

# Assessing and streaming internal reports

## 1. Objectives

- To outline the assessment responsibilities of public authorities when a report of wrongdoing is received.
- To help public authorities assess whether reports of wrongdoing are public interest disclosures (PIDs) under the *Public Interest Disclosures Act 1994* (PID Act).
- To assist public authorities make an appropriate referral of a report of wrongdoing if it is not equipped to handle the matter itself.
- 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 authority concerned and the public sector in general
- avoid embarrassment for the government, the authority 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.<sup>1</sup>

## 3. Legal and management obligations

### 3.1 PID Act

#### a) Assessing reports

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

If a PID is made in accordance with the PID Act, the reporter receives 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 (ss.25 and 26).

#### 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 reporter may be taken into account.
- If a PID is made to a public official who does not belong to the authority 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

Public authorities are 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. The *Public Interest Disclosures Regulation 2011* provides details about what information must be reported. See *Guideline C2: Reporting to the NSW Ombudsman*.

## 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 authority 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 public authorities?

### 4.1 Assessing the report

All reports of wrongdoing made by staff to an authority need to be assessed to determine:

- Is the report a PID under the PID Act?
- How the report is to 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 authority 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 reporter?  
See *Guideline C4: Managing risk of reprisals and conflict*.

When assessing the report, the disclosures coordinator should assess whether a report is a PID based on the information contained in the report. The coordinator can consider what information the reporter knew at the time and whether the person is being rational. For example, consideration may be given to what information was available to the reporter. However, information known only to the disclosures coordinator should not be relied on. For example, the alleged conduct the subject of the report has already been found to be unsubstantiated, but this was not known to the reporter who at the time had a reasonable belief it occurred. An exception to this would be to determine whether the person is making the report to avoid dismissal or other disciplinary action.

There are a number of pathways through which an authority finds out about a staff report of wrongdoing. However this guideline is only about staff reporting directly to an authority or when an authority is referred a report from their principal department or Minister or another public authority.

Other pathways are discussed in *Guideline C6: Managing interactions with investigating authorities* and *Guideline B5: Reports to Members of Parliament and journalists*.

An 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 state government or local government.

### 4.2 Designating roles and responsibilities

Authorities should establish 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.

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, either the disclosures coordinator or principal officer is responsible for referring a report to another person or authority for further action.

### 4.3 Obtaining further information from reporters

The reporter may need to be interviewed to further clarify issues about their allegations and the evidence they have or can provide to support their report. The purpose of this would be to determine a course of action, not whether the matter is a PID. At this point, the coordinator should have already formed a view about whether the report is a PID.

- be discreet in all communications and when arranging and holding meetings
- make the process as least threatening as possible
- explain why the process is necessary and how it may benefit them
- avoid creating the perception that there is scepticism or doubt about their truthfulness
- keep contemporaneous records and, if possible, get a signed record of any additional information obtained
- assess the likelihood of confidentiality being maintained and the risk of reprisals - see *Guideline C7: Confidentiality* and *Guideline C4: Managing risk of reprisal and conflict*
- provide any additional information.

This conversation also gives you an opportunity to provide 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 the authority to assess whether a report of wrongdoing is a PID under the PID Act. A *Checklist for recipient of internal report* is available on our website which may help determine whether the report of wrongdoing is likely to be a PID. Two templates are also available to assist authorities with the initial assessment of an internal report and the detailed assessment of an internal report (to be completed by the disclosures coordinator). See further *Initial assessment of internal report and Assessment of internal report*.

### Was the report of wrongdoing:

- made by a public official?

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- based on an honest belief on reasonable grounds that the information shows or tends to show the wrongdoing?

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- about:
  - corrupt conduct
  - maladministration
  - serious and substantial waste of public money
  - government information contravention
  - local government pecuniary interest contravention?

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- about a public official or public authority?

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- made to a person who is authorised to receive a PID, including:
  - the principal officer of the public authority
  - another person nominated to receive PIDs in the internal reporting policy?

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- not primarily questioning the merits of government policy?

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- not made substantially to avoid dismissal or disciplinary action?

When assessing reports, remember:

- When there is a real doubt about whether or not a report is a PID, it is best to err on the side of caution and interpret the PID Act broadly, i.e. assume that the Act applies and proceed accordingly.
- A 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.

- A reporter cannot demand to withdraw their report, but they might request it. The decision is ultimately one for the authority to make in the public interest. However, even if the authority decides not to take any action on a report, if the PID Act applies measures need to be taken to prevent reprisals occurring against the 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 reporter or their possible motives for disclosing the information – unless there is evidence that shows the report was made to avoid disciplinary action. See *Guideline D3: Reporters involved in wrongdoing*.

An authority must keep full and detailed records of the assessment of the report and the reasons for it, and retain these records in a secure location. The disclosures coordinator should provide written advice to the principal officer and 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. The authority still has an obligation to ensure that all internal reports, as with complaints and suggestions from the public, are properly addressed. In addition, staff that report wrongdoing should be appropriately supported.

If it is determined that a report by a staff member is not a PID, it is important to still consider:

- 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 authorities have comprehensive frameworks for dealing with staff concerns – including harassment or bullying, personal grievance and work 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 authority. Staff need to understand that different types of concerns or reports may have different reporting pathways and may be dealt with differently.

