

Public Interest Disclosures Management

PID Act 1994 Training Handout

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Contents

1. Introduction to PIDs.	1
2. Key terms.	1
3. PID assessment roadmap.	2
4. Who can make a PID?.	2
5. Is it about a public authority or public official?.	3
6. Who can receive a PID?.	4
7. Categories of wrongdoing in the PID Act.	7
8. The threshold test.	10
9. Do any exceptions apply?.....	12
10. Managing a PID.	13
11. PID Act Protections.	14
12. Managing the risk of reprisal.	15
13. NSW Ombudsman’s resources.	17

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1. Introduction to PIDs

The [Public Interest Disclosures Act 1994](#) (PID Act) puts in place a system for dealing with reports of certain types of serious wrongdoing and provides protections for people who make these reports. The PID Act is part of a framework of integrity legislation to help strengthen the public sector. This document has been designed to give you an understanding of how to identify and deal with internal reports that meet the tests within the PID Act. These types of reports are known as public interest disclosures, or PIDs.

This training handout summarises the key concepts in the PID Act and is not legal advice. Further detailed information on the application of the PID Act is available on the [NSW Ombudsman's website](#). You should check our website regularly to ensure you are accessing the most up to date information and [resources](#). You can also contact us to discuss your PID related queries via email through pid@ombo.nsw.gov.au.

It is important to remember that staff who report wrongdoing are giving agencies an opportunity to look at a potential problem and take appropriate steps to deal with it. Having robust systems in place to deal with allegations of wrongdoing can help strengthen the integrity of the public sector and public confidence in it.

An effective internal reporting system helps ensure that reports of wrongdoing by staff are properly assessed, investigated, and acted on. Managers and supervisors have a critical role to play in creating a culture where staff feel comfortable coming forward and reporting their concerns. We encourage you to take steps to make sure your staff know how to report any wrongdoing they come across.

All public sector agencies are required to have systems to deal with allegations of wrongdoing. Your *Internal Reporting Policy* (sometimes called PID policy) should explain how to assess whether allegations of wrongdoing are PIDs, and the processes for handling them.

Internal reporting policies explain how reports of wrongdoing made by staff are assessed to determine whether they are PIDs, and how PIDs are investigated and managed. They also contain information about reporting pathway options, including how to report wrongdoing internally and how to report externally.

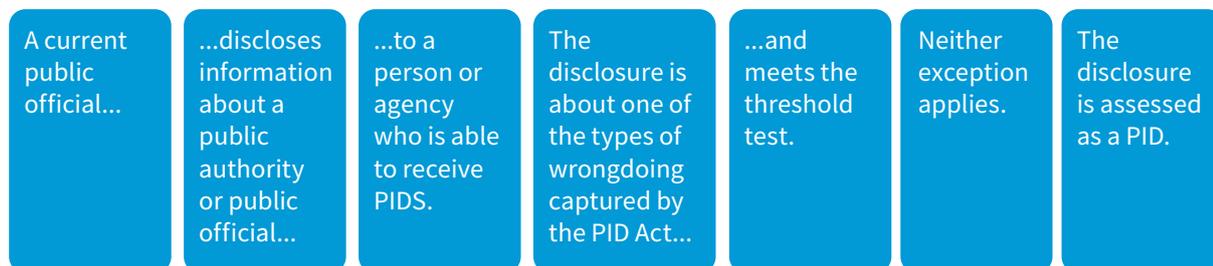
All staff should know where to locate their agency's internal reporting policy. Ideally, this policy should be located on both your agency's public website and intranet. If you receive a report of wrongdoing, you should refer to your internal reporting policy (and any other relevant internal policies) for information on how to deal with it.

2. Key terms

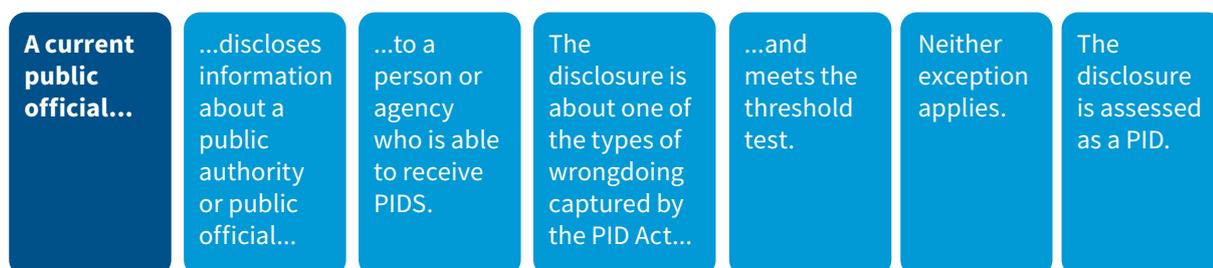
Term	Meaning
Reporter	The person who is making the PID.
Public Interest Disclosure (PID)	The wrongdoing alleged by the reporter which meets the criteria in the PID Act.
Subject officer	The person who is alleged to have engaged in wrongdoing.

