

Assessing and streaming internal reports

1. Objectives

- To outline the assessment responsibilities of organisations when they receive a report of wrongdoing.
- To help organisations assess whether reports of wrongdoing are public interest disclosures (PIDs) under the *Public Interest Disclosures Act 1994* (PID Act).
- To provide guidance on how reports should be progressed and appropriate action initiated, regardless of whether they are PIDs.

2. Why is this important?

Reports of wrongdoing from staff are an opportunity to:

- identify management practices or procedures that need improving
- identify wrongdoing by staff, consultants, contractors or agents
- strengthen public perceptions about the integrity of the organisation concerned and the public sector in general
- avoid embarrassment for the government, the organisation and its staff.

An effective internal reporting system helps ensure that reports of wrongdoing by staff are properly and appropriately assessed, dealt with and acted on. It is important staff believe some action will be taken in relation to their reports.

Reports should be assessed and dealt with:

- competently and quickly
- impartially and fairly
- reasonably and discreetly.

The *Whistling While They Work* research found that the most common reason staff gave for not reporting wrongdoing was that nothing would be done in response.¹

3. Legal and management obligations

3.1 PID Act

a) Assessing reports

Under the PID Act, public and investigating authorities must notify an internal reporter of any action taken or proposed within six months of their PID being made (s.27). There is therefore an obligation on these authorities to carefully assess all reports of wrongdoing made to them and decide what, if any, action is to be taken so they can give appropriate advice to the internal reporter.

If a PID is made in accordance with the PID Act, the internal reporter receives the statutory protections no matter what action is then taken – for example, if no action is taken or an investigation discontinued. The PID Act also continues to apply if a PID is referred to another public or investigating authority or public official (s.15).

b) Referring public interest disclosures

In certain circumstances, the PID Act permits public and investigating authorities to refer PIDs to another authority for investigation or other appropriate action (ss.25 and 26). For example:

- An investigating authority must refer a PID if it is not authorised to investigate the matter concerned and it believes that another authority may appropriately deal with the matter. In making this decision, the capacity of the authority to investigate and the confidence of the internal reporter may be taken into account.
- If a PID is made to a public official who does not belong to the organisation to which the PID relates, that public official must refer that PID to the relevant public authority or to an investigating authority for investigation or other action.

c) Reporting on public interest disclosures

From 1 January 2012, public authorities will be required to report on their obligations under the PID Act in their annual report and provide statistical information to the NSW Ombudsman every six months. A regulation supporting the PID Act will provide details about what information must be reported.

3.2 Statutory notifications

Obligations exist under other Acts to notify certain investigating authorities of conduct that may be reported. These include the duty of the:

- principal officer of a public authority to notify the Independent Commission Against Corruption of possible corrupt conduct under s.11 of the *Independent Commission Against Corruption Act 1988* (ICAC Act)
- head of a designated government or non-government organisation to notify the NSW Ombudsman of any reportable allegation or conviction involving inappropriate or abusive behaviours towards children against an employee of which they are aware (s.25C), or any information that gives the head or other employee reason to believe that reportable conduct by an employee has occurred (s.25D) under Part 3A of the *Ombudsman Act 1974*.

4. What does this mean for your organisation?

4.1 Assessing the report

All reports of wrongdoing made by staff to your organisation should be assessed to determine:

- Is the report a PID under the PID Act?
- How should the report be progressed (whether or not it is a PID)? For example:
 - › Does the report warrant action or investigation and, if so, who are the appropriate staff to do this?
 - › Should the report be referred to an external investigation or review authority?
 - › Should the report be referred to another organisation if it concerns them or their staff?
 - › Must the report be referred to the ICAC under s.11 of the ICAC Act or the NSW Ombudsman under Part 3A of the *Ombudsman Act 1974*?
- What is the likelihood of maintaining confidentiality? – see *Guideline C7: Confidentiality*.
- What are the risks of reprisals to the internal reporter? – see *Guideline C4: Assessing risk of reprisals and conflict*.

