

## Reporting pathways

### 1. Objectives

- To outline the internal and external reporting pathways available under the *Public Interest Disclosures Act 1994* (PID Act).
- To emphasise the importance of public authorities providing staff with clear advice about how and to whom certain reports of wrongdoing should be made.

### 2. Why is this important?

The PID Act only applies to reports about wrongdoing by staff if they are made to particular internal people or positions, external investigating authorities or – in limited circumstances – to Members of Parliament (MPs) or journalists.

An effective internal reporting system is an important tool to alert management to serious problems within an authority. Research shows that providing multiple reporting pathways is a crucial element of any internal reporting system and encourages staff to make reports.

The *Whistling While They Work* research found that almost all reporters bring wrongdoing to the attention of management before looking elsewhere for solutions:

- almost all reporters (97%) first report wrongdoing inside their organisation
- less than 12% of reporters ever go outside their organisation – and this is typically a last resort
- government watchdog agencies receive less than 4% of wrongdoing reports, while MPs receive about 1%.<sup>1</sup>

### 3. Legal and management obligations

#### 3.1 PID Act

##### a) Internally to public authorities

The PID Act applies to reports of wrongdoing made to a public authority's principal officer or nominated officers if the report is made by:

- staff of the public authority
- other public officials and relates to wrongdoing within the public authority.

##### b) Externally to investigating authorities

The PID Act also applies to reports of wrongdoing made to the investigating authorities listed in Table 1. The appropriate investigating authority for receiving a PID depends on what the information in the PID is about.

##### c) Other external options

Reports of wrongdoing made to MPs or journalists are public interest disclosures (PIDs) under the PID Act if, and only if, all the following conditions are met:

- the reporter must have made substantially the same disclosure to an investigating authority, public authority or a nominated officer of a public authority.
- the recipient of the disclosure either:
  - › decided not to investigate the matter
  - › did not complete their investigation within six months of the reporter making the disclosure

**Table 1: Reporting Pathways**

Internally to public authorities	Externally to investigating authorities	Other external options (in limited circumstances)
<ul style="list-style-type: none"> <li>• The principal officer – head of public authority</li> <li>• Nominated officers in accordance with the internal reporting policy – for example, disclosures coordinators or disclosures officers</li> <li>• The principal officer or nominated officers of the public authority to which the disclosure relates</li> </ul>	<ul style="list-style-type: none"> <li>• Independent Commission Against Corruption (ICAC) – for corrupt conduct</li> <li>• NSW Ombudsman – for maladministration</li> <li>• Auditor-General – for serious and substantial waste</li> <li>• Office of Local Government – for disclosures about local government</li> <li>• Information Commissioner – for government information contravention</li> <li>• Police Integrity Commission (PIC) – for police misconduct</li> <li>• Inspector of the PIC – for disclosures about the PIC or its staff</li> <li>• Inspector of the ICAC – for disclosures about the ICAC or its staff</li> <li>• Inspector of the Crime Commission – for disclosures about the Crime Commission or its staff</li> </ul>	<ul style="list-style-type: none"> <li>• Members of Parliament</li> <li>• Journalists</li> </ul>

- › did not recommend taking any action after investigating the matter
- › failed to tell the reporter what they were doing about the disclosure within six months.
- the reporter has reasonable grounds for believing that their disclosure is substantially true.
- the reporter is able to prove that their disclosure is substantially true (s.19).

In practice, this last requirement will generally be very difficult to meet.

See *Guideline B5: Reporting to Members of Parliament or journalists*.

## 4. What does this mean for public authorities?

### 4.1 Internal reporting pathways

#### a) Receiving reports of wrongdoing

An internal reporting policy should make it clear who can receive reports of wrongdoing from staff. The policy should nominate a disclosures coordinator and disclosures officers who can receive PIDs from staff – in addition to the principal officer.

