

Internal Reporting - Public Interest Disclosures

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AUTHORISED BY	Secretary	AUTHORISED DATE	18/08/2016
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1. Policy Statement

NSW Department of Industry is strongly committed to the principles and objects of the *Public Interest Disclosures Act 1994* (PID Act) by creating a climate of trust where staff are comfortable and confident about reporting wrongdoing.

This includes keeping the identity of staff members reporting wrongdoing as confidential as possible, providing support and protecting staff reporting wrongdoing, and providing confidence that all reports will be impartially assessed and properly managed.

The PID Act provides protection for staff members reporting genuine concerns regarding corruption, maladministration, substantial waste of public money or government information contraventions.

2. Who does this policy apply to?

This policy and the associated procedures apply to all agencies, divisions and authorities within NSW Department of Industry. It covers the process by which public interest disclosures can be made under the PID Act by a public official. Ongoing, temporary and casual employees, contractors, volunteers and members of advisory committees and boards are all considered to be public officials under the PID Act.

3. What is a Public Interest Disclosure

A public interest disclosure (PID) is a report of serious wrongdoing made by a public official which has been assessed and accepted as meeting the requirements of the PID Act.

Those requirements include that the person making the report must honestly believe on reasonable grounds that serious wrongdoing has occurred. Reasonable grounds are expected to be based upon credible direct evidence, such as the reporter personally witnessing an action, hearing a person admitting they have done something wrong or providing documentation indicating serious wrongdoing has occurred. A report relying upon gossip, suspicion, hearsay or personal opinion to substantiate the concerns being raised will not be accepted as a PID.

The report must also concern one or more of the categories of wrongdoing specified in the PID Act. The categories which would most likely be relevant to NSW Department of Industry are corrupt conduct, maladministration, serious and substantial waste and breaches of the GIPA Act – these are [defined](#) at the end of this policy.

Finally, the report must be made in accordance with this policy and the associated processes. A central requirement is that to be accepted as a PID an internal report must be made to an officer authorised by NSW Department of Industry to receive a PID, while an external report must be made to an authorised external investigative agency.

PIDs may be reported *internally* to:

- the Secretary
- the Public Interest Disclosures Coordinator - the Deputy Secretary, Finance, Strategy & Operations
- Public Interest Disclosure Receivers – Senior Executives Band 1 and above

4. What is not a Public Interest Disclosure

Reports not made in accordance with this policy are not PIDs and do not provide the person making the report with the protections that would otherwise be available under the PID Act. Those protections include against possible defamation action.

Public interest disclosures must be made to authorised people and bodies specified in this policy. You must also be able to explain why you believe that wrongdoing has occurred and have a reasonable basis for that belief.

A report will not be accepted as a PID if it was considered frivolous or vexatious, primarily questioned the merits of government policy or was made solely or substantially to avoid dismissal or other disciplinary action.

Matters which are more appropriately dealt with under alternate mechanisms will be managed in accordance with those arrangements and not as a PID. That includes workplace grievances and allegations concerning bullying and work health & safety matters.

5. What should be reported

You should report suspected wrongdoing, or any activities or incidents you see or know about within the Department that you believe to be wrongdoing.

Reports about serious misconduct which meet the criteria of a PID will be dealt with under the PID Act and according to this internal reporting policy.

Even if your report is not accepted as a PID, if it was made in good faith and indicates that wrongdoing may have occurred it can still be investigated.

In those circumstances the Department would still provide whatever protection it could, including keeping your identity as the reporter as confidential as possible.

6. How do I make an internal report

You are encouraged to report general wrongdoing to your supervisor, however, for a report to be accepted as a PID it must be made to a person authorised to receive such a disclosure.

Any supervisor who receives a report they believe should be treated as a PID should assist the staff member to make the report to an authorised PID Receiver. Occupants of the following roles are the only people within NSW Department of Industry authorised to receive a PID:

- Secretary
- Deputy Secretary Finance Strategy & Operations
- Senior Executives Band 1 and above

While you can report wrongdoing verbally, you are encouraged to make a report in writing as this can help to avoid any confusion or misinterpretation. An Internal Reporting Form is available to assist you in making a report.

