

**Supplementary  
Submission  
No 1a**

## **INQUIRY INTO PUBLIC INTEREST DISCLOSURES BILL 2021**

**Organisation:** NSW Ombudsman

**Date Received:** 10 November 2021

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**To:** Portfolio Committee 1  
**Subject:** Public Interest Disclosures Bill 2021

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Dear Committee

On 4 November 2021, the 2020-2021 annual report for the Public Interest Disclosures Steering Committee was tabled in both Houses: <https://www.parliament.nsw.gov.au/la/papers/Pages/taled-paper-details.aspx?pk=80717>

As Chair of the Steering Committee, the Ombudsman requests that the annual report is included in our submission to the Inquiry into the *Public Interest Disclosures Bill 2021*. The NSW Ombudsman is appearing before the Committee on 15 November 2021.

Please contact me if you would like any further information.

Kind regards

Helen

[Helen Wodak](#)

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*The NSW Ombudsman's office acknowledges the traditional owners and custodians across the lands on which we live and work, and we pay our respects to their elders past and present and to the next generation of leaders.*

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2020-21

**Public Interest Disclosures  
Steering Committee  
Annual Report 2020-21**

21 October 2021



The Public Interest Disclosures Steering Committee (the Committee) is established under section 6A of the *Public Interest Disclosure Act 1994* (PID Act). Under this section, the Ombudsman, as chairperson of the Committee, is required to prepare an annual report of the Committee's activities and any recommendations made to the Minister (the Premier and the Special Minister of State).

The PID Act sets out the framework for protecting public officials who make reports about wrongdoing from the risk of reprisal.

Public officials can make public interest disclosures (PIDs) about corrupt conduct, serious maladministration, serious and substantial waste of public money, a government information contravention or a local government pecuniary interest contravention.

C/- NSW Ombudsman's office

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## Functions

The functions of the Public Interest Disclosures Steering Committee (**the Committee**) are set out in sections 6A and 32 of the *Public Interest Disclosures Act 1994 (PID Act)*. They require the Committee to:

- provide advice to the Premier and the Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts on the operation of the PID Act and recommend any necessary reform
- receive, consider and provide advice to the Premier and the Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts on any reports from the Ombudsman in relation to the Ombudsman's functions under the PID Act
- consult with and provide advice to a Joint Parliamentary Committee to inform their review of the PID Act.

## Membership

Membership of the Committee is prescribed by the PID Act.

During the reporting year, the members or their nominated representative were:

- Michael Barnes, NSW Ombudsman [to August 2020]; Paul Miller NSW Ombudsman (Chair) [from August 2020]
- Kate Boyd, Deputy Secretary, General Counsel, Department of Premier and Cabinet (DPC); Matt Richards, Executive Director, Legal Branch, DPC
- Chris Clayton, Executive Director, Professional Services, Audit Office of NSW
- Roy Waldon, Executive Director, Legal Division, Independent Commission Against Corruption (ICAC)
- Michelle O'Brien, Chief Executive Officer and General Counsel, Law Enforcement Conduct Commission (LECC) [to November 2020]; Susan Raice, Lawyer, LECC [November 2020 – June 2021]; Robert Tumeth, Lawyer, LECC [from June 2021]
- Elizabeth Tydd, Information Commissioner; Jessica Kavanagh Director, Legal Counsel & Regulatory Advice, Information and Privacy Commission [June 2021 meeting]
- Sarah Sandstad, General Counsel, Public Service Commission (PSC); Paul Martin, Principal Lawyer, PSC [October 2020 meeting]
- Gelina Talbot, Assistant Commissioner, Commander Professional Standards Command, NSW Police Force (NSWPF) [to February 2021]; Paul Pisanos, Assistant Commissioner, Commander Professional Standards Command, NSWPF [from February 2021]
- Tim Hurst, Deputy Secretary, Local Government, Planning and Policy, Department of Planning, Industry and Environment (DPIE) [to May 2021]; Kiersten Fishburn, Chief Executive, Office of Local Government, DPIE [from June 2021]; Chris Allen, Director Sector Performance and Intervention, DPIE [March and June 2021 meetings].

The Ombudsman's Public Interest Disclosures Unit (**PID Unit**) provides secretariat support to the Committee.

## Meetings

The Committee met three times (twice remotely, once hybrid in person/teleconference) during the reporting year in accordance with the meeting schedule in the Terms of Reference.

Members of the Committee also discuss issues out-of-session throughout the year.

The Committee approved out-of-session the Committee's Annual Report 2019–20 on 10 December 2020. The chairperson submitted the report to the Minister on 14 December 2020 and it was tabled in Parliament on 23 March 2021.

