also be PIDs, and of the resulting requirements and protections.

### **Importance of identifying Code of Conduct complaints that may also be PIDs**

The NSW Ombudsman is the lead oversight agency for the PID Act, and our functions include the receipt of PIDs under the Ombudsman Act,<sup>2</sup> the provision of information, assistance and training to public authorities, and the monitoring and audit of agencies' compliance with requirements under the PID Act.

Our experience suggests that complaints that are directed through a Code of Conduct complaint process can lead to a failure to identify PIDs, unless that process expressly incorporates appropriate PID

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<sup>1</sup> The [PID Bill](#) continues these categories, although some definitions are changed and wrongdoing related to privacy breaches has also been included. See the Dictionary in Schedule 2 of the PID Bill for details of the definitions.

<sup>2</sup> The conduct of Parliament, and Members of Parliament, are excluded from the Ombudsman's jurisdiction under the Ombudsman Act.

assessment mechanisms. We note the Code of Conduct does not set out the process by which complaints are handled.

To ensure complaints that are PIDs made about Members of Parliament are appropriately recognised, assessed and handled, the Committee may wish to consider:

- noting, perhaps in section 9 of the Code, the possible application of the PID Act to some Code of Conduct complaints or reports.
- explaining the arrangements for handling such complaints to ensure they are assessed and dealt with in compliance with the PID Act.

We also recommend that any separate procedure document should:

- note the possibility that Code of Conduct complaints or reports may be PIDs.
- incorporate an initial assessment step, where attention is specifically drawn to the requirement to assess whether the report of misconduct is also a PID.
- note the types of misconduct that might also fall under the PID Act.

As you may be aware, this office made a submission to the inquiry into the proposal to appoint a Parliamentary Compliance Officer and suggested the Committee may wish to consider appointing the Parliamentary Compliance Officer as a ‘nominated disclosure officer’ under the PID Act (meaning that they would be someone to whom PIDs, for example by staff of Parliament, could be made). This would assist in ensuring that internal disclosures made about Members of Parliament are handled appropriately and that those reporting suspect breaches are protected, including from unlawful reprisals.

We have reviewed the revised draft resolution in the recent [report](#) of the Legislative Council and note that it does not expressly recommend the appointment of the Independent Complaints Officer as a nominated disclosure officer. However, the report recommends that the Independent Complaints Officer establish, within 3 months of his or her appointment, a protocol outlining how complaints are to be received, assessed and investigated. We recommend that any such protocol should also address the points made above, to ensure that PIDs are appropriately identified, assessed and handled.