3. PID assessment roadmap

This training takes you through the steps for identifying and assessing possible PIDs, as follows:



4. Who can make a PID?



PIDs can only be made by **current NSW public officials** – broadly, anyone who is employed or otherwise in the service of a public authority. If the reporter **is not** a public official at the time of making the disclosure, the report **cannot be** a PID. If the public official makes the disclosure while a public official but then ceases to be a public official, the disclosure remains protected. There is one exception—a former public official can report allegations of reprisal (see page 14 section 11 of this handout, PID Act Protections).

Examples of public officials include:

- permanent employees, whether full-time or part-time
- temporary or casual employees
- consultants
- individual contractors
- employees of contractors providing services to and on behalf of a public authority, including employees of managed correctional centres
- some volunteers¹, including members of the RFS, SES and RSPCA
- other people who perform public official functions whose conduct and activities could be investigated by an investigating authority.

Members of Parliament cannot make PIDs, but they can be the subject of one (PID Act s4A(1)(a)(ii)).

1. Volunteers provide a service to or on behalf of the public authority. Students and interns, who receive a service from the public authority (training and/or experience), are not public officials for the purposes of the PID Act.

In some circumstances employees of ‘controlled entities’ (eg private hospitals run by public universities) or NGOs may be public officials. If you are in any doubt about whether the person making the report is a public official, you may wish to seek advice from your internal legal team or from the NSW Ombudsman.

It’s important to remember that public officials can make a PID about another public official or *any* public authority – not just the public authority they work for.

Public officials may make anonymous PIDs

Someone may make an anonymous complaint because they want to minimise the risk of being identified from the information disclosed. They may omit information such as details of their employment, how they came by the information and the source of the information.

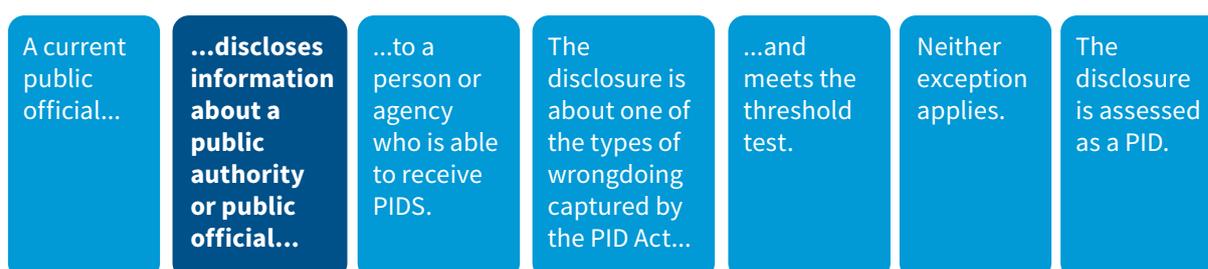
Some anonymous reporters provide contact details. If so, you should attempt to contact them and record if they do not respond or their contact details do not work (eg disconnected mobile numbers).

If you are unable to contact them or they do not respond to your contacts, you should assess whether the content of the report (including level of detail, type of information, etc) indicates that the reporter **is likely to be** a current public official.

Reporters may use other complaints pathways

People may not always use the right process when making a PID – for example, staff might incorrectly rely on the process outlined in the *Employee Grievance Policy*. Agencies should ensure that staff who receive complaints or grievances are properly trained to identify possible PIDs, so they can be properly directed, assessed and responded to. In some cases, it may be necessary to advise and support the reporter to re-make the disclosure to someone who is able to receive PIDs.

5. Is it about a public authority or public official?



The PID Act applies to **public authorities and public officials**. This term is defined in the PID Act and includes any agency whose actions can be investigated by an **investigating authority**. Every public authority must have a policy in place that outlines how it will receive, assess, and deal with PIDs.

