

Developing your Public Interest Disclosure policy

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What this guideline covers

Under section 42 of the *Public Interest Disclosures Act 2022 (PID Act)*, all agencies must have a public interest disclosure (**PID**) policy.

Section 72 of the PID Act sets out the NSW Ombudsman's functions under the PID Act. One of those functions is to publish guidelines and other materials to assist agencies with their functions under the PID Act.

This guideline contains a model PID policy (**Model Policy**) which agencies can adopt, as well as guidance on developing their PID policy based on the Model Policy.

Agencies can alternatively develop their own PID policy not based on the Model Policy, but if they do, they still must have regard to any relevant Ombudsman's guidelines (including those set out in the Model Policy).

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NSW Ombudsman, Level 24, 580 George Street, Sydney NSW 2000

Email pidadvice@ombo.nsw.gov.au

Web www.ombo.nsw.gov.au

General inquiries 02 9286 1000

Toll free (outside Sydney metro) 1800 451 524

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How to use the Model Policy

If an agency uses the Model Policy, it should adapt the policy so that it is suitable for the agency's context and aligns with the agency's governance structures around policy development. This means an agency should consider:

- the agency's agreed format and commonly used terms for internal policies
- the agency's process for policy development (including consultation, approval and implementation)
- whether there is anything unique to the agency that needs to be included in the PID policy but is not in the Model Policy
- the agency's established processes for dealing with public interest disclosures.

How to adapt the Model Policy to your agency's needs

Using the 'Guidance' sections throughout the Model Policy

These sections contain drafting guidance and examples of agency specific information that should be included in each section of the policy.

Agencies should consider existing relevant policies and procedures within the agency when adapting the Model Policy.

Agencies should also consider their staff and relevant volunteers, subcontractors and contractors to whom their policy will apply and ensure the language used in the PID policy will make sense to those people. This is an opportunity for agencies to add agency specific information that might assist the PID policy to be well understood, adopted and appropriately applied.

Aligning the PID policy with other relevant agency policies

The PID policy will be one of a suite of internal policy and procedures that an agency may have on how it deals with misconduct matters, internal grievances and complaints, integrity issues and code of conduct issues.

When adopting the Model Policy, agencies should ensure all relevant policies are aligned, consistent and use common language where possible.

Arrangements for other agencies or entities to exercise an agency's PID functions

Under section 81 of the PID Act, an agency can arrange for:

- another agency to exercise its functions under the Act on behalf of the agency
- an entity, which is not an agency, to exercise some or all of the following functions or responsibilities on its behalf:
 - the function of receiving voluntary PIDs
 - the function of dealing with voluntary PIDs through investigation
 - the agency's responsibilities to ensure their staff are trained under the PID Act.

These details must be published prominently on the agency's website and intranet, and notification of them given to the NSW Ombudsman.¹

An agency can only enter into an arrangement with an entity that is not an agency if the arrangement is 'in accordance' with its PID policy.² This means that the arrangements must be clearly provided for in the policy.

1. *Public Interest Disclosures Act 2022*, s 81(4).

2. *Public Interest Disclosures Act 2022*, s 81(3).

Summary of what must be included in an agency's PID policy

If an agency chooses to develop its own PID policy it must ensure that the policy includes the mandatory information and procedures outlined in section 43 of the PID Act, and that it is developed having regard to relevant Ombudsman's guidelines.