When making a verbal report, the person you are talking to will document the discussion and ask you to review and sign that record as accurately reflecting the report you have made – you should keep a copy of that record.

A flow chart showing the various PID actions and decision points is at [TAB A](#).

7. How do I make an external report

Staff are encouraged to report wrongdoing to an authorised person within NSW Department of Industry, however, you can also make a public interest disclosure to:

- An investigating authority
- A Member of Parliament or a journalist, but only in limited circumstances

Investigating Authorities

The PID Act lists a number of investigating authorities in NSW that staff can report wrongdoing to and the type of wrongdoing each authority can deal with. You may be more comfortable in making an external report where the matter involves the decisions or behavior of a senior person

or an on-going issue which is very contentious or problematic and you have concerns about how you may be affected by bringing this to notice.

The listed investigating authorities that are most relevant to the Department's activities are:

- the Independent Commission Against Corruption (ICAC) — for disclosures about corrupt conduct
- the Ombudsman — for disclosures about maladministration
- the Auditor-General — for disclosures about serious and substantial waste
- the Information Commissioner — for disclosures about a breach of the GIPA Act

If you are considering making an external report you should [contact the relevant investigation authority](#) for advice about how to make a disclosure to them.

You should be aware that the investigating authority may discuss any such reports with us and possibly refer them to NSW Department of Industry to investigate and manage. We will make every effort to assist and cooperate with the investigating authority to ensure the matter is dealt with appropriately and there is a satisfactory outcome. We will also provide appropriate support and assistance to staff who report wrongdoing to an investigating authority if we are aware that has occurred.

Members of Parliament or journalists

To have the protections of the PID Act, staff reporting wrongdoing to a Member of Parliament (MP) or a journalist must have already made substantially the same report to an authorised person within the Department, or an investigating authority and they:

- decided not to investigate the matter
- decided to investigate the matter, but didn't complete the investigation within six months of the original report
- investigated the matter but didn't recommend any action as a result
- didn't tell you, within six months of the report being made, whether the matter would be investigated.

To be protected under the PID Act if you report wrongdoing to an MP or a journalist you will need to not only be able to prove you have reasonable grounds for believing the disclosure is substantially true, but that it is in fact substantially true.

8. Can a report be anonymous?

There will be some situations where you may not want to identify yourself when you make a report. Although these reports will still be dealt with there are challenges where further information may be required, in providing protection and support and not being able to advise you of progress and the outcome.

It is important to realise that an anonymous disclosure may not prevent you from being identified by the subjects of the report or your colleagues. If we do not know who made the report, it is very difficult for us to prevent any reprisal if others suspect or have concluded that you have made a report.

9. What happens if I make a report and no wrongdoing was found

Making a report and having it accepted as a PID attracts the statutory protections available under the PID Act. You remain protected by the PID Act regardless of whether any wrongdoing was subsequently found to have occurred or not.

10. Roles and responsibilities

The role of all staff

Staff play an important role in contributing to a workplace where known or suspected wrongdoing is reported and dealt with appropriately. All staff are encouraged to:

- report all known or suspected wrongdoing and support those who have made reports of wrongdoing
- if requested, assist those dealing with the report, including supplying information on request, cooperating with any investigation and maintaining confidentiality
- treat any staff member or person dealing with a report of wrongdoing with courtesy and respect

- respect the rights of officers the subject of reports.

Staff must not:

- victimise or harass anyone who has made a report
- make false or misleading reports of wrongdoing.

Additionally, all staff involved in the internal reporting process and any investigation actions are obliged to adhere to our code of conduct. A breach of the code could result in disciplinary action.

NSW Department of Industry

The Department has a responsibility to establish and maintain a working environment that encourages staff to report wrongdoing and supports them when they do. This includes keeping the identity of reporters confidential where practical and appropriate, taking steps to protect reporters from reprisal and managing potential workplace conflict.

All reports of wrongdoing received from staff will be assessed and dealt with appropriately.

Once a staff member reports wrongdoing, the Department 'takes ownership' of the matter. This means it is up to us to assess and decide whether a report should be investigated, and if so, how it should be investigated and by whom. We will deal with all reports of wrongdoing fairly and reasonably, and respect the rights of any officers the subject of a report.