Examples of public authorities with obligations under the PID Act are:

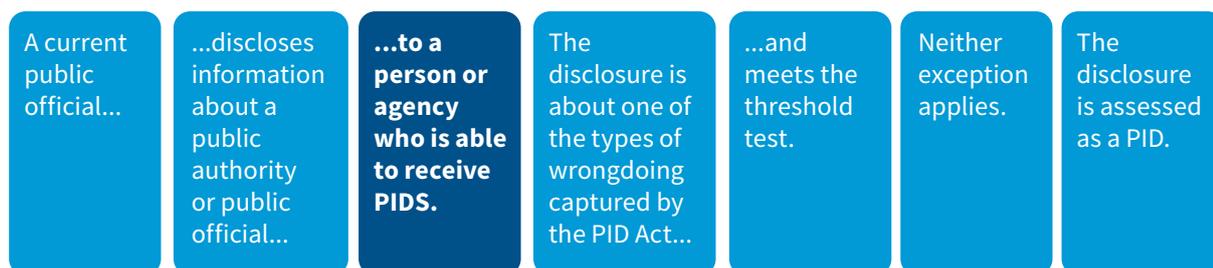
- A public service agency
- NSW government departments
- NSW Parliament

- Local government authorities including councils, county councils and joint organisations
- NSW police
- Local Aboriginal Land Councils
- Statutory authorities
- State-owned corporations
- NSW publicly funded universities

Key investigating authorities are:

- the NSW Ombudsman
- the NSW Audit Office
- the Independent Commission Against Corruption
- the Law Enforcement Conduct Commission
- the Office of Local Government
- the Information Commissioner.

6. Who can receive a PID?



Internal reporting options

For a reporter to be protected by the PID Act, reporters need to make their disclosure to the right person. Your agency's internal reporting policy will include information about who can properly receive a PID within your agency.

The Principal Officer, or head of your public authority, has overall responsibility for the PID program and a statutory obligation to receive disclosures directly from staff, should staff choose this pathway. We also suggest public authorities nominate:

- a **PID Coordinator** (person responsible for co-ordinating the assessment and management of disclosures)
- numerous **Disclosures Officers** (people nominated in the internal reporting policy to receive PIDs).

Research shows that staff are most likely to raise concerns initially with their manager or supervisor. Where the manager or supervisor is not a disclosure officer, the staff member's report is not a PID. Managers and supervisors should identify reports made to them about conduct which could be a PID and assist the staff member to make the report to an officer authorised to receive PIDs under their internal reporting policy.

Under many Codes of Conduct, staff have a responsibility to report known or suspected wrongdoing within their agency. All staff should familiarise themselves with their agency's Code of Conduct, as well as any other internal policies which impose obligations to report certain types of conduct.

Sometimes, staff may not wish to raise issues internally. There are external avenues for making a PID.

External Reporting Options

Public officials can make PIDs to the public authority to which the disclosure relates (if it is not the agency to which the public official belongs) or to external investigating authorities.

The PID Act lists several investigating authorities in NSW that staff can report wrongdoing to and the type of wrongdoing each authority can deal with. Investigating authorities will assess whether a report of wrongdoing made by a public official is a PID.

Internal reporting policies should explain the external reporting options. All staff should know where to locate their agency's internal reporting policy and list of staff nominated internally to receive reports about serious wrongdoing.

Details of external authorities are listed below:

Type of wrongdoing	External Investigative Authority
Corrupt conduct	Independent Commission Against Corruption (ICAC)
Maladministration	NSW Ombudsman ²
A serious and substantial waste	NSW Audit Office
A government information contravention	Information & Privacy Commissioner (IPC)
Wrongdoing (corrupt conduct, maladministration, serious and substantial waste, government information contravention) about local councils A pecuniary interest contravention	Office of Local Government (OLG)
Disclosures involving NSW Police	Law Enforcement Conduct Commission (LECC)
Disclosures involving the LECC	Inspector of the LECC
Disclosures involving the ICAC	Inspector of the ICAC
Disclosures involving Local Government entities or their staff	Office of Local Government (OLG)

2. The NSW Ombudsman can also receive and investigate disclosures of:
- corrupt conduct, maladministration or serious and substantial waste of public money by the LECC Inspector and the ICAC Inspector
 - serious and substantial waste of public money by the Audit Office

Other reporting pathways

In certain circumstances, the PID Act protects people when they report to a member of Parliament (MP) or journalist. This is not an alternative to reporting to a public authority or investigating authority. It can only be done after you have made a report to one of those entities, and where other conditions are satisfied.

