

Reporting to the NSW Ombudsman

1. Objective

To provide advice and guidance to public authorities about the statistical information they need to report to the NSW Ombudsman every six months and how to provide this information.

2. Why is this important?

Public authorities are required under the *Public Interest Disclosures Act 1994* (PID Act) to collect and report information about public interest disclosures (PIDs). One of the difficulties in evaluating the effectiveness of the PID system in NSW previously has been the lack of information about its implementation.

The statutory reporting requirements mean a picture can be built of how many PIDs are made each year in the NSW public sector, as well the action taken by authorities to establish internal reporting policies and make their staff aware of them. This will help the NSW Ombudsman and the Public Interest Disclosures Steering Committee to assess how the system is working and how often it is being used, in addition to providing greater transparency by ensuring that information about PIDs is publicly available. It also helps the Ombudsman to better target our strategies.

An appropriate record-keeping system for PIDs also enables authorities to comply with obligations under the *State Records Act 1998*, and to recognise patterns or see the bigger picture where a series of reports are made.

3. Legal and management obligations

3.1 PID Act

Section 31 of the PID Act requires authorities to report information about their obligations under the PID Act in their annual report. Section 6CA also requires authorities to provide the NSW Ombudsman with statistical information once every six months (within 30 days after the end of each reporting period – 30 June and 31 December – or by such later time as the Ombudsman may approve).

The NSW Ombudsman has approved that the statistical information for reporting periods ending on 31 December must be provided within 45 days after the end of the reporting period – by 14 February. The statistical information for reporting periods ending on 30 June must still be provided within 30 days after the end of the reporting period – by 30 July.

The Public Interest Disclosures Regulation 2011 (PID Regulation) outlines the information that authorities are to record and include in both the six month report to the NSW Ombudsman and the authority's annual report:

- a. the number of public officials who have made a PID to the authority,
- b. the number of PIDs received by the authority in total and the number relating to each of the following:
 - i. corrupt conduct
 - ii. maladministration
 - iii. serious and substantial waste of public money or local government money (as appropriate)
 - iv. government information contraventions
 - v. local government pecuniary interest contraventions
- c. the number of PIDs finalised by the authority
- d. whether the authority has a PID policy in place
- e. what action the head of the authority has taken to ensure that his or her staff awareness responsibilities under section 6E(1)(b) of the Act have been met.

For the purpose of reporting the number of PIDs in relation to (a) and (b) above, authorities are required to distinguish between PIDs made by public officials:

1. in the performance of their day-to-day functions as public officials
2. under a statutory or other legal obligation
3. all other PIDs.

3.2 State government requirements

The Premier's Memoranda M2011–22 states that heads of government agencies should nominate officers who will be responsible for preparing the annual and six monthly reports and ensuring that the required information is collected from 1 January 2012.

3.3 Local government requirements

The Circular to Councils 11–43 states that general managers should nominate officers who will be responsible for preparing the annual and six monthly reports and ensure that the required information is collected from 1 January 2012.

4. What does this mean for public authorities?

Public authorities should collect, appropriately and securely record, and retain sufficient information to enable the reporting of information per the obligations under the PID Act and PID Regulation.

4.1 PID online reporting tool

The NSW Ombudsman has developed a secure PID online reporting tool to help authorities meet their six-monthly reporting requirements. See the user manual for advice on using the PID online reporting tool.

a) Registered users

Each authority should register one person to use the PID online reporting tool. This registered user does not need to be the same person that is the public authority's disclosures coordinator. Once an authority has provided the name and email address of their registered user to the NSW Ombudsman's Public Interest Disclosures Unit (PID Unit) by emailing pid@ombo.nsw.gov.au, the registered user will be provided with login access to the online reporting tool and instructions on how to use the tool.

