

Public interest disclosure policy

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This policy is available on the Ombudsman’s website and on the Ombudsman’s intranet.

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Contents

Purpose	1
Who does this apply to?	1
What this policy covers	1
Terms used in this policy	2
How to make a report of serious wrongdoing	3
Features of voluntary PIDs	3
Who can make a voluntary PID?	3
Who can a voluntary PID be made to?	4
What is serious wrongdoing?	6
What form should a voluntary PID take?	6
What should be included in a report?	7
Relationship with other complaint and grievance policies and procedures	7
Deeming that a report is a voluntary PID	8
Advice	8
Protections	8
How is the maker of a voluntary PID protected?	8
Protections for people who make mandatory and witness PIDs	9
How we deal with voluntary PIDs	10
How we will acknowledge that we have received a report and keep the person who made it informed	10
How we will deal with voluntary PIDs	11
Where the report is a voluntary PID	12
How we will protect the confidentiality of the maker of a voluntary PID	12
How we will assess and minimise the risk of detrimental action	13
How we will deal with allegations of a detrimental action offence	14
What we will do if an investigation finds that serious wrongdoing has occurred	15
General support	15
Review and dispute Resolution	15
Internal Review	15
Voluntary dispute resolution	16
Ombudsman and Ombudsman officer responsibilities	16
Ombudsman	16
Senior disclosure officer	16
Ombudsman disclosure officers	17
Ombudsman managers	17
Ombudsman officers	17
Record keeping, reporting and internal oversight	17
Additional information	18
Annexure A — Integrity agencies	19
Annexure B — Ombudsman disclosure officers	21

Purpose

Under the *Public Interest Disclosures Act 2022 (PID Act)*, all NSW agencies (as defined in the PID Act) must have a Public Interest Disclosure Policy (**PID Policy**).

The Ombudsman's Office is an agency under the PID Act.

This is the Ombudsman's Office PID Policy.

At the Ombudsman's Office we take reports of serious wrongdoing seriously. We are committed to building a 'speak up' culture where all NSW public officials, including our own staff, are encouraged to report any conduct that they reasonably believe involves wrongdoing.

The integrity of our agency relies upon our staff, contractors and subcontractors speaking up when they become aware of wrongdoing.

This policy also documents our commitment to building a speak up culture. Part of that speak up culture is having in place a framework that facilitates public interest reporting of wrongdoing by:

- protecting those who speak up from detrimental action
- imposing duties on agencies who receive reports of wrongdoing to take appropriate action to investigate or otherwise deal with them.

In NSW, that framework is the PID Act.

Who does this apply to?

This policy applies to, and for the benefit of, all public officials in NSW who may make a PID **to the Ombudsman's Office** (including those who may make a PID to another agency that is referred by that agency to the Ombudsman's Office for investigation). This includes both:

- a. staff of, or public officials associated with, the Ombudsman's Office, and
- b. all other public officials in the NSW public sector.

In both cases, if the Ombudsman's Office receives a PID we have obligations including with respect to:

- protecting the maker of the PID, and
- dealing with the PID.

This policy additionally deals with PIDs that might be made **by** staff of, or other public officials associated with, the Ombudsman's Office **to someone outside the Ombudsman's Office** (such as the Independent Commission Against Corruption (**ICAC**)). In those cases, the Ombudsman's Office will also have obligations with respect to protecting the maker of the PID.

What this policy covers

This policy provides information on the following:

1. ways an Ombudsman officer can make a voluntary PID to the Ombudsman's Office under the PID Act

2. ways an Ombudsman officer can make a voluntary PID to a recipient of PIDs outside of the Ombudsman's Office under the PID Act
3. ways all other NSW public officials can make a voluntary PID to the Ombudsman's Office under the PID Act
4. the names and contact details for the disclosure officers in the Ombudsman's Office
5. the roles and responsibilities of people who hold particular roles under the PID Act and who are employees of the Ombudsman's Office
6. what information a person will receive once they have made a voluntary PID to the Ombudsman's Office
7. protections available to people who make a report of serious wrongdoing under the PID Act and what the Ombudsman's Office will do to protect them
8. the Ombudsman's Office procedures for dealing with voluntary PIDs we receive
9. the Ombudsman's Office procedures for managing the risk of detrimental action and reporting detrimental action
10. the Ombudsman's Office procedure for maintaining confidentiality in relation to voluntary PIDs, and
11. the Ombudsman's Office record-keeping and reporting requirements how we will ensure it complies with the PID Act and this policy.

Terms used in this policy

The 'Office' refers to the Ombudsman's Office.

'Ombudsman officers' refers to Any staff of, or other public officials 'associated with' the Ombudsman ('associated with' has the same meaning as in s 20(1)(5) of the PID Act). This includes contingent workers and contractors who are engaged by the Ombudsman's Office to provide services on behalf of the Ombudsman's Office or to exercise the functions of the Ombudsman's Office.

'PID maker' refers to someone who has made a voluntary PID.

How to make a report of serious wrongdoing

When a public official reports suspected or possible wrongdoing in or affecting the public sector, their report will be a PID if (and only if) it has certain features which are set out in the PID Act.

There are three types of PIDs in the PID Act. These are:

1. *Voluntary PID*: This is a PID where a report is made by the public official because they decide, of their own accord, to come forward and disclose what they know.
2. *Mandatory PID*: This is a PID where the public official makes a report about serious wrongdoing because they have a legal obligation to make that report, or because making that report is an ordinary aspect of their role or function in an agency.
3. *Witness PID*: This is a PID where a person discloses information during an investigation of serious wrongdoing following a request or requirement of the investigator.