All three of the following conditions need to be met for the protections to apply

<p>The reporter must have made substantially the same report to a public authority or investigating authority</p>	<p>Substantially the same report must have already been made to either:</p> <ul style="list-style-type: none"> • the Principal Officer of their agency or a person nominated in their agency’s internal reporting policy to receive disclosures • an investigating authority.
<p>Investigation or action following the report is inadequate</p>	<p>The agency or the investigating authority that received the initial report must have either:</p> <ul style="list-style-type: none"> • decided not to investigate the matter • decided to investigate the matter, but not completed the investigation within six months of the original report • investigated the matter but not recommended any action as a result • not told the person who made the report, within six months of the report being made, whether the matter will be investigated.
<p>The report must be substantially true</p>	<p>Not only must the reporter have reasonable grounds for believing the report is substantially true – the report needs to be substantially true. In practice this means that there must actually be wrongdoing, not just a suspicion of wrongdoing.</p>

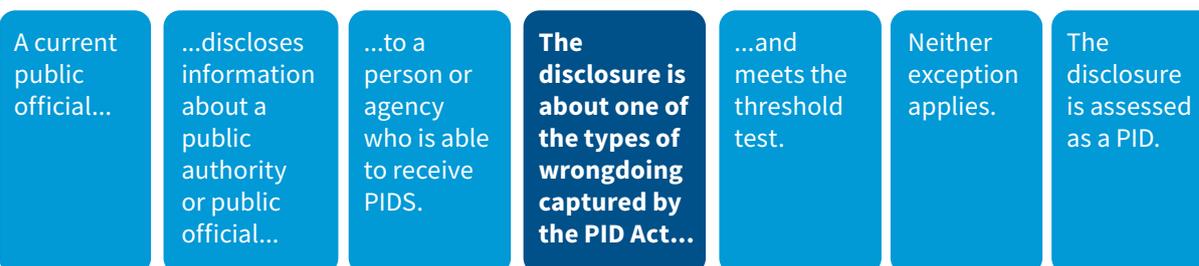
The NSW Ombudsman can also take complaints about how a PID has been dealt with.

Tips for an effective PID assessment

- The PID assessment occurs prior to the commencement of any investigation.
- Reporters are not required to state they are making a PID.
- If the reporter is anonymous, assess whether the content of the report (including level of detail, type of information, etc) indicates that the reporter is likely to be a current public official.

It is important to remember that not all internal reports will be PIDs. You should still take these reports seriously and take appropriate action to deal with them through the appropriate internal process.

7. Categories of wrongdoing in the PID Act



The PID Act covers the following types of wrongdoing:

<p>Corrupt conduct</p>	<p>Corrupt conduct is defined in sections 8 and 9 of the <i>Independent Commission Against Corruption Act 1988</i>. It involves deliberate or intentional wrongdoing involving (or affecting) a public official or public authority in NSW.</p> <p>The definition provided in these sections is intentionally broad, and includes:</p> <ul style="list-style-type: none"> • conduct of any person that adversely affects, or could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority • any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions • any conduct of a public official or former public official that constitutes or involves a breach of public trust • any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person. <p>For conduct to be considered corrupt under the ICAC Act definition, it has to be serious enough to involve a criminal or disciplinary offence, be grounds for dismissal or, in the case of members of Parliament, involve a substantial breach of their code of conduct. ICAC advises that initially you need not know with any certainty that this seriousness test can be satisfied as this will often be known only after a full investigation.</p>
<p>Maladministration</p>	<p>There are three elements to maladministration under the PID Act;</p> <ol style="list-style-type: none"> 1. Is the action/in action complained of administrative in nature? There must be a relationship between the relevant wrongdoing and the public authority or public official's powers, functions, or duties. Consider whether the conduct arose in the exercise of a power, function or duty of the relevant public authority or public official? 2. Do any of the grounds of maladministration apply? The allegation must relate to conduct that is <ul style="list-style-type: none"> • contrary to law, or

<p>Maladministration (cont.)</p>	<ul style="list-style-type: none"> • unreasonable, unjust, oppressive, or improperly discriminatory, or • based wholly or partly on improper motives <p>3. Is the alleged action/inaction serious? This means of a degree of gravity that is more than trifling or trivial. Consider the nature of the conduct and its likely (not actual) consequences and the factors below (this is not an exhaustive list, and no factor is more important than any other):</p> <ul style="list-style-type: none"> • the extent to which the action or inaction may undermine public confidence or trust in the relevant public authority or in public administration generally • whether the conduct is of sufficient gravity that it would warrant the person being dismissed, removed, disciplined, or punished • the extent to which the conduct is contrary to prohibitions which are integral to the relevant rules, industry standards or regulatory scheme • the likelihood, scope and degree of any consequences or harm which may be caused by the conduct • whether the action or inaction has implications for the relevant public authority, public administration, or the wider community generally (rather than just for the individual disclosing the conduct) • the degree of intent or improper purpose involved • the fact that conduct was “deliberate” (as opposed to accidental, negligent, or reckless), or done with a disregard of the lives or safety of others • the degree of responsibility and seniority of, or trust placed in, the public authority or public official • the duration, frequency or history of the action or inaction • where the conduct involves money or property, the quantum involved.
<p>Serious and substantial waste</p>	<p>Serious and substantial waste of public money is any uneconomical, inefficient, or ineffective use of resources, authorised or unauthorised, which results in losing or wasting public money or resources.</p> <p>Serious and substantial waste can be:</p> <ul style="list-style-type: none"> • Absolute — where the waste is regarded as significant. • Systemic — where the waste indicates a pattern that results from a weakness within an organisation’s systems. • Material — where the waste is about the authority’s expenditure or a particular item of expenditure or is to such an extent that it affects an authority’s capacity to perform its primary functions.

