

Thinking about blowing the whistle?



How to make a protected disclosure

If you become aware that something is seriously wrong in the way a public official has acted or is acting, or a public sector agency has acted or is functioning, it is in the public interest and the agency's interest that you tell someone who can do something about it. In NSW, an Act called the *Protected Disclosures Act* sets up a scheme by which people who work in the NSW public sector, for example, in a department or a local council, can come forward with important information. This brochure provides guidance on how to do this.

BEFORE YOU MAKE A DISCLOSURE

YOURSELF

Is the disclosure covered by the Act?

The *Protected Disclosures Act* is designed to deal with disclosures about serious matters about public administration, in particular:

- corruption**, or
- maladministration** (which must be conduct of a serious nature), or
- serious and substantial waste** of public money.

Your agency's internal reporting policy should contain information to explain what these terms mean. You could also look under 'protected disclosures' on the NSW Ombudsman's web site:

www.ombo.nsw.gov.au

A disclosure is **not** covered by the Act if:

- it was made frivolously or vexatiously,
- it was made primarily to avoid dismissal or disciplinary action,
- it contains intentionally false statements or is intended to mislead or attempt to mislead the recipient (these are offences under the Act),
- it questions the merits of government policy.

Making your disclosure in accordance with the scheme in the *Protected Disclosures Act* gives you the best chance of helping the agency concerned to remedy the situation.

The scheme encourages all those involved to focus on the issues (not the people) involved.

In the spirit of the Act, the agency should take reasonable action to protect you from reprisals.

REMEMBER

The best protection is confidentiality—discretion is essential

- Seek advice** from the NSW Ombudsman or from the person responsible for dealing with protected disclosures in your agency. **Be discreet** when you are doing so. You may also wish to seek legal advice from a lawyer or approach an appropriate support group.
- Be careful** in deciding who you make your disclosure to and how you make it. To be protected under the *Protected Disclosures Act* your disclosure must be made to specific people (see 'How to make a protected disclosure').
- Don't** telegraph your intentions. For example, threatening to make a disclosure may backfire. If you provide your information discreetly, the agency will be better able to focus on the issues rather than on you.
- Don't** tell anyone you are thinking about making a protected disclosure.

ASK YOURSELF

Do I have evidence to back up my allegations?

It is important that the information you provide is clear, accurate and factual. If you have documents to support your allegations, try to make them available. This will help the agency focus on the real issues and fix real problems.

Avoid speculation or emotive language: it is likely to divert attention from the real issues.

I want to report something about the agency where I work:

- Your agency should have an internal reporting policy. The policy will tell you **how** you should report these matters—for example, whether you can make a disclosure orally or do you have to put it in writing—and the **person** you can report these matters to. The policy should also tell you how the disclosure will be handled.
- If you cannot find a copy of the internal reporting policy, or you are reluctant to ask for it, you can make a disclosure to the head of your agency (i.e. your CEO or Director-General).

I want to report something about another agency:

You can make a disclosure:

- to the head of that agency or your agency, or
- to a person in that agency or your agency who is responsible for dealing with protected disclosures, or
- to the watchdog bodies below.

If you don't want to report something internally, you can report it to:

- if it's about CORRUPTION

Independent Commission Against Corruption

Tel: 8281 5999 or 1800 463 909 (toll free)
Fax: 9264 5364
GPO Box 500
Sydney NSW 2001
Email: icac@icac.nsw.gov.au

- if it's about MALADMINISTRATION

NSW Ombudsman

Tel: 9286 1000 or 1800 451 524 (toll free)
Fax: 9283 2911
Level 24, 580 George Street
Sydney NSW 2000
Email: nswombo@ombo.nsw.gov.au

- if it's about SERIOUS AND SUBSTANTIAL WASTE of public money

Auditor-General

Tel: 9285 0155
Fax: 9285 0100
GPO Box 12
Sydney NSW 2001
Email: mail@audit.nsw.gov.au

- if it's about corruption or serious misconduct by A POLICE OFFICER

Police Integrity Commission

Tel: 9321 6700 or 1800 657 079 (toll free)
Fax: 9321 6799
GPO Box 3880
Sydney NSW 2001
Email: contactus@pic.nsw.gov.au

What if my allegations cannot be investigated without my identity being guessed or revealed?

The person or agency to whom you make the disclosure:

- should alert you before your identity, or information that may tend to identify you, is revealed as part of the investigation,
- should take all reasonable steps to protect you against any reprisals in the work place.

What does the Act do for me?



PROTECTION FROM DETRIMENTAL ACTION

The Act makes it an offence to take detrimental action against you substantially in reprisal for you making a protected disclosure. It is not in the public interest for whistleblowers to suffer as a result of coming forward.

Detrimental action is action such as dismissing you or taking disciplinary action against you and also includes any action:

- that causes you injury, damage or loss,
- that intimidates or harasses you, or
- that discriminates against or disadvantages you in your employment.

The agency about which you make a protected disclosure should take reasonable action to protect you against detrimental action. The government and watchdog bodies expect this.

The agency also has obligations under the common law and occupational health and safety legislation to make sure that you do not suffer as a result of coming forward.

What if someone takes detrimental action against me?

- **Complain** to the person to whom you made the disclosure or to the person who is responsible for dealing with protected disclosures in your agency.
- If they do not help you or do not take your complaint seriously, complain to the NSW Ombudsman or the Independent Commission Against Corruption. However, be aware that these bodies cannot *prosecute* anyone for taking detrimental action against you. As with other criminal prosecutions, this is a matter for the police, although you may be able to bring a private prosecution yourself.



CONFIDENTIALITY

A person to whom you make a protected disclosure should keep information that might identify you confidential unless:

- you allow them to reveal the information, or
- fairness to other people requires the information to be revealed, or
- it is necessary to disclose information identifying you in order to investigate the matter, or
- it is in the public interest to reveal the information.



OTHER PROTECTIONS

The Act provides that you do not incur any liability for making a protected disclosure.

The Act provides a legal defence to any action taken against you for defamation or breach of confidence.

However, the Act will **not** protect you if you break the law in other ways, for example, if you break into someone's office to obtain evidence to support your allegations.

When will I be told what's happened to my disclosure?

- The person or agency to whom you made the disclosure **must** tell you within **six months** what action they have taken or propose to take.
- If you don't hear from them within six months, contact them and ask them what is happening. If you do not get a response you can complain to the NSW Ombudsman.

What if I'm not happy with the response?

- You can complain to the NSW Ombudsman or the Independent Commission Against Corruption about the way your protected disclosure was handled.
- **If:**
 - it has been decided that your allegations will not be investigated, or
 - the investigation was not completed within six months, or
 - no recommendations were made for action to be taken despite an investigation, or
 - you were not notified within six months of whether or not the matter was to be investigated,**you can** make a disclosure to a member of Parliament or a journalist.

Caution: Make sure you seek advice before you do this. To obtain protection for a disclosure to a member of Parliament or a journalist, you must be able to prove that the disclosure is **substantially true**.

Where do I go for further information?

WITHIN YOUR AGENCY

If there is a person in your agency who is responsible for dealing with protected disclosures, you should talk to them first.

NSW OMBUDSMAN

You can also contact the Ombudsman on:

Tel: 9286 1000 or 1800 451 524 (toll free)

Email: nswombo@ombo.nsw.gov.au