The principal officer of the authority needs to be identified for:

- for business units within a principal department – this will be the Department Secretary of the principal department.
- for related entities within a 'cluster' that are not part of a principal department – this will be the head of agency.
- for local government – this will be the council's general manager.
- for universities - this will be the Vice Chancellor.

The principal officer, disclosures coordinator and nominated disclosures officers should be aware of the procedures they need to follow when they receive a report of wrongdoing.

See *Guideline C3: Assessing and streamlining internal reports*.

The authority must accept and assess any PIDs that are made in accordance with its internal reporting policy and:

- are made by staff – about the authority or any of its officers or another public authority or any of its officers
- relate to the authority or any of its officers whether or not the public officer making the PID is a staff member.

#### b) Nominating disclosures officers

The authority needs to determine the most practical reporting pathways that will give staff confidence that reports of wrongdoing can be made discreetly and will be handled by experienced officers. Disclosures officers should:

- be easily accessible to staff
- be capable of handling inquiries from staff discreetly
- be able to provide avenues for staff who may wish to make a report about their supervisor or manager
- have adequate authority and expertise to properly deal with reports
- have relevant experience and skills for the position.

Internal reporting arrangements should provide a number of safe and accessible reporting options, allowing staff to report wrongdoing to a person other than their line manager or someone they work with regularly.

The optimal number of nominated disclosures officers within an authority will depend on factors such as:

- the size and structure of the authority
- the geographic distribution of work locations
- the volume and type of PIDs received.

Decentralised or dispersed authorities may find it useful to have disclosures officers in the regions or divisions, while smaller authorities may need to nominate only a few officers. The aim is to provide staff with reporting options both within and removed from the workplace, since research shows that the majority of staff report wrongdoing within their immediate workplace.

In their internal reporting policies, councils should nominate the Mayor as a disclosures officer to receive reports about the conduct of the general manager. See *Model internal reporting policy – local government*.

#### c) Nominating supervisors as disclosures officers

Authorities may consider nominating all supervisors as disclosures officers. Given that the overwhelming majority of reporters currently choose to go to a line manager as their first point of contact, nominating as many relevant and appropriate supervisors as possible recipients of PIDs helps ensure that the PID Act applies when staff raise their concerns. Nominating supervisors as disclosures officers may also encourage them to create a positive reporting environment and take responsibility for the reports they receive.

Research found that 73% of staff who report wrongdoing do so to their direct supervisor:

*The pattern appears so strong that procedures stipulating that only certain officers in the organisation can receive disclosures, perhaps removed from the immediate workplace of many employees, are unlikely to shake the frequency of this behaviour.<sup>2</sup>*

However, you may need to consider the following factors when deciding whether to nominate every supervisor as a disclosures officer:

- the number of supervisors and levels of supervision, as well as their retention rate
- the need for confidentiality in dealing with reports
- the need to ensure consistency and compliance with the internal reporting policy and procedures
- the need for adequate training for disclosures officers about their obligations under the PID Act and the internal reporting arrangements
- the skills and experience necessary to receive reports
- the need for alternative reporting pathways if a report concerns the reporter's supervisor.

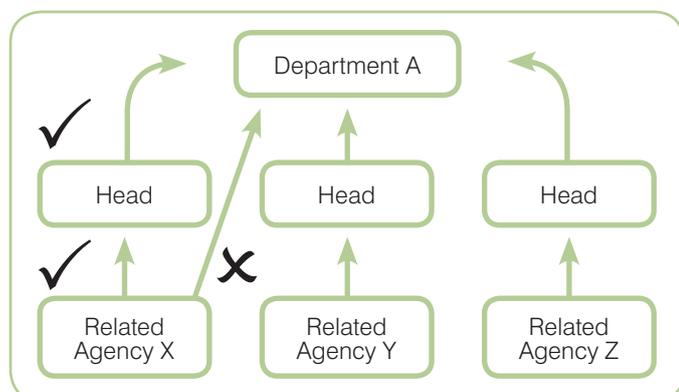
#### d) Reporting channels within principal departments

Within each cluster, administrative arrangements may be made to centralise the handling of PIDs from members of staff. However, there may be entities within each cluster that constitute separate public authorities under the PID Act.