<p>Serious and substantial waste (cont.)</p>	<p>Some examples are:</p> <ul style="list-style-type: none"> • misappropriation or misuse of public property • the purchase of unnecessary or inadequate goods and services • overstaffing in particular areas • staff being remunerated for skills that they do not have, but are required to have under the terms or conditions of their employment • programs not achieving their objectives and therefore the program's costs being clearly ineffective and inefficient • not following a competitive tendering process for a large-scale contract • having poor or no processes in place for a system involving large amounts of public funds. <p>Waste can result from such things as:</p> <ul style="list-style-type: none"> • insufficient safeguards to prevent the theft or misuse of public property • purchasing practices that do not ensure goods and services are necessary and adequate for their intended purpose • poor recruiting practices.
<p>A government information contravention</p>	<p>A breach of the <i>Government Information (Public Access) Act 2009</i> (GIPA Act) is a failure to properly fulfil functions under that Act.</p>
<p>A pecuniary interest contravention (Applies to local government only)</p>	<p>A local government pecuniary interest contravention is a failure to comply with requirements under the <i>Local Government Act 1993</i> relating to the management of pecuniary interests. A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. These include obligations to lodge disclosure of interests returns, disclose pecuniary interests at council and council committee meetings and leave the meeting while the matter is being discussed.</p> <p>For example, this could include:</p> <ul style="list-style-type: none"> • a senior council staff member recommending a family member for a council contract and not declaring the relationship • a councillor participating in consideration of a DA for a property they or their family have an interest in.

8. The threshold test



When a public authority assesses a disclosure against the PID Act criteria, they must consider the Act’s threshold test. To meet this test, the disclosure must be of information that the person making the disclosure:

- honestly believes**
- on reasonable grounds**
- shows or tends to show** one of the types of wrongdoing in the PID Act.

honest belief	<p>An honest belief is a belief that is genuinely held. It is more than suspicion, speculation, or reliance on a rumour.</p> <p>A reporter’s motive for making a PID is usually irrelevant to PID assessment³ – the key question is whether they believe the information is true. Unless presented with evidence to the contrary, we should assume that PIDs are made in good faith and the reporter has an honest belief.</p>
reasonable grounds	<p>This is an objective test. Would a reasonable person in the circumstances believe that wrongdoing had occurred? The belief cannot be based on personal favouritism, animosity, or prejudice.</p> <p>Consider what information might be available to the reporter, and how they might have come across that information. It is preferable that a reporter has factual material and personal knowledge of events and conduct, but this is not always necessary. The information provided does not have to amount to evidence (admissible or otherwise) nor direct knowledge of events and conduct. It can include information and things that may not be capable of being admitted as evidence in a court, such as hearsay (i.e. what someone told the reporter) and opinion.</p> <p>It is important to distinguish between purely speculative allegations and disclosures where a reporter may not be able to provide information about all aspects of the allegation, ie the disclosure may be based on less than perfect knowledge and information.</p> <p>When the reporter is anonymous and unable to be contacted, you will often have little or no information about the reporter’s sources of information (because they are seeking to hide their identity). In this case, you should assess any other</p>

3. The exception to this is if the PID has primarily been made to avoid dismissal or other disciplinary action. In these situations, the disclosure will not be a PID.