The Department must report on our obligations under the PID Act and statistical information about PIDs in our annual report, and to the NSW Ombudsman every six months.

To ensure we comply with the PID Act and deal with all reports of wrongdoing properly, all staff with roles outlined below and elsewhere in this policy will receive training on their responsibilities.

Roles of key positions

Secretary

The Secretary has ultimate responsibility for maintaining the internal reporting system and workplace reporting culture, and ensuring compliance with the PID Act. The Secretary can receive reports from staff, and has a responsibility to:

- assess reports received to determine whether or not the report should be treated as a PID, and to decide how the report will be dealt with
- ensure there are strategies in place to support reporters, protect them from reprisal and manage workplace conflict that may arise from the making of a report
- make decisions following any investigation or appoint an appropriate decision-maker
- take appropriate remedial action where wrongdoing is substantiated or systemic problems are identified
- refer actual or suspected corrupt conduct to the Independent Commission Against Corruption (ICAC)
- refer any evidence of a reprisal offence under section 20 of the PID Act to the Commissioner of Police or the ICAC.

PID Disclosures Coordinator

The Deputy Secretary Finance Strategy & Operations is our PID Disclosures Coordinator and has a central role in our internal reporting system. The PID Disclosures Coordinator manages the process on behalf of the Secretary and has a responsibility to:

- assess reports and determine whether or not a report should be treated as a PID, and then decide how each report will be dealt with
- acknowledge reports and provide updates and feedback to the reporter, including the outcome when the matter has been finalised
- assess whether it is possible and appropriate to keep the reporter's identity confidential
- assess the risk of reprisal and workplace conflict related to or likely to arise out of a report, and develop strategies to manage any risks identified
- provide and coordinate support to staff involved in the reporting and investigation process, including protecting the interests of any officer the subject of a report
- coordinate the response to a report and confirm what actions should or should not be taken
- ensure the Department complies with the PID Act

- provide six-monthly reports to the NSW Ombudsman in accordance with section 6CA of the PID Act.

PID Receivers

Senior Executives Band 1 and above have been nominated as PID Receivers for NSW Department of Industry. They provide a readily accessible point of contact to provide advice about the internal reporting system, receive reports of wrongdoing and assist staff to make reports.

PID Receivers have a responsibility to:

- document in writing any reports received verbally, and have the document signed and dated by the reporter
- make arrangements to ensure staff can make reports privately and discreetly when requested, if necessary away from the workplace
- discuss with the reporter any concerns they may have about reprisal or workplace conflict
- carry out a preliminary assessment and provide initial feedback and advice to the reporter - that includes managing expectations about possible outcomes
- forward reports and the completed PID Receiver Initial Assessment and Checklist forms to the PID Disclosures Coordinator for full assessment.

Supervisors and line managers

While they may not be authorised to accept a PID, supervisors and line managers who are not Senior Executives still play an important role in managing the immediate workplace of those involved in or affected by the internal reporting process.

Supervisors and line managers should be aware of the internal reporting framework and are responsible for creating a local work environment where staff are comfortable and confident about reporting wrongdoing. They have a responsibility to:

- encourage staff to report known or suspected wrongdoing within the organisation and support staff when they do
- assist staff members to make a report to a PID Receiver if they raise concerns which could be a PID
- implement local management strategies, in consultation with the PID Disclosures Coordinator, to minimise the risk of reprisal or workplace conflict in relation to a report
- notify the PID Disclosures Coordinator immediately if they believe a staff member is being subjected to reprisal as a result of reporting wrongdoing.

11. Assessment of reports

All reports will be promptly and thoroughly assessed to determine what action will be taken to deal with the report and whether or not the report will be treated as a public interest disclosure.

The PID Disclosures Coordinator is responsible for assessing all reports based upon the information available at the time.

It is up to the PID Disclosures Coordinator to decide whether an investigation should be carried out and how that investigation should be conducted. That assessment may include for the report to be referred elsewhere, or that no action should be taken.

12. Feedback to staff who report wrongdoing

Acknowledgement

When you make a report you will be advised in writing within 10 working days that it has been received. That advice will include confirmation of whether your report has been accepted as a PID and the contact details of the person managing the report.