There are a number of pathways through which an organisation finds out about a staff report of wrongdoing. However this guideline is only about staff reporting directly to an organisation or when an organisation is referred a report from their principal department or Minister. Reports to external investigating authorities will be discussed in *Guideline C6* and reports to Members of Parliament (MPs) and journalists will be discussed in *Guideline B5*.

Your internal reporting policy should include a commitment to deal with reports of wrongdoing impartially, promptly and reasonably. For more details, see the model internal reporting policies for *organisations* or *local government*.

4.2 Designating roles and responsibilities

Organisations should set up processes to ensure that any reports of wrongdoing made to disclosures officers are sent to the disclosures coordinator or principal officer for assessment, while maintaining confidentiality where practical and appropriate.

Your organisation's internal reporting procedures should specify that:

- Disclosures officers, and other recipients of reports of wrongdoing, are responsible for sending reports to the disclosures coordinator or principal officer for assessment.
- The disclosures coordinator or principal officer are responsible for assessing each report to determine if it is a PID under the PID Act, and then deciding the appropriate course of action to be taken.
- If necessary, the disclosures coordinator or principal officer are responsible for referring a report to another person or organisation for further action.

4.3 Obtaining further information from internal reporters

You may need to interview internal reporters to clarify issues about their allegations and the evidence they have or can provide to support their report. When questioning internal reporters it is important to:

- be discreet in all communications and when arranging and holding meetings
- make the process as least threatening as possible
- explain to them why this process is necessary and how it may benefit them
- avoid creating the perception that you are sceptical or doubtful about their truthfulness
- keep contemporaneous records and, if possible, get a signed record of any additional information obtained.

This conversation also gives you an opportunity to provide internal reporters with information, and ask any questions needed to assess the likelihood of confidentiality being maintained – see *Guideline C7: Confidentiality* – and the risk of reprisals.

4.4 Is the report a PID?

The onus is on your organisation to assess whether a report of wrongdoing is a PID under the PID Act. Table 1 provides a checklist to help you decide whether the report of wrongdoing is likely to be a PID.

Table 1 Is the report a PID?

Was the report of wrongdoing:	See guideline
<input checked="" type="checkbox"/> made by a public official?	<i>B1: Who can report wrongdoing?</i>
<input checked="" type="checkbox"/> made voluntarily?	<i>B3: What's not a public interest disclosure?</i>
<input checked="" type="checkbox"/> based on an honest belief on reasonable grounds that the information shows or tends to show the wrongdoing?	<i>B2: What should be reported?</i>
<input checked="" type="checkbox"/> about: <ul style="list-style-type: none"> • corrupt conduct • maladministration • serious and substantial waste of public money • government information contravention • local government pecuniary interest contravention? 	<i>B2: What should be reported?</i>
<input checked="" type="checkbox"/> about a public official or public authority?	<i>B2: What should be reported?</i>
<input checked="" type="checkbox"/> made to a person who is authorised to receive a PID, including: <ul style="list-style-type: none"> • the principal officer of the public authority • another person nominated to receive PIDs in your organisation's internal reporting policy? 	<i>B4: Reporting pathways</i>
<input checked="" type="checkbox"/> not primarily questioning the merits of government policy?	<i>B3: What's not a public interest disclosure?</i>
<input checked="" type="checkbox"/> not made substantially to avoid dismissal or disciplinary action?	<i>B3: What's not a public interest disclosure?</i>

When assessing reports, remember:

- Err on the side of caution and interpret the PID Act broadly – when in doubt, assume that the Act applies and proceed accordingly.
- An internal reporter does not have to explicitly indicate that they are making a PID under the PID Act or ask to be protected. In many cases, they may not be aware that their report amounts to a PID.
- An internal reporter cannot demand to withdraw their report, but they might request it. The decision is ultimately one for your organisation to make in the public interest. However, even if your organisation decides not to take any action on a report, if the PID Act applies your organisation should take measures to prevent reprisals being taken against the internal reporter. This may include maintaining confidentiality, where practical and appropriate – see [Guideline C7: Confidentiality](#).
- Concentrate on the allegation, the information and the evidence provided, not the identity of the internal reporter or their possible motives for disclosing the information – unless you have evidence that shows the report was made to avoid disciplinary action (see [Guideline D3: Internal reporters involved in wrongdoing](#)).

