

# Managing interactions with investigating authorities

## 1. Objectives

- To clarify the roles and responsibilities of investigating authorities when they refer a public interest disclosure to your organisation
- To clarify the roles and responsibilities of investigating authorities when they receive a public interest disclosure referred from your organisation
- To clarify the roles and responsibilities of your organisation when it receives a referred public interest disclosure from an investigating authority
- To clarify the roles and responsibilities of public authorities when they refer a public interest disclosure to your organisation.

## 2. Why is this important?

The **Public Interest Disclosures Act 1994** (PID Act) allows for investigating authorities to refer a public interest disclosure either to another investigating authority or to a public authority for investigation or other action. An investigating authority may refer a public interest disclosure if it is not authorised to investigate the matter or if it is of the opinion that another investigating authority or public authority may appropriately deal with the matter. Sections 25 and 26 of the PID Act address referral of disclosures by investigating authorities and public authorities.

## 3. Legal and management obligations

### 3.1 Section 25 of the PID Act

Section 25 of the PID Act outlines the circumstances when an investigating authority may refer a public interest disclosure to another investigating authority or a public authority.

### 3.2 When a public interest disclosure can be referred

A public interest disclosure may be referred by an investigating authority before or after the matter has been investigated. It can also be referred whether or not any investigation is complete or any findings have been made. The investigating authority may also refer any other information relevant to the matter that it may have obtained while investigating the matter, at the time of referring the disclosure.

Investigating authorities should not refer a public interest disclosure to another investigating authority or public authority if there are any doubts about its ability to investigate the matter.

The investigating authority may undertake an assessment of a public interest disclosure and determine that some aspects should be dealt with by one authority and other aspects should be dealt with by another authority. The investigating authority is free to refer different parts of a public interest disclosure to different authorities for investigation.

For example, a public interest disclosure may show or tend to show corrupt conduct and serious and substantial waste of public money. The referring investigation authority could refer the aspects of the disclosure relating to corruption to the Independent Commission Against Corruption (ICAC) and the aspect relating to serious and substantial waste to the Audit Office/Division of Local Government.

### 3.3 Consultation prior to referral

The PID Act states that the investigating authority is not to refer a public interest disclosure to another investigating authority or public authority without first seeking and taking into consideration the views of the investigating authority or public authority.

This can be done informally via a telephone conversation or a summary of the issues could be forwarded in writing. In some circumstances it may be appropriate to provide a copy of the disclosure to the investigating authority or public authority so it can make a judgement on whether it considers the matter should be formally referred.

For example, a public interest disclosure may make allegations of both maladministration and serious and substantial waste of public money. The Ombudsman and Audit Office may agree to conduct a joint investigation with each investigating authority focusing on the allegations relevant to its area of operations. In those circumstances, the responsibility for fulfilling the legislative obligations set out by the PID Act will need to be explicitly agreed between the agencies.

Consideration should also be given to whether it is appropriate to consult with the internal reporter prior to making a decision to refer a public interest disclosure.

### 3.4 Information to be included as part of the referral

In referring a public interest disclosure to another investigating authority or public authority, depending on the circumstances investigating authorities should endeavour to enclose a statement which addresses the following:

#### a) The basis for the investigating authority's assessment that the matter is a public interest disclosure

This should include a statement of reasons that explains why the report is considered to be a public interest disclosure.

**Guideline C3: Assessing and Streaming Internal Reports – Public Interest Disclosures** sets out criteria assessment officers should address when determining whether or not the matter is a public interest disclosure.

#### b) The reasons for referral under section 25 of the PID Act

This should outline why the receiving organisation is best placed to investigate or otherwise take action in relation to the public interest disclosure. Reasons for referral could include that

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the disclosure shows or tends to show serious or substantial waste of public money and would be more appropriately dealt with by the Audit Office, or because it shows or tends to show the public authority has engaged in wrongdoing of a kind that amounts to maladministration, which would warrant a referral to the Ombudsman.

## c) Recommended action

Section 25 of the PID Act states that an investigating authority referring a public interest disclosure may recommend what action should be taken by the receiving authority. These recommendations provide guidance to the receiving investigation authority or public authority regarding the action the referring investigating authority considers would be appropriate under the circumstances. Such recommendations are advisory only. For example, the referring authority may ask for a report or information on action taken.

## d) Identity of the internal reporter

An investigating authority referring a public interest disclosure under the PID Act should identify the internal reporter to

the receiving authority. The receiving authority assumes responsibility for acknowledging the public interest disclosure and advising about the outcome so needs to know the identity of the reporter. This will also enable the receiving authority to better assess and manage any risks of reprisal that may occur as a result of the making or investigation of a public interest disclosure.

## 3.5 Consultation after referral

Consultation with the receiving authority does not necessarily end after the matter has been referred formally. Section 25 allows for an investigating authority and the receiving authority to enter into arrangements to avoid duplication of action, to allow the resources of both agencies to be used efficiently and to ensure action is taken that provides the most effective result.

Table 1 sets out the responsibilities under the PID Act for both the referring and receiving authorities under various circumstances. This is a guide only and any decision relating to the fulfilment of legislative responsibilities can be negotiated between the authorities depending on the circumstances of the matter and the specific statutory obligations that apply.