If it has not been accepted as a PID you will be told why not and any further action which may still be taken.

If it is accepted as a PID a copy of this Internal Reporting Policy will be provided, together with an explanation of the action intended to be taken and likely timeframes. Details of available support services will also be advised.

Please note, if you make a report which meets the requirements of the PID Act but the report was made under a statutory or legal obligation, or incidental to the performance of your day to day functions, you are not required to be given an acknowledgement letter or a copy of the Internal Reporting Policy.

Progress updates

While your report is being investigated or other enquiries are being made we will keep you informed of progress. If it becomes necessary to disclose your identity, or it becomes apparent in the course of an investigation who made the report, you will be consulted on possible strategies to protect you from possible reprisals or adverse actions.

In some circumstances it may be agreed to disclose your identity as the reporter to enable suitable protection and support to be implemented and monitored by your manager. If your identity remains undisclosed it may be difficult to provide the same level of support and protection as your manager may not be able to be advised of your situation.

Feedback

Once the matter has been finalised you will be given:

- enough information to show that adequate and appropriate action was taken and/or is proposed to be taken in response to your disclosure and any problem that was identified
- advice about whether you are likely to be called as a witness in any further matters, such as disciplinary or criminal proceedings

13. Maintaining confidentiality

We realise that you may prefer for your identity and the fact you have made a report to remain confidential. This can help to prevent reprisal action being taken against you for reporting wrongdoing.

Where possible and appropriate we will take steps to keep your identity, and the fact you have reported wrongdoing, confidential.

If confidentiality cannot be maintained, we will develop a plan to support and protect you from reprisal in consultation with you.

If you report wrongdoing, it is important that you only discuss your report with those responsible for dealing with it. The fewer people who know about your report, before and after you make it, the more likely it will be that we can protect you from any reprisal.

Staff involved in the investigation or handling of a report, including witnesses, are also required to maintain confidentiality and not disclose information about the process or allegations to anybody other than those people responsible for managing the internal reporting and investigation processes.

14. Managing the risk of reprisal and workplace conflict

If you report wrongdoing a risk assessment will be undertaken to identify the risk to you of detrimental action in reprisal for reporting, as well as indirect but related risks of workplace conflict or difficulties. The risk assessment will be used to identify strategies to deal with those risks and determine the level of protection and support that is appropriate.

Depending on the circumstances, those actions may be to:

- relocate the reporter or the staff member who is the subject of the allegation within the current workplace
- transfer the reporter or the staff member who is the subject of the allegation to another position for which they are qualified
- grant the reporter or the staff member who is the subject of the allegation leave of absence during the investigation of the disclosure.

These actions are not punishment and will be undertaken in consultation with the affected people.

15. Protection against reprisals

We will not tolerate any reprisal against staff who report wrongdoing or are believed to have reported wrongdoing.

The PID Act provides protection for staff who have made a public interest disclosure by imposing penalties on anyone who takes detrimental action against another person substantially in reprisal for that person making a public interest disclosure. These penalties also apply in cases where a person takes detrimental action against somebody because they mistakenly believe or suspect the other person has made a PID when they didn't.

Detrimental action means action causing, comprising or involving any of the following:

- injury, damage or loss
- intimidation or harassment
- discrimination, disadvantage or adverse treatment in relation to employment
- dismissal from, or prejudice in, employment
- disciplinary proceedings.

A person who is found to have committed a reprisal offence may face criminal penalties such as imprisonment and/or fines, and may be required to pay the victim damages for any loss suffered as a result of the detrimental action. Taking detrimental action in reprisal is also misconduct which may result in disciplinary action.

It is important to understand the nature and limitations of the protection provided by the PID Act. The PID Act protects staff from detrimental action being taken against them because they have made, or are believed to have made, a PID. Making a report does not provide immunity or protect people from disciplinary or other management sanctions where their behaviour or actions otherwise provide reasonable grounds to do so. That may apply where the reporter has been complicit or involved in the action in question, or other unrelated matters which warrant investigation.