You must keep full and detailed records of your assessment of the report and the reasons for it, and retain these records in a secure location. Your organisation's disclosures coordinator should provide written advice to the principal officer and internal reporter about the assessment decision and how the matter is to be progressed.

4.5 What if the report is not a PID?

In practice, whether a report fulfils all the requirements for a PID under the PID Act should be of little relevance. Your organisation still has an obligation to ensure that all internal reports, as with complaints and suggestions from the public, are properly addressed. In particular, you should make sure that staff – who often find these situations stressful – are appropriately supported.

If your organisation decides that a report by a staff member is not a PID, it is important to still determine:

- what the staff member expects to be done with their information
- whether they need any support or protection from possible reprisals
- if the matter warrants further action.

Most organisations have comprehensive frameworks for dealing with staff concerns – including harassment or bullying, personal grievance and occupational health and safety systems. The challenge for disclosures coordinators and managers is to ensure that the appropriate policy and procedure is applied to the particular circumstances and the staff member is referred to the most appropriate person or organisation. Staff need to understand that different types of concerns or reports may have different reporting pathways and may be dealt with differently.

However, reports of wrongdoing covered by the PID Act are also often entwined with grievances, workplace conflict or performance management concerns. In these cases, it is important to distinguish allegations of serious wrongdoing from any other issues and deal with each using the appropriate mechanisms.

Research found that:

- almost half (49%) of all wrongdoing observed by staff may not be 'public interest' wrongdoing but concern personnel or workplace grievances
- interpersonal conflicts accompany 46% of reports about 'public interest' wrongdoing.²

4.6 Deciding on the appropriate action

Regardless of whether a report of wrongdoing is a PID under the PID Act, you need to:

- establish and document the relevant facts
- reach appropriate conclusions based on the available evidence
- decide on a suitable response.

Your organisation must be flexible enough to respond appropriately to reports of wrongdoing. Although corrupt conduct and pecuniary interest allegations must be about the conduct of an individual, allegations about the other categories of conduct identified in the PID Act may be about a more general approach or failure of the organisation.

Depending on the circumstances, the options for action in response to a report could include:

- no action or a decision to decline to take action
- resolving the issue managerially
- an internal audit of an issue or the operation of a particular unit
- implementing or changing policies, procedures or practices
- a preliminary or informal investigation
- a full or formal investigation by or on behalf of your organisation
- referral to an investigating authority or the police if it is a criminal matter.

Any action taken must comply with your organisation's policies and procedures for investigative or disciplinary processes.

Your organisation should identify clear criteria for assessing what action is appropriate in response to a report. These criteria include:

- the nature, scope and seriousness of the allegations
- whether the allegations can be effectively investigated, given the likelihood of evidence being obtained or the length of time since the alleged conduct occurred
- the likelihood that the alleged wrongdoing could have occurred even if little supporting evidence is currently available
- whether the report should more appropriately be referred to an investigating authority for action, or an investigating authority is or has already properly investigated the matter
- whether the concerns can be appropriately dealt with managerially without an investigation.

See [Guideline C5: Investigating disclosures](#) once a PID has been assessed as warranting investigation.

4.7 Referring cases for external review or investigation

Your organisation may be obliged to notify:

- the ICAC of possible corrupt conduct under s.11 of the ICAC Act
- the NSW Ombudsman of any reportable allegation or conviction involving inappropriate or abusive behaviours towards children (s.25C), or any information that suggests reportable conduct has occurred (s.25D) under Part 3A of the [Ombudsman Act 1974](#)
- the NSW Police Force if the report alleges criminal conduct.