If responsibilities within the authority change, or a staff member leaves or moves into another position, the authority should ensure the person assigned reporting responsibilities is aware of the PID online reporting tool. Any changes to the registered user or their contact details should be emailed to PID Unit at pid@ombo.nsw.gov.au. For security reasons, this email should be sent by the previously registered user, the disclosures coordinator or the head of the authority.

b) Security

Registered users are responsible for keeping their password for the PID online reporting tool secure and treating the password as sensitive, confidential information. If a password is suspected to have been compromised, registered users are to notify the PID Unit immediately and the password will be changed. Responsibility for providing information via the PID online reporting tool should not be delegated to a person other than the registered user.

4.2 Terminology

The following is some general guidance on what should be included within each category of information outlined in the PID Regulation.

a) Number of public officials who made PIDs to the authority

In this category, 'made' refers to those PIDs made directly to the authority by a public official working either within the authority or for another public authority. That is, it does not include PIDs that have been received via referrals from an investigating or authority under sections 25 or 26 of the PID Act.

This means that the report should provide the number of public officials who made a PID directly to the authority – including any public officials who made a PID that was not dealt with by the authority, but was referred to an investigating or another public authority under s.26 of the PID Act.

While there will be situations where one public official will make one PID, this will not always be the case. Table 1 highlights a number of these circumstances.

b) Number of PIDs received by the authority in total

All PIDs received that the authority took primary responsibility for handling should be included in this category. There are a number of different matters that would fit into this category. The report should include PIDs:

- received by the authority from a public official working either within the authority or for another public authority that the authority retained responsibility for handling
- made to another public authority and referred to the authority for handling under s.26 of the PID Act
- referred under s.25 of the PID Act by an investigating authority to the authority for handling.

This means that misdirected PIDs that are received by the authority but referred to a relevant public authority or investigating authority for handling under s.26 of the PID Act should not be included. The authority that the PID is referred to is responsible for reporting it as a PID they have received.

However, it is important to keep in mind that responsibility for handling a PID is only transferred from one authority to another if the PID is referred under s.25 or 26 of the PID Act. For example:

- If an authority notifies an investigating authority of a PID under another legislative provision or requirement – for example, section 11 of the *Independent Commission Against Corruption Act 1988* – the authority remains responsible for the PIDs handling and for reporting on it. If an investigating authority decides to assume responsibility for the handling of a matter, the authority should formally refer the matter to them under s.26 of the PID Act.
- If a PID is referred to an investigating authority under s.26 of the PID Act, but it is referred back to the authority under another legislative provision for investigation, the investigating authority still remains responsible for the PIDs handling and for reporting on it.

If one public authority refers a PID to another authority to handle, it is therefore essential that this is done under s.26 of the PID Act, as well as any other relevant legislative provisions. However, authorities should only refer PIDs under s.26 of the PID Act to an investigating authority if they have made a decision to assume responsibility for the matter, not as part of their normal notification process.

Even if more than one public authority is involved in taking action or conducting a joint investigation in response to a PID, it should only be reported as received by the authority which was the lead investigator or took primary responsibility for its handling.

Table 1. Scenarios where the number of public officials and PIDs are not the same

Scenario	Counting rules
A group of staff make the same allegation within the one disclosure – for example, in the same letter	<ul style="list-style-type: none"> • One PID • More than one public official
Multiple staff members make the same allegation via separate disclosures – for example, in different letters	<ul style="list-style-type: none"> • More than one PID • More than one public official
One person makes a number of allegations related to the same event, omission or course of conduct via separate disclosures to the same authority	<ul style="list-style-type: none"> • One PID • One public official
One person makes a number of largely unrelated allegations via separate disclosures	<ul style="list-style-type: none"> • More than one PID • One public official
One person makes a subsequent allegation of detrimental action substantially in reprisal for earlier making a PID	<ul style="list-style-type: none"> • More than one PID • One public official
An anonymous disclosure clearly made by a public official (see <i>Guideline B6: Anonymous reporting</i>)	Assume <ul style="list-style-type: none"> • One PID • One public official
An anonymous disclosure that uses the word 'we' rather than 'I' – but it is not clearly indicated or otherwise verifiable that it is being made on behalf of more than one person	Assume <ul style="list-style-type: none"> • One PID • One public official
The same allegations are made to the same authority in separate anonymous letters that are in similar writing and it is clearly indicated or otherwise verifiable that they are from the same public official	Assume <ul style="list-style-type: none"> • One PID • One public official.
The same allegations are made in separate anonymous letters that are in similar writing – but it is not clearly indicated or otherwise verifiable that they are from the same public official	Assume <ul style="list-style-type: none"> • More than one PID • More than one public official.