Responding to allegations of reprisal

If you believe that detrimental action has been or is being taken against you or someone else in reprisal for reporting wrongdoing, you should tell your supervisor, the PID Disclosures Coordinator or the Secretary immediately.

All supervisors must notify the PID Disclosures Coordinator or the Secretary if they suspect that reprisal against a staff member is occurring or has occurred, or if any such allegations are made to them.

If we become aware of or suspect that reprisal is being or has been taken against a person who has made a disclosure, we will:

- assess the report of reprisal to decide whether it should be treated as a PID and whether the matter warrants investigation, or if other action should be taken to resolve the issue
- if the reprisal allegation warrants investigation, ensure this is conducted by a senior and experienced person
- if it is established that reprisal is occurring against someone who has made a report, take all steps possible to stop that activity and protect the reporter
- take appropriate disciplinary action against anyone proven to have taken or threatened any action in reprisal for making a disclosure
- refer any evidence of an offence under section 20 of the PID Act to the ICAC or NSW Police Force.

If you allege reprisal, you will be kept informed of the progress and outcome of any investigation or other action taken in response to the allegation.

If you have reported wrongdoing and are experiencing reprisal which you believe is not being dealt with effectively you can contact the Ombudsman or the ICAC (depending on the type of wrongdoing you reported). Contact details for these investigating authorities are included at the end of this policy.

Protection against legal action

If you make a PID in accordance with the PID Act, you will not be subject to any liability, and no action, claim or demand can be taken against you for having made the PID. You will not have breached any confidentiality or secrecy obligations and you will have the defence of absolute privilege in defamation.

16. Support for those reporting wrongdoing

We will make sure that staff who have reported wrongdoing in good faith, regardless of whether their report is treated as a PID or not, are provided with access to any professional support they may need as a result of the reporting process – such as stress management or counselling services.

Access to support may also be available for other staff involved in the internal reporting process where appropriate. Reporters and other staff involved in the process can discuss their support options with the PID Disclosures Coordinator.

17. Sanctions for making false or misleading statements

It is important all staff are aware it is a criminal offence under the PID Act to wilfully make a false or misleading statement when reporting wrongdoing. We will not support staff who wilfully make false or misleading reports. Such conduct may also be a breach of the code of conduct and result in disciplinary action.

18. The rights of persons the subject of a report

We are committed to ensuring staff who are the subject of a report of wrongdoing are treated fairly and reasonably. This includes keeping the identity of any person the subject of a report confidential, where this is practical and appropriate.

If you are the subject of a report that is going to be formally investigated you will be:

- advised of the details of the allegation
- advised of your rights and obligations under the relevant policies and procedures
- kept informed about the progress of any investigation
- given a reasonable opportunity to respond to any allegation made against you
- told the outcome of any investigation, including any decision made about whether or not further action will be taken against you.

Where the reported allegations are clearly wrong, or have been investigated and unsubstantiated, the allegations will, as far as possible, remain confidential unless you agree otherwise.

19. Where can I get more help and information

Questions and internal reports may be referred to the PID Disclosures Coordinator at pid@industry.nsw.gov.au

E-Learning modules on PID Staff Awareness and Management Responsibilities are available through Learning@Industry.

The Ombudsman also has an extensive library of fact sheets and guidelines concerning various aspects of PIDs accessible from their website - www.ombo.nsw.gov.au/what-we-do/our-work/public-interest-disclosures

PIDs may be reported *externally* to the Independent Commission Against Corruption (ICAC), Ombudsman, Auditor General or the Information Commissioner.

For disclosures about corrupt conduct:

Independent Commission Against Corruption (ICAC) - 02 8281 5999
icac@icac.nsw.gov.au
www.icac.nsw.gov.au

For disclosures about serious and substantial waste:

Auditor-General of the NSW Audit Office
02 9275 7100
mail@audit.nsw.gov.au
www.audit.nsw.gov.au

For disclosures about maladministration:

NSW Ombudsman - 02 9286 1000
nswombo@ombo.nsw.gov.au
www.ombo.nsw.gov.au

For disclosures about breaches of the GIPA Act:

Information Commissioner - 1800 472 679
ipcinfo@ipc.nsw.gov.au
www.ipc.nsw.gov.au