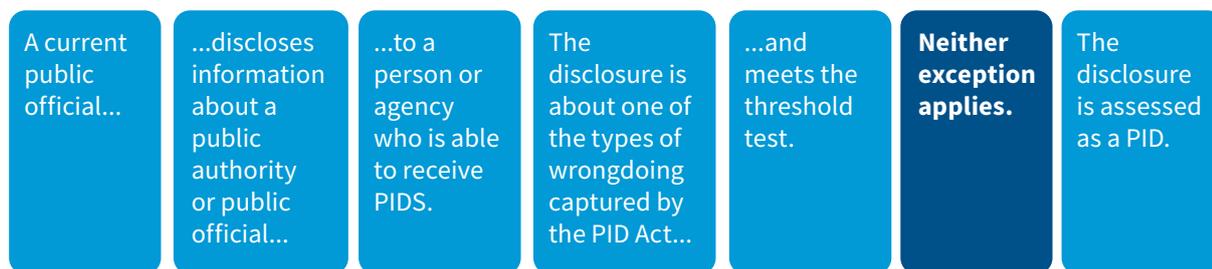
	<p>inferences that can be drawn from the information provided. For example, have they provided detailed information about the alleged wrongdoing, even if there is limited information about how they know.</p>
shows or tends to show	<p>There must be sufficient information to show or tend to show that the wrongdoing has happened, is happening or will happen (noting that PIDs can also relate to future events). This may include:</p> <ul style="list-style-type: none"> • direct observation of the wrongdoing by the reporter • corroborative observation by others • evidence such as unbalanced accounts, missing items of value or contradictory records. <p>Sufficient detail should be provided to help you make this assessment. The reporter may provide factual information such as:</p> <ul style="list-style-type: none"> • what has occurred? • who was involved? • when the wrongdoing occurred? • where the wrongdoing happened? • further information or evidence that would assist in any investigation? • why the conduct was wrong (i.e. unlawful or unreasonable) <p>Information ‘shows’ (even if it does not prove) if, on its face, it relates or shows that the conduct occurred, and why that conduct was wrong. This is a higher standard than ‘tends to show’.</p> <p>Information ‘tends to show’ if it shows the relevant conduct is likely or probably occurred, or likely or probably would be engaged in. It can also be information that indirectly helps to show the relevant conduct occurred in some way. It is not enough that it only shows a possibility that that conduct might have occurred or might possibly be engaged in.</p> <p>It is not necessary for the reporter to provide sufficient information to conclusively establish or prove that the wrongdoing occurred to any investigative standard of proof. The disclosure cannot be based on a mere allegation or suspicion that is unsupported by any facts, circumstances, or evidence. This means the assessment may be affected by the information being too general or lacking specifics. This will be a question of degree.</p>

You should ensure that reporters understand they should not attempt to investigate, ie try to obtain evidence themselves. This may jeopardise the investigation and risk the reporter breaching your agency’s policies.

Reporters also need to know it is an offence to intentionally make a false or misleading report of wrongdoing – there are penalties of up to 50 penalty units or 12 months imprisonment or both.

It is **not an offence** to make a PID where the reporter honestly believes the information is true, and a subsequent investigation determines it is not. In those cases, the reporter is still protected by the PID Act.

9. Do any exceptions apply?



A disclosure will not be a PID if:

- **It primarily questions the merits of government policy, including local government** (s17 PID Act)

For state government public authorities and officers, this excludes any reports which, at their core, criticise the formal policies of the executive arm of government—for example, the Cabinet, the Premier or another Minister.

For a council or county council, this excludes reports that essentially criticise any formal policy of the council's governing body—that is, the elected councillors.

Government policy should not be confused with organisational or administrative policy, which concerns the procedural issues or routine practices of an authority. These policies do not set the agenda for an authority but provide the mechanisms for achieving the agenda set by the government of the day or elected council.

The PID Act may apply to reports relating to government policy if they focus on the adequacy of the advice given by a public official or authority. However, they cannot principally involve questioning the merits of the adopted policy. For example, a report criticising the government's decision to close a particular school would not be a PID. However, a report alleging that corrupt conduct in closing the school (for example school computers were sold to staff), could be a PID.

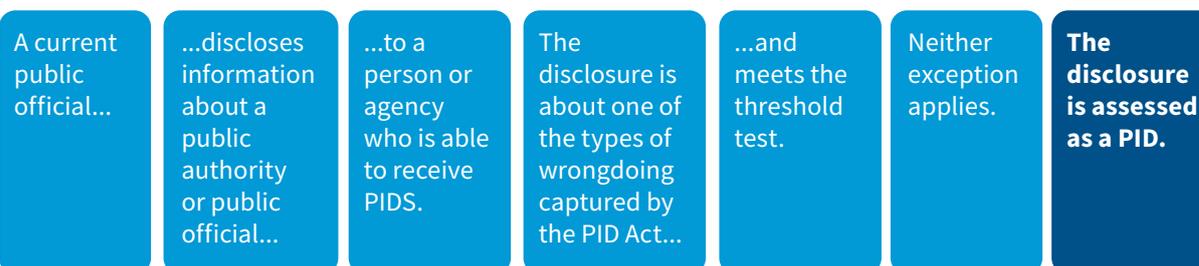
- **It is motivated by the object of avoiding disciplinary action** (s18 PID Act)

Some people may make a report because they have been involved in wrongdoing or their performance has been unsatisfactory, and they want to allege that any subsequent dismissal or disciplinary action is a reprisal.

Deciding a report was made solely or substantially to avoid dismissal or disciplinary action requires assessing the subjective (ie actual) motive of the reporter. The fact that the making of a report resulted in the consequences being avoided is not sufficient—you *must be able to prove that this was the intention of the reporter*.