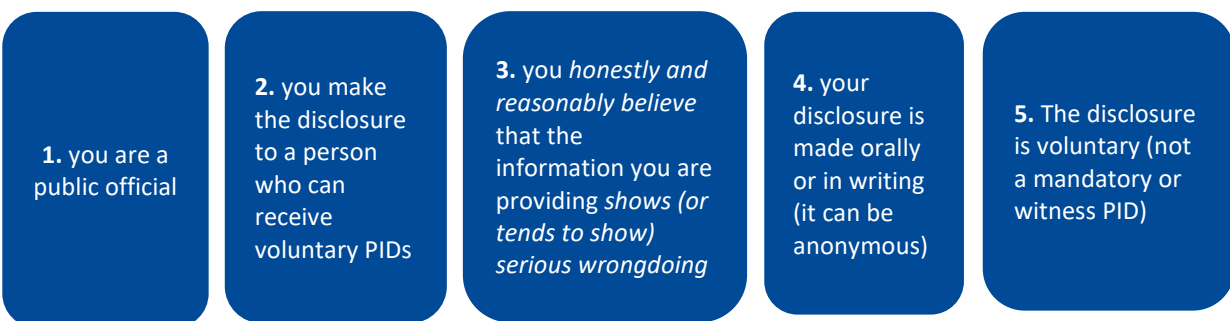
This policy mostly relates to making a voluntary PID, and how we will deal with voluntary PIDs that are received by the Ombudsman's Office. People who make a mandatory PID or a witness PID are also entitled to protection. More information about these protections is available in the Protections section of this policy below.

Features of voluntary PIDs

Voluntary PIDs are the kind of PIDs most people have in mind when they think about public interest reporting of wrongdoing and 'whistleblowing'.

They involve a public official making a report because they have information that they believe shows (or tends to show) serious wrongdoing, and they make that report voluntarily – in the sense that they are not under a legal obligation to make that report and it is not an ordinary part of their role or functions to report such wrongdoing.

A report is a voluntary PID if it has the following five features, which are set out in sections 24 to 27 of the PID Act.



If (and only if)¹ the report has all five of these features, it is a voluntary PID.

Who can make a voluntary PID?

Any NSW public official can make a voluntary PID.

¹ However, in some circumstances a report that does not have all of these features may be 'deemed' to be a voluntary PID by the head of an agency. This is explained below.

Ombudsman officers are public officials. This includes all senior executive and non-executive staff, as well as workers engaged through contingent labour arrangements.

A person is also a public official if they:

- are employed in or by an agency or otherwise in the service of an agency
- have public official functions or acts in a public official capacity and their conduct or activities can be investigated by an integrity agency
- are in the service of the Crown
- are a statutory officer
- are a judicial officer
- are a Member of the NSW Parliament (**MP**), including a Minister
- are employed under the *Members of Parliament Staff Act 2013*.

Some individuals and entities in the private sector will also be public officials in certain circumstances:

A person is a public official if	A person is not a public official if
<p>they provide services or exercise functions on behalf of an agency, even if they are a contractor, subcontractor or volunteer</p> <p>or</p> <p>if they are an employee, partner or officer of an entity that:</p> <ul style="list-style-type: none"> • provides services on behalf of an agency or • exercises functions of an agency • and they are involved in providing those services or exercising those functions. 	<p>they merely provide services to an agency, for example they own or work for a business that provides computer software or hardware to an agency</p>

Who can a voluntary PID be made to?

For a report to be a voluntary PID, it must be made to particular individuals who are themselves public officials and who are authorised to receive PIDs. These people are required to be trained on how to recognise and deal with PIDs.

If you are an Ombudsman officer and wish to report serious wrongdoing

If you are a public official working in the Ombudsman’s Office, you can make a voluntary PID to any of the following individuals:

- the Ombudsman personally
- any Ombudsman’s Office disclosure officer (these are listed, together with their contact details, in [Annexure B](#)).
- your manager in the Ombudsman’s Office. Your manager is anyone:
 - who directly or indirectly supervises you and
 - who you directly or indirectly report to.

If you make your disclosure to your manager, it is their responsibility to ensure that what you have disclosed is then communicated on to an Ombudsman disclosure officer. They may do this by asking you to accompany them to talk to a disclosure officer.

You can also make a report to another agency, including to another integrity agency (such as the ICAC). For such a report to be a voluntary PID, it needs to be made to one of the following individuals:

- the head of any agency or a disclosure officer of any agency² or
- someone in another integrity agency (such as the ICAC) who is authorised to receive PIDs³ or
- a Minister or a member of a Minister’s staff (but here the disclosure must be written, and cannot be oral).

If you are an Ombudsman officer and choose to make a disclosure outside of the Ombudsman’s Office, it is possible that your disclosure will be referred back to the Ombudsman’s Office so that appropriate action can be taken.

If you are a public official working in another agency and wish to make a report of serious wrongdoing to the Ombudsman’s Office

All public officials (from any agency) can also make a report of serious wrongdoing to the Ombudsman’s Office. For a report to us to be a voluntary PID, the report needs to be made to:

- the Ombudsman personally
- any Ombudsman disclosure officer (these are listed, together with their contact details, in [Annexure B](#)⁴).