Topic	Procedures that must be included in an agency's PID policy
Acknowledging receipt of voluntary PIDs, providing information to makers of voluntary PIDs and dealing with voluntary PIDs (s 43(1)(a)–(b))	Specify procedures for: <ul style="list-style-type: none"> • acknowledging receipt of voluntary PIDs • providing information to the makers of voluntary PIDs • dealing with disclosures that are or may be voluntary PIDs.
Risk management (s 43(1)(c))	Detail the agency's procedures for assessing and minimising the risk of detrimental action, other than reasonable management action, being taken against a person as a result of a voluntary PID being made.
Detrimental action (s 43(1)(d))	Detail the agency's procedures for dealing with allegations that a detrimental action offence has been committed by or against a public official associated with the agency.
Maintaining confidentiality and protections (s 43(1)(e) and (3))	Detail the agency's procedures for maintaining confidentiality in relation to voluntary PIDs and protecting the identity of the makers of voluntary PIDs. Include information about protections available under the PID Act to makers of voluntary, mandatory and witness PIDs.
Corrective action (s 43(1)(f))	Specify the agency's procedures for taking appropriate corrective action in response to findings of serious wrongdoing or other misconduct that arise from voluntary PIDs relating to the agency.
Record-keeping (s 43(1)(g))	Outline the agency's record-keeping procedures including how information is stored and confirm that security/access levels will be applied to all communications regarding disclosures made in accordance with the PID Act.
Reporting obligations (s 43(1)(g))	Specify the agency's procedures for reporting in relation to voluntary PIDs to the NSW Ombudsman and how the agency will prepare its annual return.
Establishing internal oversight and complying with the PID Act (s 43(1)(h)–(i))	Provide details about how the agency will ensure it complies with the PID Act, including who or what business unit has internal oversight over compliance with the PID Act.
Roles and responsibilities (s 43(2))	Specify the responsibilities under the PID Act given to: <ul style="list-style-type: none"> • the head of the agency • disclosure officers for the agency

	Specify the responsibility imposed by section 51(1) on managers of public officials associated with the agency.
List of disclosure officers (s 43(4))	Prominently include a list identifying the agency's disclosure officers by class, position, role or name, as well as information enabling them to be contacted.

Model Public Interest Disclosure Policy

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Purpose

All agencies in NSW are required to have a Public Interest Disclosure (**PID**) Policy under section 42 of the *Public Interest Disclosures Act 2022 (PID Act)*.

At [agency name] we take reports of serious wrongdoing seriously. We are committed to building a 'speak up' culture where public officials are encouraged to report any conduct that they reasonably believe involves wrongdoing.

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

This policy sets out:

- how [agency name/we] will support and protect you if you come forward with a report of serious wrongdoing
- how we will deal with the report and our other responsibilities under the PID Act
- who to contact if you want to make a report
- how to make a report
- the protections which are available to you under the PID Act.

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.

This policy should be read in conjunction with [names and links to the agency's relevant policies such as a Code of Conduct, documents articulating the agency's values and principles, internal policies on grievance handling, misconduct matters, and dealing with internal fraud and corruption].

Guidance: By articulating the *purpose* of the PID Policy, agencies have an opportunity to demonstrate their commitment to the principles in the PID Act.

It is important to create a positive and safe environment so that employees feel they can come forward and make reports, and that the agency will take active steps to protect and support them if they do so. It is also important to reassure employees that reporting wrongdoing is a normal part of working for the agency and that it is consistent with the agency's approach to upholding the integrity of the agency.

Agencies can choose to adopt the *purpose* section above or can draft their own *purpose* section. If an agency chooses to draft its own *purpose* section, wording should be included that confirms the following:

- the importance of the PID Policy and how it aligns with the existing processes in place to detect serious wrongdoing
- that the agency encourages employees (and the relevant volunteers, contractors and subcontractors) to report serious wrongdoing and other misconduct

- that the agency is committed to supporting and protecting people that report serious wrongdoing and that detrimental action against reporters will not be tolerated
- that everyone in the agency has a responsibility to speak up and act in the public interest by doing so, and that the agency will in turn, ensure that reporters are protected.

Accessibility of this policy

This policy is available on [our/agency name] publicly available website as well as on the [intranet/insert name of the agency's intranet].

A copy of the policy is also sent to all staff of [agency name] on their commencement. A hard copy of the policy can be requested from [position or unit].