Legislation

- *Public Interest Disclosures Act 1994*
- *Independent Commission against Corruption Act 1988*
- *Ombudsman Act 1974*
- *Public Finance and Audit Act 1983*
- *Government Sector Employment Act 2013*
- *Government Information (Public Access) Act 2009*

Related policies

Code of Conduct IND-P-184

Fraud & Corruption Prevention IND-P-188

Government Information (Public Access) IND-I-178

Other related documents

Internal Reporting form INT16/71608

PID Receiver – Checklist when receiving an internal report INT16/71614

PID Receiver - Initial assessment of internal report INT16/71611

PID Disclosure Coordinator - Assessment of an internal report INT16/71616

Superseded documents

This policy replaces:

TI-A-123 Public Interest Disclosures - internal reporting policy, dated 1 October 2011

Trade & Investment Internal Reporting – Public Interest Disclosure Procedure, dated October 2011

Revision history

Version	Date issued	Notes	By
1	19/8/2016	All Senior Executives Band 1 and above authorised as PID Receivers	Director Governance & Information Requests

Review date

30/06/2019

Contact

PID Disclosures Coordinator – Deputy Secretary Finance Strategy & Operations

Ph (02) 6391 3319

pid@industry.nsw.gov.au

For further information on the PID Policy and associated processes

Director Governance & Information Requests

Ph (02) 9934 0648

Definitions

Corrupt conduct

"Corrupt conduct" is defined in sections 8 and 9 of the *Independent Commission Against Corruption Act 1988*. The definition used in the Act is intentionally broad, corrupt conduct is defined to include the dishonest or partial exercise of official functions by a public official.

Conduct of a person who is not a public official, when it adversely affects the impartial or honest exercise of official functions by a public official, also comes within the definition.

Corrupt conduct can take many forms, e.g., taking or offering bribes, public officials dishonestly using influence, blackmail, fraud, election bribery and illegal gambling.

Maladministration

"Maladministration" is defined in the PID Act as conduct that involves action or inaction of a serious nature that is either:

- contrary to law
- unreasonable, unjust, oppressive or improperly discriminatory
- based wholly or partly on improper motives (section 11)

This could include making decisions to approve or refuse an application based on factors other than the merits of the application.

Serious and substantial waste of public money

The term "serious and substantial waste" is not defined in the PID Act. The Auditor-General provides the following working definition:

"Serious and substantial waste refers to the uneconomical, inefficient or ineffective use of resources, authorised or unauthorised, which results in a loss/wastage of public funds/resources." In addressing any complaint of serious and substantial waste, regard will be had to the true nature and materiality of the waste.

Serious and substantial waste is further defined as:

- *Absolute*: serious and substantial waste might be regarded in absolute terms where the waste is regarded as significant.
- *Systemic*: the waste indicates a pattern, which results from a system weakness within the public authority.
- *Material*: the serious and substantial waste is/was material in terms of the public authority's expenditure or a particular item of expenditure or is/was material to such an extent so as to affect a public authority's capacity to perform its primary functions.
- *Material by nature but not by amount*: the serious and substantial waste may not be material in financial terms but may be significant by its nature - that is, it may be improper or inappropriate.

Waste can take many forms, for example:

- misappropriation or misuse of public property
- the purchase of unnecessary or inadequate goods and services
- too many personnel being employed in a particular area, incurring costs which might otherwise have been avoided
- personnel 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 costs being clearly ineffective and inefficient.

Waste can result from things such as:

- the absence of appropriate safeguards to prevent the theft or misuse of public property
- purchasing procedures and practices which fail to ensure that goods and services are necessary and adequate for their intended purpose

- purchasing practices where the lowest price is not obtained for comparable goods or services.

Breach of the GIPA Act

"Government information contravention" is defined in the PID Act as conduct of a kind that constitutes a failure to exercise functions in accordance with any provision of the [Government Information \(Public Access\) Act 2009](#).

That could include:

- destroying, concealing or altering records to prevent them from being released
- knowingly making decisions that are contrary to the legislation
- directing another person to make a decision that is contrary to the legislation.

Flow chart of the internal reporting process