Making a report to a Member of Parliament (MP) or journalist

Disclosures to MPs or journalists are different to other reports. You can only disclose a report of wrongdoing as a voluntary PID to an MP or journalist in the following circumstances:

- You first made substantially the same disclosure (described here as a ‘previous disclosure’) to someone who can receive disclosures as voluntary PIDs under the PID Act (for example, to a disclosure officer in the agency you work for, or to an authorised recipient in an integrity agency).
- The previous disclosure is ***substantially true***.
- You did not make the previous disclosure anonymously.
- You did not give a written waiver of your right to receive information relating to your previous disclosure.
- In respect of your previous disclosure:, you either:
 - received notification that the relevant agency you made the disclosure to will not investigate the serious wrongdoing and will also not refer the previous disclosure to another agency, or
 - did not receive, by the end of the investigation period, all of the following information:
 - notice of an agency’s decision to investigate the serious wrongdoing
 - a description of the results of the investigation into the serious wrongdoing
 - details of proposed or recommended corrective action as a result of the previous disclosure or investigation.

Investigation period means:

² Refer to the individual agency’s PID policy.

³ A list of integrity agencies is in [Annexure A](#). You must check the individual agency’s PID policy to find out who can receive a PID in that agency.

⁴ You can contact one of the individuals listed in [Annexure B](#) directly by using the contact details that are listed there. In addition, any written report that is submitted to our general email or postal address will be taken to be received by one of these authorised recipients provided they are clearly marked to the attention of either the Ombudsman or a disclosure officer. This can be done by simply marking your correspondence as “To the attention of the Ombudsman” or “To the attention of a disclosure officer”.

- six months from the previous disclosure being made, or
- 12 months from the previous disclosure being made, if you applied for an internal review of the agency's decision within six months of making the disclosure.

If all the above requirements are met, your disclosure to an MP or journalist may be a voluntary PID.

What is serious wrongdoing?

To be a voluntary PID, a report must be of one or more of the following categories of *serious wrongdoing* (in addition to having the other features set out in this policy). Serious wrongdoing is defined in the PID Act as:

- *corrupt conduct* — such as a public official accepting a bribe
- *serious maladministration* — such as an agency systemically failing to comply with proper recruitment processes when hiring staff
- *a government information contravention* — such as destroying, concealing or altering records to prevent them from being released under a Government Information (Public Access) Act (GIPA Act) application
- *a local government pecuniary interest contravention* — such as a senior council staff member recommending a family member for a council contract and not declaring the relationship
- *a privacy contravention* — such as unlawfully accessing a person's personal information on an agency's database
- *a serious and substantial waste of public money* — such as an agency not following a competitive tendering process when contracting with entities to undertake government work.

These categories of serious wrongdoing overlap, and conduct may fall under more than one category. The maker of a voluntary PID does not need to identify which particular category or categories of wrong conduct apply when they make their report.

Note that, while the Ombudsman's Office's functions as an integrity agency are generally focused on serious maladministration, a report made to the Ombudsman's Office about any kind of serious wrongdoing (as defined in the PID Act) will be a PID, provided it has all the other features of a voluntary PID.

What form should a voluntary PID take?

Voluntary PIDs can be made in the following ways:

- *in writing* — by email or letter
- *orally* — have a private discussion with a person who can receive voluntary PIDs. This can be face-to-face, via telephone or virtually. (There is an exception when making a disclosure to a Minister or a member of the Minister's staff: those disclosures **must be in writing**.)
- *'anonymously'* — this is defined in the Act to mean that, taking into account the circumstances of the disclosure and the material accompanying the disclosure, there is no reasonably practicable means of communicating with the maker of the disclosure about the disclosure (whether or not the maker's name is known). Accordingly, you can disclose 'anonymously' by not providing any contact address or any other information that would enable the agency to find your contact details (such as your name), and by telling the recipient of your disclosure that you do not wish to be contacted or provided with any information about your disclosure. However, you should be aware that if you

make an anonymous disclosure this may affect the agency's ability to investigate or otherwise deal with the matter.

What should be included in a report?

A person who makes a PID is not expected to prove that what is contained in the report actually happened or that it constituted serious wrongdoing. A person making a PID needs to honestly believe, on reasonable grounds, that the information they are reporting shows or tends to show serious wrongdoing.

Even though a person does not have to prove the serious wrongdoing happened or provide sufficient evidence, a mere allegation with no supporting information is unlikely to meet this test.

When someone makes a report, it is not essential that they explicitly state what category of serious wrongdoing they are reporting, or even that they are reporting 'serious wrongdoing'. It is the responsibility of an authorised recipient of PIDs to identify if the disclosure has the features of a voluntary PID.

When making a report to the Ombudsman's Office, providing as much information as possible when making the report will assist us with dealing with the report effectively. When making a report, you should include the following:

- any relevant dates, times and location of key events
- any names of person(s) involved in the suspected wrongdoing, their role, title and how they are involved
- your relationship with the person(s) involved, such as whether you work closely with them
- your description of the matter you are disclosing
- how you became aware of what you are disclosing
- possible witnesses to what you are disclosing
- other information (including documents) you have that supports your report.

Relationship with other complaint and grievance policies and procedures

In some cases, a report about serious wrongdoing that is made to the Ombudsman's Office might, as well as being a PID, also be a complaint or grievance that is subject to another relevant Ombudsman policy or process. If that is the case, we will deal with the report as set out in this policy, as well as making sure that we follow any other relevant Ombudsman policies.

Not all reports alleging wrongdoing in the public sector will be disclosures to which the PID Act applies. If we receive a report that does not have the features of a PID set out above, we will consider whether it might instead trigger the application of another process or pathway for dealing with reports of suspected or alleged wrongdoing. Some of these relevant to the Ombudsman's Office are set out below.