For example, Departments, Related Agencies and Separate Agencies (entities established under a separate statute) listed in Schedule 1 of the *Government Sector Employment Act 2013*

are separate public authorities. In Figure 1, department A and separate agencies X, Y and Z are all separate public authorities sitting within a principal department cluster.

**Figure 1: Principal department cluster - administrative structure**



The provisions of the PID Act mean that staff should have reporting channels that are internal to the public authority that they belong to. For example, the protections of the PID Act apply if a staff member of public authority X reports wrongdoing within that public authority to a nominated officer in that public authority (including the head), but not if the report is made to a nominated officer within principal department A. Note that the Secretary of the principal department, as a principal officer of a public authority, can receive a PID from a public official of any authority.

However, once the report is made, the recipient in public authority X may refer it under section 26 of the PID Act to someone within principal department A to deal with.

If staff wish to report wrongdoing external to the authority and receive the statutory protections of the PID Act, the internal reporting policy should make clear that they must make their report to an investigating authority or, in certain limited circumstances, to an MP or journalist (s.19). The internal reporting policies of principal departments should also advise staff of related entities within their cluster that are separate public authorities to make a report in accordance with the internal reporting policies of those entities.

## 4.2 External reporting pathways

Staff should be encouraged to report wrongdoing internally, but they should also be given clear advice about how to report wrongdoing (or seek review) externally.

An internal reporting policy should detail all external reporting pathways available to staff. It should include a workplace commitment to support staff if they report wrongdoing to an appropriate investigating authority, MP or journalist and to help resolve the matter.

Some reporters may have information that relates to more than one of the categories of wrongdoing outlined in the PID Act. For example, a decision may constitute both maladministration and a serious and substantial waste of public funds. In such cases, reporters have multiple external reporting avenues available to them and reports can be made to more than one authority. In this case, the PID Act will apply to each of the reports. The authorities involved will need to work together to decide on the best course of action.

Staff should be encouraged to report externally if the matter relates to the head of an authority or, in relation to local government, a Mayor.

Research has found that:

- many reporters were not aware of their rights to seek review by an external authority
- some reporters are reluctant to refer matters to an external authority for fear of being penalised
- there is frequent misunderstanding about the jurisdictions and functions of external authorities
- some reporters do not report externally because of preconceptions about external authorities, including that they are legalistic and bureaucratic.<sup>3</sup>

If the authority is advised by an external investigating authority that a member of staff has made a PID to that authority and they identify the member of staff involved, the authority will be expected to:

- respect and support the person's decision to make the PID externally
- cooperate with any processes proposed by the external investigating authority
- maintain the confidentiality of the person who made the PID and any person who is the subject of a PID, where practical and appropriate
- after consulting with the investigating authority, offer to appoint a support person and give them adequate resources to perform this role
- assess the likelihood of the person being exposed to reprisals or related workplace conflict, and ensure that systems and strategies are established to minimise any such risk
- ensure the workplace situation is effectively managed if reprisal is threatened or does take place
- after consulting with the investigating authority, take appropriate action against any person who threatens or takes reprisal
- take appropriate remedial action in response to any investigation findings or recommendations by the investigating authority
- be responsible for implementing any workplace reform that is necessary to address any systemic issues identified by the investigating authority in their investigation or by the authority.

## 5. Your questions answered

### Does the PID Act apply if a report is made to a supervisor who passes it on to a nominated disclosures officer?

No. In these circumstances, the PID Act will not apply to the person who reported to their supervisor – unless the supervisor is nominated in the internal reporting policy as a disclosures officer.

However, if the supervisor is aware of the contents of the report and has an honest belief on reasonable grounds that the information shows or tends to show one of the categories of wrongdoing identified in the PID Act, then the supervisor may have made a PID.