Table 2. Scenarios where more than one allegation is made

Scenario	Counting rules
A public official makes multiple allegations within the same disclosure about the same event, omission or course of conduct related to the one category of wrongdoing – for example, corrupt conduct	One PID relating to corrupt conduct
A public official makes multiple allegations within the same disclosure about the same event, omission or course of conduct but related to different categories of wrongdoing – for example, maladministration and waste of public funds	One PID relating to the primary category of wrongdoing alleged
A public official makes multiple largely unrelated allegations as part of separate disclosures – for example, made at different times	One PID for each separate disclosure
A public official makes a number of allegations about the same event, omission or course of conduct via separate disclosures	One PID as the allegations relate to the same event, omission or course of conduct
A witness – who is a public official – makes allegations during the course of an investigation into an earlier disclosure	If the disclosure by the witness meets the requirements of the PID Act, it should be counted as a separate PID
A public official makes the same allegations to two authorities	Two PIDs as each authority is receiving information unknown previously

See *Guideline B2: What should be reported?* for advice on what conduct falls within the five categories of wrongdoing

c) Number of PIDs received primarily about each category of wrongdoing

In many cases, a PID will allege one kind of wrongdoing. However, there will be some PIDs where more than one type of wrongdoing is alleged within the same disclosure.

Where a PID contains multiple allegations that could fit more than one category of wrongdoing, the public authority should only report the primary category of wrongdoing alleged, not each allegation. The primary category of wrongdoing is the dominant issue that is alleged, and is likely to involve the most significant or serious breach of conduct. If the PID contains allegations of corrupt conduct, this will generally be the primary category of wrongdoing.

This will mean that the total number of PIDs by each category of wrongdoing should match the total number of PIDs received during the reporting period. Table 2 highlights a number of these circumstances.

d) Categories of reporters

The PID Regulation requires authorities to further distinguish between categories of reporters, that is, in what capacity was the reporter acting or how was the report made to the authority. The three categories are:

- PIDs made in the performance of day-to-day functions as a public official
- PIDs made under a statutory or other legal obligation
- all other PIDs.

The information is required to be provided in relation to:

- the number of public officials who have made PIDs to the authority
- the number of PIDs received by the authority in total
- the number of PIDs received by the authority primarily about each category of wrongdoing.

The purpose of the distinction is to get a clearer picture as to whether the PID Act is achieving its objective of encouraging and facilitating disclosures about wrongdoing by public officials outside their roles and obligations. The categories are explained with examples below.

1. PIDs made in the performance of day-to-day functions as a public official

This is perhaps the most problematic category of PIDs.

Given the purpose of distinguishing such PIDs in statistical reports, the most practical way to define the PIDs falling into this category is that they would primarily include PIDs made incidental to the performance of functions that are (or should be) set out in a person's job description, duty statement or the like.

Examples of job titles that might fall into this category include:

- Internal Auditor
- Investigator
- Ethics Officer

- GIPA Officer
- Internal Ombudsman
- Complaints Officer
- Corruption Prevention Officer
- Audit and Risk Committee Member
- Manager.

An example of a report that should be classified as a PID and would fit into this category:

An auditor, while performing his/her day-to-day role, detects that serious and substantial waste has occurred. The auditor reports their finding, with applicable recommendations, in an audit report to the Manager Audit or the Chief Executive of the public authority (both are nominated disclosures officers). This report is likely to be a PID that should be reported in the category of 'PIDs made in the performance of day to day functions'.