Policies that may be relevant to reports by Ombudsman officers about the Office or Ombudsman officers:

- Grievance management policy
- Dealing with misconduct allegations policy
- Bullying, harassment and discrimination policy
- Code of Ethics and Conduct.

Ombudsman officers should report any wrongdoing they become aware of regardless of whether they think it is serious wrongdoing. We are then responsible for making sure any reports are handled appropriately under the PID Act, or if a report is not a PID, in line with our other policies and procedures.

Policies that may be relevant to reports by other public officials about the Ombudsman’s Office or other agencies:

- [Making a complaint to the Ombudsman](#)
- [Making a complaint about the Ombudsman’s service](#)
- [Requesting a review of an Ombudsman decision](#)
- [Making a complaint to the Office of Local Government](#)
- [Making a complaint to the Law Enforcement Conduct Commission](#)
- [Making a complaint to the Health Care Complaints Commission](#)
- [Making a complaint to the Information and Privacy Commission](#)
- [Making a report to the Independent Commission Against Corruption](#)

Deeming that a report is a voluntary PID

If a report is made to the Ombudsman’s Office, the Ombudsman can, in certain circumstances, determine that a report is a voluntary PID even if the report does not otherwise have all the features of a voluntary PID. This is known as the ‘deeming power’. Deeming a disclosure to be a voluntary PID ensures the protections provided under the PID Act are available to the person who made the disclosure.

Before the Ombudsman can deem a disclosure to be a voluntary PID, the Ombudsman must themselves honestly believe, and on reasonable grounds, that the disclosure shows or tends to show serious wrongdoing.

If a person makes a disclosure that does not have all the features of a voluntary PID, they may ask the Ombudsman to consider deeming the disclosure to be a voluntary PID. However, even if the Ombudsman holds the belief described above, the Ombudsman has a discretion whether or not to deem the disclosure a voluntary PID.

For more information about the deeming power, see the Ombudsman’s guideline [Deeming that a disclosure is a voluntary PID](#).

Advice

If you are unsure of whether you have information that, if reported, might constitute a PID or if you would like other advice about making a voluntary PID, you can contact pidadvice@ombo.nsw.gov.au.

If you are an Ombudsman officer, you can also speak to your manager or an Ombudsman disclosure officer. However, you should be mindful that what you discuss with a manager or disclosure officer could then constitute a disclosure under the PID Act, which we may be required to deal with.

Protections

How is the maker of a voluntary PID protected?

When a person makes a voluntary PID they receive special protections under the PID Act.

We are committed to taking all reasonable steps to protect voluntary PID makers from detriment as a result of having made a PID.

We will not tolerate any type of detrimental action being taken against someone because they have made a report, might make a report or are believed to have made a report.

The maker of a voluntary PID is protected in the following ways:

- *Protection from detrimental action*

- A person must not take detrimental action against another person because they have made a voluntary PID or are considering making a PID. Detrimental action includes bullying, harassment, intimidation or dismissal.
- Once we become aware that a voluntary PID by a person employed or otherwise associated with the Office has been made, or if a PID that concerns serious wrongdoing relating to the Office has been made, we will undertake a risk assessment and take steps to mitigate the risk of detrimental action occurring against the person who made the voluntary PID.
- It is a criminal offence for someone to take detrimental action against a person because they have made or may make a voluntary PID. It is punishable by a maximum penalty of 200 penalty units or imprisonment for five years or both.
- A person may seek compensation where detrimental action has been taken against them.
- A person can apply for a court order (injunction) where detrimental action is threatened or has occurred (for example, an order to prevent dismissal or to require reinstatement).

Note that a person who makes a PID can still be subject to reasonable management action (such as ordinary performance reviews and performance management). Provided such action is not taken because of the PID, it is not detrimental action under the PID Act.

- *Immunity from civil and criminal liability*

Some public officials are often subject to a duty of confidentiality that prevents them disclosing certain information that they obtain or become aware of at work. Sometimes, in order to make a PID, public officials will need to breach or disregard such confidentiality duties. If that happens, a public official cannot be disciplined, sued or criminally charged for breaching confidentiality.

- *Confidentiality*

Public officials and agencies must not disclose information tending to identify a person as the maker of a voluntary PID unless doing so is permitted by the PID Act.

- *Protection from liability for own past conduct*

The Attorney General can give the maker an undertaking that a disclosure of their own past conduct will not be used against them if a person discloses their own wrongdoing or misconduct while making a report. This undertaking can only be given on application by an integrity agency to the Attorney General.

Protections for people who make mandatory and witness PIDs

Apart from voluntary PIDs, there are two other types of disclosures that are recognised as PIDs under the PID Act:

- *A mandatory PID:* This is a PID where the public official has made the report about serious wrongdoing because they have a legal obligation to make that report, or because making that report is an ordinary aspect of their role or function in an agency.

- *A witness PID*: This is a PID where a person discloses information during an investigation of serious wrongdoing following a request or requirement of the investigator.

Protections for makers of mandatory and witness PIDs are detailed in the table below.