Referring other reports to external investigating authorities is discretionary and only appropriate in certain circumstances. It is advisable to discuss the particulars of a matter with the investigating authority first to determine whether it should be referred.

For example, it may not be appropriate for organisations to deal with a report themselves if:

- the report relates to the head of your organisation, general manager or mayor
- there is a good reason why it would be appropriate for the investigating authority to deal with it – for example, it is already under investigation by the NSW Ombudsman
- it relates to more than one organisation and they are not able to properly investigate the allegations
- the matter is highly sensitive
- there is a considerable actual or perceived conflict of interest.

The relevant investigating authority can then assess the report to determine what action is appropriate. If your organisation does not have the capacity to conduct an investigation internally, this may include a recommendation that you contract an external investigator to undertake the necessary investigation. One option would be to obtain the services of a provider from the Internal Audit Bureau (IAB) Service's public interest disclosures investigators panel. The NSW Ombudsman has entered into a Memorandum of Understanding (MOU) with IAB Services to ensure organisations are able to quickly and easily access appropriate, cost effective investigative services for PID matters.

Even if a matter is referred to an investigating authority, your organisation:

- remains responsible for supporting the internal reporter
- should notify the internal reporter that you have referred their report to an investigating authority
- should consult with the investigating authority about your respective responsibilities for implementing strategies to minimise any risk of reprisal that the internal reporter faces, keeping the internal reporter appropriately informed during the process, and providing them with any final report.

If an investigating authority receives a PID about your organisation (either directly or as a s.11 notification under the ICAC Act), they may refer it to your principal officer for investigation and report.

Contact the relevant investigating authority for more advice on referring a report.

5. Your questions answered

Does the PID Act apply if the report was about a relatively minor matter, but the resulting investigation identifies significant and serious issues?

If the actual content of the report makes only minor allegations, the PID Act will not apply because it only applies to reports about serious matters – see [Guideline B2: What should be reported?](#)

However, your organisation has a duty of care to ensure that any staff who report wrongdoing are appropriately supported through the process, regardless of whether their report meets all the requirements of the PID Act.

Does the PID Act apply if the allegations in the report are not found, after investigation, to be substantially true?

A report of wrongdoing does not have to be substantially true for the PID Act to apply as long as it meets the requirements of the Act.

Organisations and the general public can both benefit from people raising their concerns about the way an organisation is functioning. Reports of wrongdoing from staff are particularly valuable because they see 'close-up' what is happening. It is in an organisation's interests to tolerate over-reporting rather than risk serious wrongdoing taking place without detection.

If staff feel that they must always provide evidence to substantiate their allegations, they will be less likely to report suspected wrongdoing. We know that people fear they won't be taken seriously, might suffer retribution, may be left unsupported or otherwise be affected detrimentally by reporting. People who report wrongdoing often find themselves in very stressful situations, and organisations should support staff through the reporting process whatever the outcome.

However if a report of wrongdoing is made to an MP or journalist, it must be substantially true for the PID Act to apply (s.19(4)(5)).

Does the PID Act apply if neither the internal reporter nor the organisation initially recognises the report as a PID?

Yes – a report of wrongdoing that meets the requirements of the PID Act is a PID, irrespective of when this is identified.

Are there any situations where the PID Act would apply at one time but not at another?

If a report of wrongdoing is made in accordance with the PID Act, the internal reporter can seek the statutory protections of the Act at any time in the future. This applies no matter what action is then taken in relation to the PID – for example, if no action is taken or an investigation discontinued. The PID Act also continues to apply if a PID is referred to another public authority, investigating authority or public official (s.15).