Such reports could be described as 'technical' PIDs. They are reports made for some other official purpose, for example as part of an investigation or audit report, that coincidentally also meet the criteria in the PID Act to be categorised as a PID.

This category also includes managers who are reporting wrongdoing by their staff as part of their responsibilities as a manager.

2. PIDs made under a statutory or other legal obligation

This is perhaps the simplest category of PIDs to define and would include, for example:

- reports made by principal officers of public authorities to the ICAC under s.11 of the ICAC Act (that otherwise meet the requirements of the PID Act)
- reports made by the heads of designated public authorities to the Ombudsman under s.25C of the *Ombudsman Act 1974* (that otherwise meet the requirements of the PID Act).

It is the responsibility of the authority that received the report to assess whether a PID has been made and therefore whether to include it for statistical reporting in this category.

The majority of authorities will not receive any PIDs that fall into this category. Importantly, it should be noted that matters referred to an authority under a statutory provision such as s.11 of the ICAC Act or ss.25 or 26 of the PID Act are not generally considered 'PIDs made under a statutory or other legal obligation'. Unless there is sufficient evidence to determine that the PID should be included in one of the above two categories, these matters should be included in the 'All other PIDs' category (see further below).

3. All other PIDs

PIDs that do not fall into either of the first two categories will fit within this category.

e) Number of PIDs finalised by the authority in the reporting period

This is the number of PIDs received since 1 January 2012 that have been finalised or closed in the reporting period. This includes all PIDs that the authority was responsible for handling.

The way in which a PID is finalised will vary depend on the circumstances. In some instances, there will need to be a detailed investigation of the allegations. Others may be resolved quickly and informally. While this is ultimately a decision for each authority, PIDs should be considered to be finalised when the substantial matter alleged has been resolved, even though there may be workplace issues ongoing.

Each authority should consider what they class as final – for example, the date any final report is issued or approved, final correspondence is sent or any recommendations made are implemented – and this direction should be provided to the staff tasked with recording and reporting on PIDs. This may already be outlined in investigations procedures or guidance.

f) Whether the authority has established an internal reporting policy

Under section 6D of the PID Act, authorities are required to have a policy and procedures for receiving, assessing and dealing with PIDs.

Public authorities are required to indicate on the online reporting tool whether or not the authority has established an internal reporting policy.

If the authority has finalised its policy, but is awaiting formal approval, this field in the online reporting tool should be marked as 'no'. This can then be updated when the next statistical report is provided.

For further information about internal reporting policies and procedures, see *Guideline A2 Internal reporting policy and procedures*, the *Model internal reporting policy* and *Model internal reporting policy (local government)*.

g) Whether the head of the authority has taken action to meet their staff awareness obligations, and if so how

One of the responsibilities of the head of each authority under section 6E(1)(b) of the PID Act is to ensure their staff are aware of the contents of their internal reporting policy and the protections under the PID Act for people who make PIDs.

Public authorities are required to indicate on the online reporting tool whether or not the head of the authority has taken action to meet their staff awareness obligations. If an authority indicates that they have, information will be required as to how staff have been made aware from a list of options. As many options as applicable can be selected and any other mechanisms used can be included in the free text space provided.

Authorities should only provide information about what action was taken in the relevant six-month period.

For further information about the staff awareness options listed in the online reporting tool, see *Guideline A3: Awareness and training*.

4.3 Public authority details

The PID online reporting tool asks authorities to provide additional details to assist our analysis of the information provided.

a) Public authority type

Public authorities will be asked to select which of the following best describes their type:

- state government agency
- state owned corporation
- university
- local government authority
- Local Health District
- investigating authority/oversight agency
- Aboriginal Land Council
- NSW Police Force
- other.