If you believe that a PID has been made with the intention of avoiding dismissal or disciplinary action, the rules of procedural fairness require that the reporter be given an opportunity to be heard (whether by a hearing or in writing). You should give the reporter an opportunity to be heard and then complete your agency's PID Assessment template before taking any action.

10. Managing a PID



Once the PID has been assessed, agencies should:

- Acknowledge receipt of the PID and provide the reporter with a copy of the internal reporting policy within 45 days (but preferably much sooner).
- Determine whether the PID should or may be referred to another agency (for example, the PID/conduct may need to be referred to ICAC where it involves possible corrupt conduct)⁴
- If the PID is not going to be referred or the other agency declines to take any action, determine what action your agency will take to deal with it – for example, the allegations may need to be investigated.
- Communicate regularly with the reporter, including advising the reporter within six months of what action has been taken or will be taken in relation to the PID.
- Keep full and accurate records.

Ensure you are managing your PID in accordance with the PID Act and other requirements of law and best practice.

Tips when managing a PID:

- Reporters may complain if they believe nothing has happened, or if they are not kept up to date with the progress of an investigation. Regular communication can assist with managing expectations and reducing the risks of further complaints, or of the reporter contacting an MP or journalist.
- Ensure subject(s) of allegations of wrongdoing are treated fairly and given procedural fairness. The reporter's identity should be kept confidential (except where the matter results in disciplinary or criminal proceedings or one of the other exceptions applies).
- Be mindful of your obligations under work health and safety legislation, the common law duty of care towards all employees, and obligations to comply with principles of good conduct and administrative practice.
- If a matter cannot be dealt with confidentially, be vigilant and proactive in preventing reprisal action and other unwanted consequences, such as gossip.

4. Duty to notify ICAC of possible corrupt conduct contained at s.11 of the *Independent Commission Against Corruption Act 1988*

- Conduct a risk assessment to identify, analyse, evaluate, and address risks to the internal reporter, subject of allegations, and agency. Monitor and review the risks throughout the process.
- Explain to potential witnesses why they are being interviewed and give them some information about the process to contain suspicion and fear.
- Continuous improvement should sit at the heart of all integrity frameworks. Agencies are exposed to constantly evolving risks, and integrity frameworks need to evolve to meet these challenges. Even where a PID or complaint has not been substantiated, there may still be opportunities to improve control frameworks

11. PID Act Protections

The PID Act, more commonly known as whistleblower protection legislation, encourages NSW public officials to report serious wrongdoing—such as corrupt conduct or maladministration—and provides them with certain legal protections when they do.

PID Act protections are in addition to Work Health and Safety obligations, any general or workplace obligations of confidentiality, and the common law duty of care.

The protections are outlined in Part 3 of the PID Act and include:

Confidentiality guideline (s22)	<p>The PID Act states that information that might identify or tend to identify a person who has made a PID must not be disclosed unless:</p> <ul style="list-style-type: none"> • the person consents in writing to the disclosure of the information • it is generally known that the person has made a PID as they have voluntarily identified themselves • it is essential to disclose the information to satisfy the principles of procedural fairness • it is necessary for the information to be disclosed to allow for the matter to be effectively investigated • it is otherwise in the public interest to do so.
Protection against actions (s21)	<p>A person is not subject to any liability for making a PID and no action, claim or demand may be taken or made of or against the person for making the disclosure.</p>
Protection against reprisals (s20)	<p>Public officials who make PIDs, or are suspected of making PIDs, are protected against reprisals.</p> <p>You need to assess whether:</p> <ul style="list-style-type: none"> • the public official made a disclosure of wrongdoing (whether or not this was assessed as a PID), or • may have been suspected of making such a disclosure.

<p>Protection against reprisals (s20)</p>	<p>The PID Act states a person who takes detrimental action against another person that is substantially in reprisal for the other person making a public interest disclosure is guilty of an offence and may be the subject of disciplinary action and personal liability in damages for any loss that the other person suffers as a result.</p> <p>Detrimental action means action causing, comprising or involving any of the following:</p> <ul style="list-style-type: none"> • injury, damage or loss • intimidation or harassment • discrimination, disadvantage or adverse treatment in relation to employment • dismissal from, or prejudice in, employment • disciplinary proceeding. <p>Maximum penalty: 2 years imprisonment or 100 penalty units or both.</p> <p>It is not necessary to determine that a PID was in fact made. The protections extend to cases where the person who takes the detrimental action does so because they believe or suspect that the other person made or may have made a public interest disclosure, even if they did not in fact do so.</p>
<p>Injunctions to prevent reprisals (s20B)</p>	<p>The Supreme Court may grant an injunction restraining a person from engaging in reprisal action against a person who has made a PID.</p>

12. Managing the risk of reprisal

It is important to assess and manage the risk of reprisal to reporters, as well as anyone else who might be involved in a PID. Doing so can protect your staff, as well as your agency.