Guidance: Under section 47 of the PID Act, agencies have to prominently publish the PID policy on the agency's public website and the agency's intranet. If the agency does not have a public website or an intranet, they have to otherwise ensure that it is readily accessible to all public officials associated with the agency.

In the section 'Accessibility of this policy' agencies should include how the policy will be made available if it does not have a public website or intranet.

Agencies can provide more specific information here about the precise location of the policy to assist staff to locate it.

Who does this policy apply to?

This policy applies to, and for the benefit of, all public officials in NSW. You are a public official if you are:

- a person employed in or by an agency or otherwise in the service of an agency
- a person having public official functions or acting in a public official capacity whose conduct or activities an integrity agency is authorised by another Act or law to investigate
- an individual in the service of the Crown
- a statutory officer
- a person providing services or exercising functions on behalf of an agency, including a contractor, subcontractor or volunteer
- an employee, partner or officer of an entity that provides services, under contract, subcontract or other arrangement, on behalf of an agency or exercises functions of an agency, and are involved in providing those services or exercising those functions
- a judicial officer
- a Member of Parliament (**MP**), including a Minister
- a person employed under the *Members of Parliament Staff Act 2013*.

The [title of the head of the agency], other nominated disclosure officers and managers within [agency name] have specific responsibilities under the PID Act. This policy also provides information on how people in these roles will fulfil their responsibilities. Other public officials who

work in and for the public sector, but do not work for [agency name] may use this policy if they want information on who they can report wrongdoing to within [agency name].

Guidance: Agencies should modify ‘Who does this policy apply to’ to ensure it is applicable’ in the context of the agency.

Agencies can include specific types of public officials who they have in their agency or who are associated with their agency. For example, an agency may consider highlighting that staff of specific private entities that exercise functions on behalf of the agency are public officials. A full list of who is a public official is found in section 14 of the PID Act. Further guidance can be found in the Ombudsman guideline ‘Core concepts in the PID Act’.

If the agency engages consultants to assist the agency with their work, it should be noted that these consultants are not considered public officials under the PID Act.

Agencies can also identify here what is not covered by this policy with reference to other existing policies, such as policies on how a member of the public can complain about the agency or on how to deal with personal work-related grievances.

Who does this policy not apply to?

This policy does not apply to:

- people who have received services from an agency and want to make a complaint about those services
- people, such as contractors, who provide services to an agency. For example, employees of a company that sold computer software to an agency.

This means that if you are not a public official, this policy does not apply to your complaint (there are some circumstances where a complaint can be deemed to be a voluntary PID, see section 1(i) of this policy for more information).

However, you can still make a complaint to [agency name/us]. This can be done by:

Guidance: Agencies should include information about complaint processes for people who are not public officials but want to make a complaint about the agency. This should include links to complaint webpages or phone numbers.

Compliance with the PID Act

Guidance: Agencies can include in this section information about the review process for this policy, including:

- the policy review schedule
- who will review the policy and who will approve the version of the policy
- who can be contacted if an error or issue is found in the policy
- who will monitor the policy and consider whether it is meeting its purpose.

What is contained in this policy?

This policy will provide you with information on the following:

- ways you can make a voluntary PID to [agency name] under the PID Act
- the names and contact details for the nominated disclosure officers in [agency name]
- the roles and responsibilities of people who hold particular roles under the PID Act and who are employees of [agency name]
- what information you will receive once you have made a voluntary PID
- protections available to people who make a report of serious wrongdoing under the PID Act and what we will do to protect you
- [agency name] procedures for dealing with disclosures
- [agency name] procedures for managing the risk of detrimental action and reporting detrimental action
- [agency name] record-keeping and reporting requirements
- how [agency name] will ensure it complies with the PID Act and this policy.

Guidance: The content contained in this section is what agencies must include in their PID policy under section 43 of the PID Act. If an agency has included more procedures or information in its PID policy outside of the mandatory topics, then these topics should be listed here.