If unsure, select 'Other'.

b) Cluster

Authorities will be asked to select which state government cluster or principal department they belong to. This will provide us with information about the distribution of PIDs across the clusters.

If the authority is a local government authority or does not belong to a cluster, leave this as 'Not part of a cluster'.

c) Geographic location

Authorities will be asked to select which of the following geographic locations it operates within: regional, metropolitan or state-wide.

If both regional and metropolitan areas are applicable, select 'state-wide'.

d) Number of staff

Public authorities will be asked to provide the number of staff. This will allow the NSW Ombudsman to comment more accurately on any relationship between the number of staff and the number of PIDs within a public authority.

The number of staff should reflect the total number of people who were employed at any time during the reporting period, even if they only worked for one day. This is known as the 'headcount' in the Department of Premier and Cabinet's *The NSW public sector workforce: A 2010 snapshot and snapshot tables*.¹ Staff with periods of employment in different public authorities during the reporting period are counted as separate staff in each public authority. In the Health sector, this also applies to staff working in more than one Local Health District.

5. Your questions answered

What will the NSW Ombudsman do with the information provided?

The current wording of the reporting requirements means that the type of information provided to the NSW Ombudsman every six months is the same as the type of information provided by the public authority in their annual report. Some authorities may still have concerns about how the information provided will be used, and particularly whether it will be reported publicly.

The PID Act requires the NSW Ombudsman to prepare a number of public reports, including a report on monitoring conducted under the PID Act. This will include relevant discussion and analysis of the information provided in six monthly statistical reports made by authorities to the Ombudsman. However, this will generally only include aggregate data and comparisons based on the type, location and size of authorities.

Any authority with particular concerns around the information it provides to the Ombudsman being used in a public report, should communicate these concerns, along with the reasons for them to the NSW Ombudsman when the statistical report is submitted. For more information, contact the PID Unit at pid@ombo.nsw.gov.au.

Our authority has not received any PIDs in the reporting period. Do we still have to submit a report?

Yes. Each authority must submit a report every six months even if they have not received any PIDs over that time.

For ease of reporting, the PID online reporting tool automatically populates '0' next to each category that is required to be reported.

Authorities are still required to indicate the number of PIDs that have been finalised in the reporting period, whether the authority has an established an internal reporting policy, and whether the head of the authority has taken action to meet their staff awareness obligations (and, if so, how).

Can our authority nominate more than one person to be responsible for providing the information or delegate data entry to someone other than the person registered?

No, the online reporting tool allows for only one registered user and email address to be associated with each authority. This does not need to be the same person as the authority's disclosures coordinator. Registered users are responsible for keeping their password for the PID online reporting tool secure and treating it as sensitive, confidential information.

If responsibilities within the authority change, or a staff member leaves or moves into another position, ensure the person assigned reporting responsibilities is aware of the PID online reporting tool. Any changes to the registered user or their contact details should be emailed to the PID Unit at

pid@ombo.nsw.gov.au. For security purposes, this email should be sent by the previously registered user, the disclosures coordinator or the head of the public authority.

Is the same person able to submit a report for more than one authority?

Yes – the online reporting tool allows for more than one authority to be associated with each registered user or email address. When submitting a report, these users will be required to select the authority that the report is for. People that are registered for more than one authority should ensure that the PID Unit is aware of this by emailing pid@ombo.nsw.gov.au.

What happens if the report from our authority is late?

The NSW Ombudsman has approved that the statistical information for reporting periods ending on 31 December can be provided within 45 days after the end of the reporting period – by 14 February. The statistical information for reporting periods ending on 30 June must still be provided within 30 days after the end of each reporting period – by 30 July.

An authority which has not met these timeframes should contact the PID Unit at pid@ombo.nsw.gov.au.

Can our authority change a report once it is submitted?

The online reporting tool allows registered users to progressively add or make changes to their authority's report. Submitting a report is equivalent to saving it in the online report tool. This means you can start to complete the report, submit it on the online reporting tool, and make changes by updating the report that you have submitted. Refer to the *PID online reporting tool: User manual* for step-by-step instructions on how to do this.