Ideally, you should conduct risk assessments just after your agency receives the PID. You should then develop strategies to eliminate, minimise or manage any identified risks.

You should also revisit your risk assessment periodically. Risks may change and new risks may appear during the process.

It is important to document the steps you have taken to assess and manage risks - our [PID Risk Assessment](#) template can help with this.

Stages in the risk assessment and management process include:

Stage 1: Identify the risks

It is important to talk to the reporter to understand any risks they may be exposed to. Each case is different, and the questions you ask will be guided by the specific context. Making a PID can be a stressful experience, so it's important that you are mindful of this and supportive of the reporter.

Examples of possible issues to discuss include:

- Does anybody know the identity of the reporter? Consider whether one of the exceptions to maintaining confidentiality applies. If confidentiality is unable to be maintained, this should be factored into the risk assessment.
- Has the reporter told anyone else they have made, or intended to make, the report?
- Has the reporter raised their concerns previously?
- Is there a chance other staff will infer the reporter has made the report?
- Does the reporter have any specific concerns about reprisal?
- Is the subject officer the reporter's supervisor?
- Does the reporter work closely with the subject officer?

Stage 2: Analyse and evaluate the risks

Where confidentiality is unable to be maintained, there may be a heightened risk of reprisal. Other factors which may heighten the risk of reprisal include where:

- two or more people are the subject of the allegations of wrongdoing
- the subject officer holds a higher position in the organisation
- the allegations of wrongdoing are serious
- there is a history of workplace conflict between the parties.

When analysing risks, consider the consequences of the risks, the likelihood they will occur, and any control measures that can be implemented to eliminate or mitigate them.

Stage 3: Risk treatment

Potential strategies to reduce and manage risks of reprisal include:

- keeping the identity of the reporter and subject officer(s) confidential
- developing a reporter support strategy, including appointing a support officer
- proactively advising subject officers about the consequences of taking reprisal action
- reviewing supervision arrangements
- communicating with managers and supervisors about keeping the identity of the reporter confidential and encouraging them to monitor the work environment for signs of conflict
- temporarily relocating the subject officer to a different location/role
- independently verifying the work performance of the reporter.

Each case is different. The key is to implement strategies which are proportionate to the risks you have identified, and to communicate why you have implemented each strategy.

Stage 4: Monitor and review

Risks may need to be reviewed at various points in the process, such as when a decision is made to investigate, during the investigation and once the outcome of an investigation is known. Where risks have changed, you should also review the strategies to treat each risk.

13. NSW Ombudsman's resources

The NSW Ombudsman has oversight of the PID Act. We fulfil this role in a range of ways, including by providing advice to agencies on the application of the PID Act, and on how agencies can ensure they are complying with their obligations.

If you have any questions, you can contact the PID Team at pid@ombo.nsw.gov.au or review the resources on our website (listed below).

Organisational commitment

[A1: Management commitment to internal reporting](#)

[A2: Internal reporting policy and procedures](#)

[A3: Awareness and training](#)

[A4: Evaluation of policy, processes and practices](#)

Facilitating reporting

[B1: Who can report wrongdoing?](#)

[B2: What should be reported?](#)

[B3: What's not a public interest disclosure?](#)

[B4: Reporting pathways](#)

[B5: Reporting to MPs and Journalists](#)

[B6: Anonymous reporting](#)

Assessing and investigating disclosures

[C1: People the subject of a report](#)

[C2: Reporting to the NSW Ombudsman](#)

[C3: Assessing and streaming internal reports](#)

[C4: Assessing risk of reprisals and conflict](#)

[C5: Investigating public interest disclosures](#)

[C6: Managing interactions with investigating authorities](#)

[C7: Confidentiality](#)

Supporting and protecting reporters

[D1: Internal reporter support strategy](#)

[D2: Information, advice and feedback to internal reporters](#)

[D3: Internal reporters involved in wrongdoing](#)

[D4: Preventing and containing reprisals and conflict](#)

[D5: Responding to allegations of reprisal](#)

[D6: Finalisation and follow-up](#)

Implementation

[E1: Model for internal reporter support](#)

[E2: Roles and responsibilities](#)

Other PID management resources are available for download from www.ombo.nsw.gov.au.

You can also [subscribe](#) to our bi-monthly newsletter.

Remember to check our website regularly to ensure you are accessing the latest resources.

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