Protection	Mandatory PID	Witness PID
Detrimental action — It is an offence to take detrimental action against a person based on the suspicion, belief or awareness that a person has made, may have made or may make a PID.	✓	✓
Right to compensation — A person can initiate proceedings and seek compensation for injury, damage or loss suffered as a result of detrimental action being taken against them.	✓	✓
Ability to seek injunction — An injunction can be sought to prevent the commission or possible commission of a detrimental action offence against a person. For example, an order to prevent dismissal or to require reinstatement.	✓	✓
Immunity from civil and criminal liability — a person will not incur civil or criminal liability if the person breaches a duty of confidentiality while making a disclosure. This means that legal action cannot be taken against a person for: <ul style="list-style-type: none"> • breaching a duty of secrecy or confidentiality, or • breaching another restriction on disclosure. 	✓	✓

How we deal with voluntary PIDs

How we will acknowledge that we have received a report and keep the person who made it informed

When a disclosure officer in the Ombudsman’s Office receives a report which is a voluntary PID, or may be a voluntary PID, the person who made the report will receive the following information:

- An acknowledgment that the report has been received. This acknowledgement will:
 - state that the report will be assessed to identify whether it is a PID
 - state that the PID Act applies to how we deal with the report
 - provide clear information on how to access this PID policy
 - provide details of a contact person and available supports.

- If the report is a voluntary PID, we will inform the PID maker how we intend to deal with the report. We will do this as soon as possible after we have identified the report is a voluntary PID. Ways we may deal with a PID include:
 - investigating the serious wrongdoing
 - referring the report to a different agency (if appropriate) to deal with the voluntary PID. If we do this, we will provide the PID maker with details of this referral
 - if we decide to take no action on the report (that is, to not investigate the report and to not refer it to another agency for it to be investigated) we will tell the PID maker the reasons for this decision.
- If we decide to investigate the serious wrongdoing, we will provide the PID maker with updates on the investigation at least every three months. During this time, if the PID maker would like more frequent updates, they should contact the contact person who was nominated when the report was made.
- If we investigate the serious wrongdoing, we will provide the PID maker with the following information once the investigation is complete:
 - A description of the results of the investigation — that is, we will tell the PID maker whether we found that serious wrongdoing took place.
 - Information about any corrective action as a result of the investigation/s — for matters involving the conduct of the Ombudsman’s Office or an Ombudsman officer, we will tell the PID maker what action we have taken or propose to take if an investigation finds that serious wrongdoing or other misconduct occurred. For matters where we find that serious wrongdoing by another public official or agency occurred, we will only be able to provide information about the recommendations we may make to that agency.
Corrective action could include taking disciplinary action against someone or changing the practices, policies and procedures that we have in place which led to the serious wrongdoing.
 - There may be some details about both the findings made as a result of the investigation and the corrective action taken that cannot be revealed to the PID maker. We will always balance the right of a person who makes a report to know the outcome of that report, with other legal obligations we have.
- If a person has made an anonymous report, in many cases we may not be able to provide them with this information.

How we will deal with voluntary PIDs

Once a report that may be a voluntary PID is received, we will look at the information contained in the report to see if it has the features of a voluntary PID set out above. This assessment is undertaken to identify whether the report is a voluntary PID or another type of disclosure, and to make sure that the right steps are followed. If it is a voluntary PID, we will ensure that we comply with the requirements in the PID Act.

Report not a voluntary PID

Even if a report is not a voluntary PID, it will still need to be dealt with in a manner consistent with our complaints handling or other relevant policies and procedures.

If the report is not a voluntary PID, we will let the report maker know that the PID Act does not apply to the report and how we will deal with the concerns raised in the report.

If we assess the report is a voluntary PID, but later realise that it is not actually a voluntary PID (meaning it does not have all the features of a PID) then we will cease dealing with the disclosure as a voluntary PID. If this occurs, we will inform the person who made the report that we have ceased dealing with the report as a voluntary PID. We will provide the person with reasons for this decision.

If the person is not happy with our assessment about whether a disclosure is a voluntary PID or otherwise disagrees with it, they can raise their concerns with the person who they have been communicating with about the report or a disclosure officer. They may also request an [internal review](#).

Where the report is a voluntary PID

If the report is a voluntary PID:

- We may conduct an investigation to make findings about whether the serious wrongdoing disclosed in the report occurred, who was involved, who was responsible, and whether the people involved, or the agency, engaged in serious wrongdoing.
- We may decide that the report should be referred to another agency, such as another integrity agency. Before referring a matter, we will discuss the referral with the other agency, and we will provide the PID maker with details of the referral and a contact person within the other agency. (Note that reports concerning possible corrupt conduct may also be required to be reported to the ICAC in accordance with section 11 of the *Independent Commission Against Corruption Act 1988*.)
- If a voluntary PID relates to the Office or an Ombudsman officer and we decide not to investigate the PID and not to refer the PID to another agency, we must send written reasons for this decision to the Ombudsman's PID unit by emailing pidadvice@ombo.nsw.gov.au.
- There will be circumstances where a voluntary PID is not investigated, or not investigated to finality. There may be several reasons for this. For example, it may be that (unknown to the PID maker) the serious wrongdoing has already been investigated and action taken. Or it may be decided that, owing to the time that has elapsed, or other circumstances, that there is no public interest or practical utility in investigating or finalising an investigation.

How we will protect the confidentiality of the maker of a voluntary PID

We understand that people who make voluntary PIDs may want their identity and the fact that they have made a report to be confidential.

Under the PID Act, information tending to identify a person as the maker of a voluntary PID (known as identifying information) is not to be disclosed by a public official or an agency, except where expressly permitted by the Act.