However, authorities will only be able to update reports using the online reporting tool for 30 days after the end of reporting period ending 30 June and for 45 days after the end of reporting period ending 31 December. Any changes to the report after this time can be emailed to the PID Unit at pid@ombo.nsw.gov.au. The details of the change requested will be noted and the public authority's report updated. This should only happen in exceptional circumstances.

Does our authority include the same information that we provide to the NSW Ombudsman in our annual report?

Yes, the PID Regulation provides that the same information must be included in both the six monthly reports to the NSW Ombudsman and the authority's annual report.

Section 31 of the PID Act provides that the annual report must be prepared within four months of the end of each reporting year and submitted to the Minister responsible for the authority. The annual report must be tabled in each House of Parliament by the Minister as soon as practical after it is prepared, unless it is included in an annual report prepared for the purposes of the *Annual Reports (Departments) Act 1985* or the *Annual Reports (Statutory Bodies) Act 1984*.

The reporting year will either be a financial or calendar year depending on the authority's usual reporting cycle as outlined in these Acts. If the authority does not have a financial year for the purposes of either of these Acts, the year end will be 30 June.

Once the annual report is submitted to the Minister, a copy must also be provided to NSW Ombudsman. An electronic version of the report or a link to where the report is available online should be emailed to pid@ombo.nsw.gov.au.

Do we count reports of wrongdoing that we assess as not being PIDs in the reporting requirements?

If the report of wrongdoing clearly does not meet one or more of the requirements in order to be a PID, it should not be counted as a PID by the authority. For example, if the person reporting wrongdoing was not a public official.

However, if the disclosure is initially assessed as a PID and it is only further investigation or inquiries that bring this assessment into question, the disclosure should still be considered to be a PID and counted as such. An exception would be where further investigation or inquiries find that the report was made to avoid disciplinary action. Also see *Guideline C3: Assessing and streaming internal reports*.

As a principal department, public officials make PIDs to us about agencies within our cluster that we then refer to those agencies to handle. Won't this mean our numbers artificially high?

There are likely to be situations where an authority, such as a principal department, has a high number of public officials who make PIDs directly to them that are subsequently referred to the public authority within their cluster to which the PID relates for handling. If these PIDs are referred by the principal department under s.26 of the PID Act, these PIDs will not be counted as PIDs received by the principal department.

There will not always be a clear relationship between the number of public officials who made PIDs and the number of PIDs received within an individual agency. The numbers should not be interpreted to mean that a large number of people are disclosing the same wrongdoing.

Public authorities need to include the same statistical information in their annual report. This may provide an opportunity to include additional context and information such as the number of PIDs made to the public authority that were referred to other public authorities for handling.

6. Additional resources

- *PID online reporting tool: User manual*
- *Model internal reporting policy*
- *Model internal reporting policy (local government)*
- *Guideline A2: Internal reporting policy and procedures*
- *Guideline A3: Awareness and training*
- *Guideline B2: What should be reported?*
- *Guideline B6: Anonymous reporting*
- *Guideline C3: Assessing and streaming internal reports*
- *Annual Reports (Departments) Act 1985*
- *Annual Reports (Statutory Bodies) Act 1984*
- *Independent Commission Against Corruption Act 1988*
- *Ombudsman Act 1974*
- *Public Interest Disclosures Act 1994*
- *Public Interest Disclosures Regulation 2011*
- *State Records Act 1998*
- *Premier's Memoranda M2011-22*
- *Circular to Councils 11-43*
- *The NSW public sector workforce: A 2010 snapshot and snapshot tables*

Endnote

¹ Public Sector Workforce 2011, *The NSW public sector workforce: A 2010 snapshot and snapshot tables*, Department of Premier and Cabinet, p. 22.

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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We can arrange an interpreter through TIS or you can contact TIS yourself before speaking to us.