

Improving the management of Public Interest Disclosures

Background

The Ombudsman has recently taken action on complaints from disclosers about how public sector employers have managed their obligations under the *Public Interest Disclosure Act 2010* (the PID Act).

The disclosers raised various concerns including the time taken to investigate and finalise matters, provision of appropriate information to disclosers during the investigation process, the management of confidentiality requirements and the action taken to manage the risk of reprisal.

The Ombudsman investigated these complaints under the *Ombudsman Act 2001* with focus on administrative actions and decision-making. The Ombudsman did not consider the substance of the initial allegations, which included timesheet fraud and other misconduct in the workplace. As the oversight agency for the PID Act, the Ombudsman also has an education and advisory role about public interest disclosures.

Outcome

As a result of considering these complaints, the Ombudsman identified five common areas for improvement in agencies' management of public interest disclosures (PIDs).

- **Identification of a complaint as a PID**

Under the PID Act, the obligation to recognise and respond to an allegation as a PID rests with the public sector entity. Managers of public sector entities need to identify, acknowledge and act promptly on matters that may be PIDs.

The PID Act does not require the discloser to have to elect to proceed with the PID. Once made, the ownership of the PID lies with the entity and not the discloser. It is for the entity to determine what further action is necessary on the disclosed 'public interest information'.

It is not necessary for the discloser to identify their disclosure as a PID to make it a PID. Nor is it necessary for the disclosure to be made in writing.

Case examples

- An officer may make a PID in the ordinary course of their work, such as an auditor reporting suspected corrupt conduct.
- In one case, the Ombudsman found that it was unreasonable administrative action for a number of managers to have failed to identify a verbal disclosure from an officer about widespread timesheet fraud in the workgroup as a PID.

- The Ombudsman also found it to be unreasonable administrative action for a public sector entity to take no action after receiving and identifying a disclosure as a PID because the discloser failed to attend a meeting to provide further information about the disclosure.
- Further, the Ombudsman found the actions by a public sector entity to seek confirmation from the discloser that they wished to make a PID was unreasonable. This contributed to the discloser being left without the protections provided by the PID Act for an extended period of time.

- **Timeliness**

While the PID Act does not set a specific time within which a PID investigation must be finalised, entities are required to act within a reasonable time. Six months to complete a PID investigation is considered a reasonable benchmark, unless the matter is unusually complex or exceptional circumstances exist.

Entities are also required to ensure the discloser is kept informed during the investigation in a timely and appropriate way.

Case example

In two separate cases, the Ombudsman expressed concern about significant and unjustified delays (of up to three years) in investigating and finalising PIDs. To take such an extended period of time to complete the investigation is unreasonable to both the discloser and subject officers.

- **Risk assessment**

The PID Standard requires that the entity's CEO ensure that a risk assessment of reprisal be conducted as soon as possible after receiving a PID, and where appropriate, the entity should seek input from the discloser.

To ensure the risk of reprisal is appropriately managed, the entity should also ensure the risk assessment is reviewed during the investigation – particularly at key milestones which may increase the risk of reprisal – and it may be necessary to revise the support arrangements in place.

Entities should ensure that comprehensive and timely records of risk assessments are kept as evidence of the risk assessment process and to comply with the requirements of the *Public Records Act 2002*.

Case example

The Ombudsman found that it was unreasonable for a public sector entity to not review its assessment of the risk of reprisal to a discloser at key points in the process. This included when officers who were the subject of the PID received 'please explain' letters and when the discloser reported to managers that the subject officers had become aware of the discloser's identity.

- **Information management**

Entities have an obligation to understand and apply the confidentiality requirements of the PID Act. These provisions help to protect the discloser, the alleged subject officer and any other person affected by the allegation. It is important to maintain appropriate confidentiality during the assessment phase; during the investigation phase and after the relevant matter has been closed.

Case example

In a number of cases, the Ombudsman has found it is contrary to law and unreasonable for managers to disclose confidential information about a PID to the subject officer. An early and unnecessary approach to a subject officer could hinder a subsequent investigation.

- **PID awareness and training**

Training is a key element in equipping public authority managers to deal promptly and appropriately with PIDs, so as to comply with PID Act requirements. In response to a number of complaints, the Ombudsman recommended that the agencies complained about review their policies and procedures and provide better guidance to managers and staff about the obligations imposed by the PID Act and the PID Standard.

When considering the types of PID training needed, entities could consider three levels:

1. basic introductory training for all new employees and as a refresher for longer term employees
2. management training for the CEO, senior executives and managers
3. comprehensive PID training for officers responsible for identification, assessment and investigation of potential PID matters.

Making a difference

An effective system for managing public interest disclosures helps to safeguard the integrity of the agency and the wider public sector while providing protections for people who make PIDs or are the subject of a PID.

All public sector entities can use this information to review and reconsider their own PID management programs.