There are certain circumstances under the PID Act that allow for the disclosure of identifying information. These include:

- where the person consents in writing to the disclosure
- where it is generally known that the person is the maker of the voluntary PID because of their voluntary self-identification as the maker
- when the public official or Ombudsman's Office reasonably considers it necessary to disclose the information to protect a person from detriment
- where it is necessary the information be disclosed to a person whose interests are affected by the disclosure
- where the information has previously been lawfully published

- when the information is disclosed to a medical practitioner or psychologist for the purposes of providing medical or psychiatric care, treatment or counselling to the individual disclosing the information
- when the information is disclosed for the purposes of proceedings before a court or tribunal
- when the disclosure of the information is necessary to deal with the disclosure effectively
- if it is otherwise in the public interest to disclose the identifying information.

We will not disclose identifying information unless it is authorised under the PID Act.

We will otherwise put in place steps to keep the identifying information of the PID maker and the fact that a report has been made confidential. It may not be possible for us to maintain complete confidentiality while we progress the investigation, but we will do all that we practically can to not unnecessarily disclose information from which the PID maker can be identified. Ways we may do this include:

- Limiting the number of people who are aware of the PID maker's identity or information that could identify them.
- Ensuring that any person who does know the identity of the PID maker is reminded that they have a legal obligation to keep their identity confidential.
- Ensuring that only authorised persons have access to emails, files or other documentation that contain information about the identity of the PID maker.
- Undertaking an assessment to determine if anyone is aware of the PID maker's identity and if those persons may have a motive to cause detrimental action to be taken against the maker or impede the progress of the investigation.

If confidentiality cannot be maintained or is unlikely to be maintained, we will:

- Discuss with the PID maker the fact that their identity may become known.
- Implement strategies to minimise the risk of detrimental action occurring including regularly updating any risk assessment and risk management plan.
- Provide additional supports to the PID maker.
- Remind persons who become aware of identifying information of the consequences for failing to maintain confidentiality and that engaging in detrimental action is a criminal offence and may also be a disciplinary matter.

How we will assess and minimise the risk of detrimental action

We have risk management obligations under section 61 of the PID Act.

Once we become aware of a voluntary PID that:

- has been made by a member of staff of, or public official associated with, the Ombudsman's Office
- is about serious wrongdoing by our Office, or by member of staff of, or public official associated with, the Ombudsman's Office, or
- otherwise affects, or might affect, the exercise of functions by our Office

we must assess and minimise the risk of detrimental action, other than reasonable management action, being taken against someone as a result of the disclosure being made. This includes detrimental action being taken against the person who has made the disclosure and may include other persons such as witnesses and investigators. The risk of detrimental action being taken against the public official whose

serious wrongdoing the disclosure is about will also be assessed. (Of course, investigating that public official's conduct, and taking appropriate disciplinary action if they are suspected or found to have engaged in misconduct, is reasonable management action and is not detrimental action).

Where appropriate, we will discuss with those individuals any concerns they have, suggest ways in which they might mitigate any risk of detrimental action, and ensure that they have a secure and confidential means of communicating with our Office, including offering the contact details of a support person.

Where we are dealing with a voluntary PID made by an Ombudsman officer about the conduct of another Ombudsman officer, risk management strategies may include relocating officers within the Office, changing reporting lines, or providing for an officer to take leave.

Detrimental action against a person is an act or omission that causes, comprises, involves or encourages detriment to a person or a threat of detriment to a person (whether express or implied). Detriment to a person includes:

- injury, damage or loss
- property damage
- reputational damage
- intimidation, bullying or harassment
- unfavourable treatment in relation to another person's job
- discrimination, prejudice or adverse treatment
- disciplinary proceedings or disciplinary action, or
- any other type of disadvantage.

Detrimental action does not include:

- lawful action taken by a person or body to investigate serious wrongdoing or other misconduct
- the lawful reporting or publication of a finding of serious wrongdoing or other misconduct
- the lawful making of adverse comment, resulting from investigative action
- the prosecution of a person for a criminal offence
- reasonable management action taken by someone in relation to a person who made or may make a PID. For example, a reasonable appraisal of a PID maker's work performance.

How we will deal with allegations of a detrimental action offence

If we become aware of an allegation that a detrimental action offence has occurred or may occur, we will:

- take all steps possible to stop the action and protect the person(s)
- take appropriate disciplinary action against anyone that has taken detrimental action (if they are an Ombudsman officer)
- refer any evidence of a detrimental action offence to the Commissioner of Police and to the ICAC (or the Law Enforcement Conduct Commission, if applicable)
- notify the Ombudsman's PID unit, about the allegation of a detrimental action offence being committed.

What we will do if an investigation finds that serious wrongdoing has occurred

If, having conducted an investigation, we find that any of the following has occurred:

- serious wrongdoing or other misconduct by **our Office or by a public official associated with our Office**
- detrimental action by **a public official associated with our Office**

we will take appropriate action to address that wrongdoing or misconduct.

Corrective action can include:

- a formal apology
- improving internal policies to adequately prevent and respond to similar instances of wrongdoing
- providing additional education and training to staff where required
- taking employment action against persons involved in the wrongdoing (such as termination of employment, relocation, a caution or reprimand)
- payment of compensation to people who have been affected by serious wrongdoing or other misconduct.

General support

If, after having made a report to us, you need support or advice about making a disclosure, or what happens once you have made a disclosure, you can always communicate with the contact person whose details you were given when you made your disclosure.

You are also able to speak with someone from our Office's PID Advice team, who can be contacted by email at PIDadvice@ombo.nsw.gov.au or on (02) 9286 1010.

If you are an Ombudsman officer, you can also contact our [Employee Assistance Provider](#) at any time.