## Matters of significance considered by the Steering Committee

As in previous years, the Committee's main activity this year has been advising the Government in relation to their drafting of the *Public Interest Disclosures Bill 2021* (**the Bill**).

The Bill was introduced into the Legislative Council by the Hon. Don Harwin MLC, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts, on 14 October 2021. On 19 October 2021, the Bill was referred to Portfolio Committee No. 1 - Premier and Finance for inquiry and report by 15 November 2021.

## Background to the Bill

In October 2017, the Joint Parliamentary Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission (**the Ombo-LECC Committee**) completed its Review of the *Public Interest Disclosures Act 1994* and tabled a report making 38 recommendations for revision or amendment (**the PID Act Report**). The recommendations focus on simplifying the disclosure process, improving remedies for detrimental action, refining reporting requirements and clarifying the PID Act generally.

On behalf of the Premier, the Government formally requested that the Committee examine in detail the implementation issues arising from the JPC's recommendations and, in due course, to consider the draft Bill prepared in response to the PID Act review.<sup>1</sup>

In November 2017, the Joint Parliamentary Committee on the Independent Commission Against Corruption (**the ICAC Committee**) completed its *Report on the inquiry into protections for people who make voluntary disclosures to the Independent Commission Against Corruption* (**the ICAC Protections Report**).

On 18 April 2018, the Government's response to the ICAC Protections Report<sup>2</sup> noted that the ICAC Committee identified that some of its recommendations may lead to overlap with the public interest disclosures regime in the PID Act. This could lead to different treatment of a disclosure by a public official under the PID Act and the *Independent Commission Against Corruption Act 1988* (**ICAC Act**). The Government committed to preparing a Bill in relation to voluntary disclosures to the ICAC taking into consideration the Government's review of the public interest disclosures regime.

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1. [Government response to the Committee report.pdf](#) (nsw.gov.au)

2. [Government Response Voluntary Disclosures Inquiry.pdf](#) (nsw.gov.au)

## Government consultation about the Bill

The Committee has been consulted about multiple drafts of the Bill and individual Committee members have also provided submissions.

The Committee acknowledges the Government's extensive engagement and consultation with the Committee in relation to the preparation of complex legislation. The Committee has provided timely, detailed and targeted advice to Government, including providing a comprehensive assessment of the Bill against the recommendations of the Ombo-LECC Committee and the ICAC Committee.

## Assessment of the Bill

The Committee unanimously welcomes the Bill, and believes it will represent a significant enhancement to whistleblower protections in NSW, helping to ensure that reports of wrongdoing are acted upon, and that reporters are encouraged to come forward and are protected when they do.

The Committee considers that the Bill is an ambitious and comprehensive re-write of the legislation and addresses many of the weaknesses in the existing PID Act. The Committee supports the final recommendation of the Ombo-LECC Committee, which recommended a complete re-write of the legislative scheme.

The Committee has advised Government it considers that the recommendations of the PID Act Review and the ICAC Protections Report have been implemented in the new Bill,<sup>3</sup> with one significant exception in relation to the treatment of external disclosures to members of Parliament and journalists (Recommendation 11).

The Committee has consequently advised Government that it supports the Bill being passed in its current form.

Although some of Committee members raised suggestions for ways that the Bill might be further improved, they acknowledge that issues raised by their suggestions were not considered in the Parliamentary Committees' recommendations. The Committee may examine these issues further and report back to Government as necessary. The Committee does not support any further delays to the Bill while these issues are considered by the Committee.

The Committee has, however, recommended that the commencement date for the Bill allow time for the considerable preparation that will be required before the new legislation comes into force. The Committee supports the commencement clause in the Bill as it provides sufficient time for this preparation to occur.


## Future program of work

Over the next year, the Committee's main activity will be supporting the implementation of the new legislation. This will include:

- a) supporting the Ombudsman's office as it develops new public and agency guidelines, reporting tools, templates and training, and

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3. In some instances, the recommendations of the Ombo-LECC Committee and the ICAC Committee refer to particular sections, concepts or wording in the current PID Act, which cannot be implemented precisely in accordance with their terms in the new Bill. In all such cases, the intent of the recommendations has been implemented.

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- b) providing advice to Government about the draft Public Interest Disclosure Regulation under the new Bill.

The Committee will also commence consideration of issues raised in the Ombudsman's report *Special Report by the NSW Ombudsman on the Public Interest Disclosures Bill 2021*, which was tabled in response to the introduction of the Bill on 19 October 2021.<sup>4</sup>

## Recommendations to the Minister

The Committee did not make formal recommendations over the reporting year but provided advice to Government in response to its proposed reform of the PID Act.

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4. [Special Report by the NSW Ombudsman on the Public Interest Disclosures Bill 2021](#)