**Table 1 Responsibilities under the PID Act in various circumstances**

There are certain legislative responsibilities in the PID Act on the recipients of PIDs. Under various circumstances, the investigating or public authority who receives a PID bears the responsibility for undertaking these tasks.

Legislative responsibilities / Circumstances	Acknowledging the report	Notifying the internal reporter of the action taken or proposed to be taken within 6 months of the public interest disclosure being made	Reporting on PIDs received	Maintaining the confidentiality of the internal reporter or making decisions about whether information about the issue or investigation can be disclosed	Preventing possible reprisal for the making of the PID (and, as a matter of good practice, it is appropriate for the internal reporter to be provided with support)
A PID received directly by the investigating authority but then referred to another authority under s25 of the PID Act	Referring authority Receiving authority on receipt of the PID	Receiving authority	Receiving authority	Referring and receiving authority	Referring and receiving authority
A PID received by a public authority but then referred to the investigating authority for action/investigation under s26 of the PID Act	Referring authority Receiving authority on receipt of the PID	Receiving authority	Receiving authority	Referring and receiving authority	Referring and receiving authority
A PID received by an investigating authority but then referred to a public authority for action/investigation under the provisions of legislation other than the PID Act	Referring authority Receiving authority on receipt of the PID	Referring authority	Referring authority	Referring and receiving authority	Referring and receiving authority

## 3.6 Section 26 of the PID Act

Section 26 of the PID Act states that a public official may refer any disclosure to another authority for investigation or other action considered appropriate. When making such a referral, public officials should be guided by the advice in 3.2 to 3.5 above.

## 4. What does this mean for your organisation?

If your organisation receives a public interest disclosure from an investigating authority it should be managed in accordance with your internal reporting policy and procedures. The public interest disclosure will now become the responsibility of your organisation and your organisation is responsible for carrying out the various obligations as a receiving authority set out under the PID Act.

You should count it as a public interest disclosure managed by your organisation and include in it your six monthly reports to the Ombudsman. **Guideline C2: Reporting to the NSW Ombudsman** provides further information about your reporting obligations.

## 5. Your questions answered

### What if our organisation receives a matter referred by an investigating authority that they identify as a PID but refer under a legislative provision other than the PID Act?

The investigating authority referring the matter to your organisation should explain the purpose of the referral and whether the investigating authority wants you to investigate, take no action or report back. The investigating authority referring a matter to your organisation should explain the implications of the referral.

### Referral from the ICAC under the *Independent Commission Against Corruption Act 1988*

ICAC may refer a matter to your organisation under sections 19 and/or 53 of the *Independent Commission Against Corruption Act 1988* (ie not under the PID Act). In those circumstances, your organisation would be obliged to take the action requested in the referral but would not be responsible for fulfilling the obligations under the PID Act. The ICAC would retain responsibility for managing the obligations under the PID Act.

ICAC would count the matter as a public interest disclosure managed by ICAC and there would be no obligation on your organisation to count the matter when making your six monthly reports to the Ombudsman.

### Referral from the ICAC under the PID Act

If the matter is referred to you under the PID Act (whether or not it is also referred under the ICAC Act), your organisation is responsible for managing the matter as a public interest disclosure in accordance with your organisation's internal reporting policy.

As the public interest disclosure has been referred to your organisation, your organisation is responsible for managing it. Your organisation is also obliged to report the public interest disclosure to the Ombudsman as part of your six monthly reporting obligations under the PID Act.

### Referral from the NSW Ombudsman under Part 3A of the *Ombudsman Act 1974*

The Ombudsman may receive a public interest disclosure that relates to a reportable allegation, or reportable conviction, against an employee of a designated government agency that the Ombudsman monitors under Part 3A of the Ombudsman Act. Although assessing the matter as a public interest disclosure, the Ombudsman may refer it to your organisation under Part 3A of the Ombudsman Act for investigation (ie not under the PID Act).

In these circumstances, your organisation would be obliged to appropriately address the matter but would not be responsible for fulfilling the obligations under the PID Act. The Ombudsman would retain responsibility for managing the obligations under the PID Act.

The Ombudsman would count the matter as a public interest disclosure managed by the Ombudsman and there would be no obligation on your organisation to count the matter when making your six monthly reports to the Ombudsman.

### Referral from the Ombudsman under Part 8A of the *Police Act 1990*

The Ombudsman may receive a public interest disclosure from a Police Officer. Under Part 8A of the *Police Act* the Ombudsman must refer any complaint received to the Commissioner (unless the Ombudsman forms a view that it would not be in the public interest to do so).

In these circumstances, the NSW Police Force would be obliged to address the matter but would not be responsible for fulfilling any obligations under the PID Act. The Ombudsman would retain responsibility for managing the obligations under the PID Act.

The Ombudsman would count the matter as a public interest disclosure managed by the Ombudsman and there would be no obligation on the NSW Police Force to count the matter when making its six monthly reports to the Ombudsman.

## 6. Additional resources

 [Public Interest Disclosures Act 1994](#)

## 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.