Review and dispute resolution

Internal review

If you disagree with any of the following decisions:

- that we will not recognise or deal with your disclosure as a voluntary PID
- that we will not take any further action in relation to your disclosure because we do not recognise it as a voluntary PID
- (if the disclosure is about the Ombudsman's Office or an Ombudsman officer) to neither investigate your disclosure nor refer your voluntary PID to another agency, or to stop investigating your voluntary PID without either completing the investigation or referring the disclosure to another agency for investigation

you should raise this with the contact officer you have been dealing with in our Office. If, having discussed the matter with them, you are still not satisfied with this outcome, you may seek an internal review of our action.

Internal reviews are conducted in compliance with the PID Act and with our [Guideline on Dealing with voluntary PIDs](#).

Applications must be in writing and made within 28 days of being informed of our decision. The application should state the reasons why the Office should not have made the decision that was made. The applicant may also submit any other relevant material with their application.

If you are a PID maker who does not work for the Ombudsman's Office, your application for an internal review can be sent to mailCIB@ombo.nsw.gov.au

If you are an Ombudsman officer your application for an internal review can be sent to legal@ombo.nsw.gov.au

Voluntary dispute resolution

In some circumstances where a dispute arises between the maker of a report and the agency to whom the report has been made, it may be appropriate to conciliate the matter. Conciliation is a voluntary process and will only be suitable for disputes where both parties are willing to attempt to resolve the dispute in this way.

If the dispute is between the maker of a report and the Ombudsman's Office, we will consider whether conciliation would be appropriate and, if both the Ombudsman and the maker of the report agree to conciliate, we will arrange for conciliation, with the involvement of an independent conciliator.

Ombudsman and Ombudsman officer responsibilities

Ombudsman

The Ombudsman is responsible for:

1. fostering a workplace culture where reporting is encouraged
2. receiving disclosures from public officials
3. ensuring there is a system in place for assessing disclosures, and
4. ensuring the Ombudsman's Office complies with this policy and the PID Act
5. ensuring that the Ombudsman's Office has appropriate systems for:
 - a. overseeing internal compliance with the PID Act
 - b. supporting public officials who make voluntary PIDs, including by minimising the risk of detrimental action
 - c. implementing corrective action if serious wrongdoing is found to have occurred
 - d. complying with reporting obligations regarding allegations or findings of detrimental action
 - e. complying with yearly reporting obligations.

Senior disclosure officer

The Chief Operating Officer is the senior disclosure officer for the Ombudsman's Office. They are responsible for the following:

1. receiving disclosures from public officials or that are passed on to them by managers
2. ensuring disclosures are dealt with appropriately, including by appropriately referring disclosures (if relevant)
3. ensuring that any oral disclosures that have been received are recorded in writing
4. preparing the annual return for the Ombudsman's Office

5. reviewing and updating internal systems in place to ensure compliance with the PID Act
6. providing information under section 59 of the PID Act to Ombudsman officers who make PIDs
7. ensuring adequate supports are provided to Ombudsman officers who make PIDs
8. assessing the risk of detrimental action occurring against Ombudsman officers who make a PID
9. assessing the risk of detrimental action occurring against the subject(s) of a disclosure, witnesses, investigators and others when a PID has been made by an Ombudsman officer
10. assessing the likelihood of maintaining confidentiality and implementing strategies to maintain confidentiality (for Ombudsman officers who make a PID), and
11. arranging for PIDs made by Ombudsman officers to be dealt with in accordance with the PID Act.

Ombudsman disclosure officers

Disclosure officers are responsible for:

1. receiving disclosures from public officials or that are passed on to them by managers
2. ensuring disclosures are dealt with appropriately, including by appropriately referring disclosures (if relevant), and
3. ensuring that any oral disclosures that have been received are recorded in writing.

Ombudsman managers

Managers are responsible for:

1. receiving disclosures from Ombudsman officers that report to them or that they supervise, and
2. passing on those disclosures to an Ombudsman disclosure officer.

Ombudsman officers

Ombudsman officers are expected to disclose suspected serious wrongdoing or other misconduct in accordance with this policy.

They are also required to use their best endeavours to assist in an investigation of serious wrongdoing if asked to do so by other Ombudsman officers dealing with voluntary PIDs.

Record keeping, reporting and internal oversight

We must keep full and accurate records with respect to all information received in connection with the PID Act. This ensures that the Ombudsman's Office complies with its obligations under the *State Records Act 1998*.

Like all other agencies, our Office is required to provide an annual return which provides information about:

- voluntary PIDs received by the Ombudsman during each return period (1 July to 30 June)
- action taken by the Ombudsman to deal with voluntary PIDs during the return period
- how the Ombudsman promoted a culture in the workplace where PIDs are encouraged.

Complaints and Resolution Branch will collect this information and the responsibility for completing this return lies with the Ombudsman's Chief Operating Officer.

The return is provided to the Ombudsman's Systems Oversight Branch, which is responsible for receiving and reporting on returns provided by all agencies under the PID Act.

We also provide reports about our compliance with this policy to our Audit and Risk Committee on an annual basis.

A copy of this policy, and information about the PID Act, is provided to all new Ombudsman officers and contractors when they start working at the Office. Regular training is also provided within the Office to ensure officers and contractors know what steps to take to report wrongdoing, and officers are aware of any obligations they have to receive and handle disclosures.


Additional information

If you require further information about this policy, how public interest disclosures will be handled or the PID Act you can:

- confidentially contact a nominated disclosure officer within the Ombudsman's Office
- contact the PID Advice Team within the Ombudsman's Office by phone: (02) 9286 1010 or email: pidadvice@ombo.nsw.gov.au, or
- access the NSW Ombudsman's PID guidelines which are available on our website.