The only exceptions are if:

- During the course of an investigation, it is proved to the required standard that the reporter willingly provided false or misleading information or made the report substantially with the motive of avoiding dismissal or other disciplinary action. See [Guideline B3](#) on what is not a PID and [Guideline D3](#) on internal reporters involved in wrongdoing.
- A report that was initially made to a public authority or investigating authority – and met the requirements of the PID Act – is then made to an MP or journalist, but the internal reporter is unable to prove that their report is substantially true. See [Guideline B5](#) on reporting to MPs and journalists.

6. Additional resources

- [Model internal reporting policy](#)
- [Model internal reporting policy \(local government\)](#)
- [Guideline B1: Who can report wrongdoing?](#)
- [Guideline B2: What should be reported?](#)
- [Guideline B3: What's not a public interest disclosure?](#)
- [Guideline B4: Reporting pathways](#)
- [Guideline B5: Reporting to Members of Parliament and journalists](#)
- [Guideline C2: Reporting to the NSW Ombudsman](#)
- [Guideline C4: Assessing risk of reprisals and conflict](#)
- [Guideline C5: Investigating disclosures](#)
- [Guideline C6: Managing referred and external investigations](#)
- [Guideline C7: Confidentiality](#)
- [Guideline D3: Internal reporters involved in wrongdoing](#)
- [Government Information \(Public Access\) Act 2009](#)
- [Independent Commission Against Corruption Act 1988](#)
- [Ombudsman Act 1974](#)
- [Public Interest Disclosures Act 1994](#)
- [Whistleblowing in the Australian public sector: Enhancing the theory and practice of internal witness management in public sector organisations](#)

Contact details for investigating authorities

To report 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
Web: www.icac.nsw.gov.au

Address: Level 21, 133 Castlereagh Street
Sydney NSW 2000

To report 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
Web: www.audit.nsw.gov.au

Address: Level 15, 1 Margaret Street
Sydney NSW 2000

To report police misconduct:

Police Integrity Commission (PIC)

Phone: 02 9321 6700
Toll free: 1800 657 079
Facsimile: 02 9321 6799

Email: contactus@pic.nsw.gov.au
Web: www.pic.nsw.gov.au

Address: Level 3, 111 Elizabeth Street
Sydney NSW 2000

To report 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
Web: www.ombo.nsw.gov.au

Address: Level 24, 580 George Street
Sydney NSW 2000

To report wrongdoing in local government:

Division of Local Government in the Department of Premier and Cabinet

Phone: 02 4428 4100
Tel. typewriter (TTY): 02 4428 4209
Facsimile: 02 4428 4199

Email: dlg@dlg.nsw.gov.au
Web: www.dlg.nsw.gov.au

Address: 5 O'Keefe Avenue
Nowra NSW 2541

To report breaches of the **Government Information (Public Access) Act 2009**:

Information Commissioner

Toll free: 1800 463 626
Facsimile: 02 8114 3756

Email: oicinfo@oic.nsw.gov.au
Web: www.oic.nsw.gov.au

Address: Level 11, 1 Castlereagh Street
Sydney NSW 2000

7. Last updated

November 2011

8. Endnotes

1 Brown, AJ (ed.) 2008, *Whistleblowing in the Australian public sector: Enhancing the theory and practice of internal witness management in public sector organisations*, ANU E Press, Canberra, p. 54.

2 Brown, p. 37.

Contact us for more information

Our business hours are: Monday to Friday, 9am–5pm (*Inquiries section closes at 4pm*)

If you wish to visit us, we prefer you make an appointment. Please call us first to ensure your complaint is within our jurisdiction and our staff are available to see you.

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Sydney NSW 2000

Email pid@ombo.nsw.gov.au
Web www.ombo.nsw.gov.au

General inquiries 02 9286 1000
Facsimile 02 9283 2911

Toll free (outside Sydney metro) 1800 451 524
Tel. typewriter (TTY) 02 9264 8050

Telephone Interpreter Service (TIS): 131 450
We can arrange an interpreter through TIS or you can contact TIS yourself before speaking to us.