Supervisors are responsible for assisting the reporter to make the report directly to a nominated disclosures officer. This means that all supervisors should be trained to identify when a staff member reports wrongdoing that may be covered by the PID Act. See *Guideline A3: Awareness and Training*.

### Does the PID Act apply to a report made to the wrong public authority?

The PID Act does not apply if a report is made to the wrong public authority and so the reporter will not receive protection

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in this case. Therefore, a reporter needs to make sure they are making their disclosure to the correct public authority where the wrongdoing is actually occurring or the public authority of which they are a staff member.

## Does the PID Act apply to a report made to a confidential hotline?

Some authorities have a dedicated in-house phone number for the purpose of enabling staff to report wrongdoing anonymously. They are a safe and accessible reporting option that can benefit both the reporter and the authority. Some authorities use externally contracted hotlines.

However, the PID Act clearly intends that reports should be made to public authorities or investigating authorities, except in the limited circumstances when the Act applies to reports to Members of Parliament or journalists. The Act will only apply to a report of wrongdoing made to a hotline if the person receiving the report is an officer of the same public authority as the reporter or is an officer of the public authority that the report is about – see section 14(2) of the Act. The person must also be nominated in the authority's internal reporting policy.

This means that reports of wrongdoing made to hotline operators employed by external providers are not PIDs under the PID Act, even if they are then referred to the authority to handle.

To ensure that the PID Act applies to all relevant reports of wrongdoing made by staff, the authority needs to outline in their internal reporting policy how staff can contact disclosures officers or the disclosures coordinator if they wish to disclose anonymously. For example, establish and promote an in-house hotline staffed by a disclosures officer or coordinator.

If necessary, any external hotline staff should be trained to readily identify a report that may be a PID and refer the reporter directly to a disclosures officer or coordinator within the authority who is nominated to receive PIDs under the internal reporting policy.

## Does the PID Act apply to a report made to the Minister responsible for an authority?

In some circumstances, staff may feel that reporting concerns to the responsible Minister may be an effective way to have the problem they have observed fixed. However, staff should be aware that under the PID Act there is no specific reporting channel directly to the responsible Minister and they are not the principal officer of the authority under the PID Act.

Instead, a report to the responsible Minister is considered to be identical to a report to any other Member of Parliament. Importantly, this means that a number of significant conditions must be met for the report to be considered a PID.

Authorities should advise their Minister's office to encourage staff to make their reports directly to the authority or to an external investigating authority.

## Which pathway is most appropriate for a report about the conduct of a Minister?

A report made in accordance with an internal reporting policy will not be considered to be a PID if it is about the conduct of the responsible Minister. This is because the Minister is not an employee of the authority.

If staff have concerns about the conduct of the responsible Minister, they should make their report to an investigating authority that has jurisdiction to investigate their allegations – either the ICAC or the Auditor-General, as appropriate. The NSW Ombudsman cannot investigate the conduct of Ministers, but can investigate advice given to Ministers.

Reports about the conduct of an MP (including a Minister) can also be made in accordance with an official procedure established by the Department of Parliamentary Services, the Department of the Legislative Assembly or the Department of the Legislative Council – see section 14(2A). Reports can be made either to the principal officer or another nominated officer of these public authorities. The conduct reported must constitute corrupt conduct, maladministration or a serious and substantial waste of public money.<sup>4</sup>

## 6. Additional resources

- *Model internal reporting policy – local government*
- *Guideline A3: Awareness and Training*
- *Guideline B5: Reporting to Members of Parliament or journalists*
- *Guideline C3: Assessing and streaming internal reports*
- *Public Interest Disclosures Act 1994*
- *Public Sector Employment and Management Act 2002*

## 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, pp. 88, 92.
2. Brown, pp. 70–72.
3. Roberts, P, Brown, AJ & Olsen, J 2011, *Whistling while they work: A good practice guide for managing internal reporting of wrongdoing in public sector organisations*, p. 45.
4. MPs do not have obligations under the *Government Information (Public Access) Act 2009* and *Local Government Act 1993*.

## 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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