Our Office cannot provide you with legal advice about your rights or obligations under the PID Act.

Ombudsman approval



Paul Miller
NSW Ombudsman

Annexure A — Integrity agencies

Even though each integrity agency will have functions focussed on particular kinds of serious wrongdoing, any of them can receive a PID about any type of serious wrongdoing defined in the PID Act. An integrity agency that receives a PID about serious wrongdoing that it does not have a function of investigating may, under the PID Act, refer that PID to the integrity agency that is more appropriately able to investigate it.

Integrity agency	What they investigate	Who to report to
NSW Ombudsman	Most kinds of serious maladministration by most agencies and public officials (but not NSW Police, judicial officers or MPs)	Details of recipients of PIDs are located at Annexure B — Ombudsman disclosure officers (which lists the disclosure officers for the Ombudsman’s Office) and Who can a voluntary PID be made to?
Auditor-General	Serious and substantial waste of public money by auditable agencies	Refer to the Auditor-General’s PID policy which is available on the Audit Office of NSW public website – www.audit.nsw.gov.au
Independent Commission Against Corruption (ICAC)	Corrupt conduct (Serious maladministration by the NSW Ombudsman or Ombudsman Officers)	Refer to ICAC’s PID policy which is available on ICAC’s public website – www.icac.nsw.gov.au
The Inspector of the Independent Commission Against Corruption	Serious maladministration by the ICAC or the ICAC officers	Refer to ICAC’s PID policy which is available on ICAC’s public website - www.icac.nsw.gov.au
The Law Enforcement Conduct Commission (LECC)	serious maladministration by the NSW Police Force or the NSW Crime Commission	Refer to LECC’s PID policy which is available on LECC’s public website - www.lecc.nsw.gov.au
Inspector of the Law Enforcement Conduct Commission	serious maladministration by the LECC and LECC officers	Refer to LECC’s PID policy which is available on LECC’s public website - www.lecc.nsw.gov.au
Office of the Local Government (OLG)	local government pecuniary interest contraventions	Refer to the OLG PID policy which is available on OLG’s public website - www.olg.nsw.gov.au
Privacy Commissioner	privacy contraventions	Refer to the Privacy Commissioner’s PID policy which is available on the Information and Privacy Commissions’ public website - www.ipc.nsw.gov.au

Integrity agency	What they investigate	Who to report to
Information Commissioner	government information contraventions	Refer to the Information Commissioner's PID policy which is available on the Information and Privacy Commissions' public website - www.ipc.nsw.gov.au

Annexure B — Ombudsman disclosure officers

The postal address for all Ombudsman disclosure officers is:

Level 24, 580 George Street, SYDNEY NSW 2000.

If you send a letter to our address, or an email to our general mail@ombo.nsw.gov.au address, and you mark it to the attention of one of the people listed below or to either:

- “The NSW Ombudsman”, or
- “The PID Disclosure Officer”

then we will take your correspondence as have been sent to, and received by, one of the disclosure officers below.

Email and phone details for individual disclosure officers are provided below.

Name	Role	Contact information
Paul Miller	NSW Ombudsman	Telephone: (02) 9286 1000 between 9am to 4pm Monday to Friday Disclosures made in writing should be addressed to: Paul Miller NSW Ombudsman Level 24, 580 George Street SYDNEY NSW 2000
Chris Clayton	Chief Operating Officer	Telephone: (02) 9286 1000 between 9am to 4pm Monday to Friday Email: PIDdisclosureofficer@ombo.nsw.gov.au
Monica Wolf	Chief Deputy Ombudsman	Telephone: (02) 9286 1000 between 9am to 4pm Monday to Friday Email: mwolf@ombo.nsw.gov.au
Jacqueline Fredman	Deputy Ombudsman	Telephone: (02) 9286 1000 between 9am to 4pm Monday to Friday Email: jfredman@ombo.nsw.gov.au
Sanya Silver	Deputy Ombudsman	Telephone: (02) 9286 1000 between 9am to 4pm Monday to Friday Email: ssilver@ombo.nsw.gov.au

Name	Role	Contact information
Helen Wodak	Deputy Ombudsman	Telephone: (02) 9286 1000 between 9am to 4pm Monday to Friday Email: hwodak@ombo.nsw.gov.au
Louise Lazzarino	Deputy Ombudsman	Telephone: (02) 9286 1000 between 9am to 4pm Monday to Friday Email: llazzarino@ombo.nsw.gov.au
Megan Smith	Legal Counsel	Telephone: (02) 9286 1000 between 9am to 4pm Monday to Friday Email: msmith@ombo.nsw.gov.au
Josh Faulkner	Director, Corporate Services	Telephone: (02) 9286 1000 between 9am to 4pm Monday to Friday Email: jfaulkner@ombo.nsw.gov.au
Natalie Richardson	Manager, People & Culture	Telephone: (02) 9286 1000 between 9am to 4pm Monday to Friday Email: nrichardson@ombo.nsw.gov.au
Fayina Lelekov	Manager, Governance & Risk	Telephone: (02) 9286 1000 between 9am to 4pm Monday to Friday Email: flelekov@ombo.nsw.gov.au
For public officials outside the Ombudsman’s Office, all complaint handling staff in the Ombudsman Complaints and Resolution branch are disclosure officers		Telephone: 1800 451 524 between 9am to 4pm Monday to Friday Or use our: Online complaint form