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.<sup>2</sup>

## 4.6 Deciding on the appropriate action

Regardless of whether a report of wrongdoing is a PID under the PID Act, the authority needs to:

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

An authority must be flexible enough to respond appropriately to reports of wrongdoing. Although corrupt conduct and local government 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 authority.

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 the authority
- referral to an investigating authority or the police if it is a criminal matter.

Any action taken must comply with policies and procedures for investigative or disciplinary processes.

An authority should identify clear criteria for assessing what action is appropriate in response to a report, including:

- 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 public interest disclosures* once a PID has been assessed as warranting investigation.

## 4.7 Referring cases for external review or investigation

An authority 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 an authority to deal with a report if:

- the report relates to the head of the authority or in local government the 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 investigating authority
- it relates to more than one authority 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 an authority does not have the capacity to conduct an investigation internally, this may include a recommendation that the authority contract an external investigator.

Even if a matter is referred to an investigating authority, the authority needs to:

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

See *Guideline C6: Managing interactions with investigating authorities*.

## 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 corrupt conduct, maladministration of a serious nature, serious and substantial waste of public funds, a breach of the GIPA Act and a local government pecuniary interest contravention.

However, the authority 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 true for the PID Act to apply as long as it meets the requirements of the Act. The exception is 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)).

Authorities and the general public can both benefit from people raising their concerns about the way an authority functions. Reports of wrongdoing from staff are particularly valuable because they see 'close-up' what is happening. It is in an authority'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 face reprisal, may be left unsupported or otherwise affected detrimentally by reporting. People who report wrongdoing often find themselves in very stressful situations, and authorities should support staff through the reporting process whatever the outcome.

## Does the PID Act apply if neither the reporter nor the authority 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 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: What's not a public interest disclosure?* and *Guideline D3: 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 reporter is unable to prove that their report is substantially true. See *Guideline B5: Reporting to MPs and journalists*.

## 6. Additional resources

- *Model internal reporting policy – state government*
- *Model internal reporting policy – local government*
- *Template - Initial assessment of internal report*
- *Template - Assessment of internal report*
- *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: Managing risk of reprisal and conflict*
- *Guideline C6: Managing interactions with investigating authorities*
- *Guideline C7: Confidentiality*
- *Guideline D3: Reporters involved in wrongdoing*
- *Government Information (Public Access) Act 2009*
- *Independent Commission Against Corruption Act 1988*
- *Local Government Act 1993*
- *Ombudsman Act 1974*
- *Public Interest Disclosures Act 1994*
- *Public Interest Disclosures Regulation 2011*



# Assessing and streaming internal reports

## Contact details for investigating authorities

For more help with assessing reports of wrongdoing, contact the Public Interest Disclosures Unit at the NSW Ombudsman.

### To report corrupt conduct:

Independent Commission Against Corruption (ICAC)  
Level 7, 255 Elizabeth Street  
Sydney NSW 2000

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](mailto:icac@icac.nsw.gov.au)  
Web: [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au)

### To report maladministration:

NSW Ombudsman  
Level 24, 580 George Street  
Sydney NSW 2000

Phone: 02 9286 1000  
Toll free (outside Sydney metro): 1800 451 524  
Tel. typewriter (TTY): 02 9264 8050  
Facsimile: 02 9283 2911

Email: [pid@ombo.nsw.gov.au](mailto:pid@ombo.nsw.gov.au)  
Web: [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)

### To report serious and substantial waste:

Auditor-General of the NSW Audit office  
Level 15, 1 Margaret Street  
Sydney NSW 2000

Phone: 02 9275 7100  
Facsimile: 02 9275 7200

Email: [mail@audit.nsw.gov.au](mailto:mail@audit.nsw.gov.au)  
Web: [www.audit.nsw.gov.au](http://www.audit.nsw.gov.au)

### To report wrongdoing in local government:

Chief Executive Officer  
Office of Local Government  
5 O'Keefe Avenue  
Nowra NSW 2541

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

Email: [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au)  
Web: [www.olg.nsw.gov.au](http://www.olg.nsw.gov.au)

### To report police misconduct:

Commissioner  
Police Integrity Commission (PIC)  
Level 3, 111 Elizabeth Street  
Sydney NSW 2000

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

Email: [contactus@pic.nsw.gov.au](mailto:contactus@pic.nsw.gov.au)  
Web: [www.pic.nsw.gov.au](http://www.pic.nsw.gov.au)

### To report breaches of the GIPA Act:

Information Commissioner  
Information and Privacy Commission  
Level 11, 1 Castlereagh Street  
Sydney NSW 2000

Toll free: 1800 472 679  
Facsimile: 02 8114 3756

Email: [ipcinfo@ipc.nsw.gov.au](mailto:ipcinfo@ipc.nsw.gov.au)  
Web: [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)

## 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.

Level 24, 580 George Street  
Sydney NSW 2000

Email [pid@ombo.nsw.gov.au](mailto:pid@ombo.nsw.gov.au)  
Web [www.ombo.nsw.gov.au](http://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.