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

- confidentially contact a nominated disclosure officer within [agency name]
- contact the PID Advice Team within the NSW Ombudsman by phone: (02) 9286 1000 or email: pidadvice@ombo.nsw.gov.au, or
- access the NSW Ombudsman's PID guidelines which are available on its website.

If you require legal advice with respect to the PID Act or your obligations under the PID Act, you may need to seek independent legal advice.

1. How to make a report of serious wrongdoing

(a) Reports, complaints and grievances

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

Some internal complaints or internal grievances may also be PIDs, as long as they have the features of a PID. If an internal complaint or grievance is a report of serious wrongdoing, we will consider whether it is a PID. If it is a PID, we will deal with it as set out in this policy, but we will also make sure we follow our [name of relevant policies].

It is important that we quickly recognise that we have received a PID. This is because once a PID is received, the person who has made the report is entitled to certain protections and we have certain decisions that we have to make on how we will deal with the PID and how we will protect and support the person who has made the report.

Guidance: This section is an opportunity for agencies to provide the following information which is relevant to the agency:

- general information about how it deals with complaints, internal grievances and other misconduct matters
- that staff should report all wrongdoing and misconduct, not only reports of serious wrongdoing as defined under the PID Act, and that the agency will deal with these appropriately even if they are not a PID
- that a complaint or a grievance may also be a PID
- the avenues to report all types of wrongdoing and misconduct within the agency.

(b) When will a report be a PID?

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

2. *Voluntary PID*: This is a PID where a report has been made by the public official because they decided, of their own accord, to come forward and disclose what they know.
3. *Mandatory PID*: This is a PID where the public official has made 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.
4. *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. People who make a mandatory PID or a witness PID are still entitled to protection. More information about protections is available in section 2 of this policy.

You can find more information about mandatory and witness PIDs in the Ombudsman's guidelines 'Dealing with mandatory PIDs' and 'Dealing with witness PIDs'.

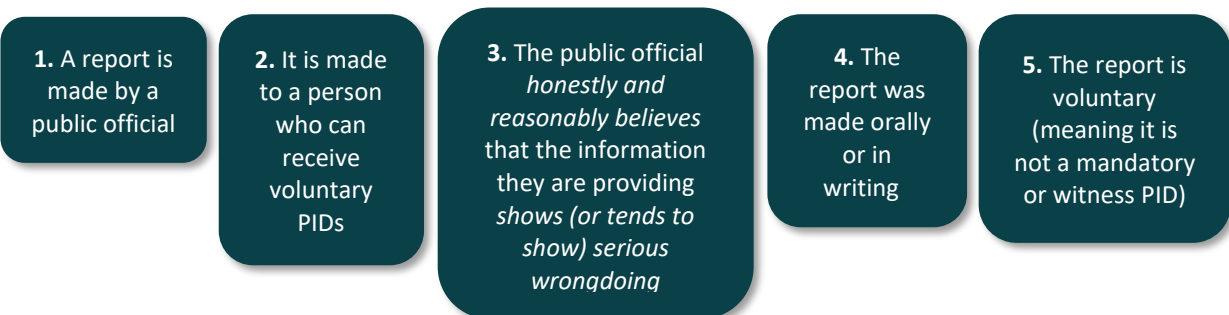
Guidance: Some agencies are more likely than others to receive mandatory PIDs, particularly if they have staff with certain legal obligations to report serious wrongdoing. Those agencies can include further information here about how mandatory PIDs will be dealt with and/or link to other relevant policies and legislative provisions.

Agencies can also choose to include some information on how they will generally deal with witness PIDs or reference any policies they have regarding conducting internal investigations.

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

They involve a public official making a report because they have information that they believe shows (or tends to show) serious wrongdoing, where they are not under a legal obligation to make that report and where it is not an ordinary part of their role 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 the report has all five features, it is a voluntary PID.

You will not be expected to prove that what you reported actually happened or is serious wrongdoing. You *do* have to honestly believe, on reasonable grounds, that the information you are reporting shows or tends to show serious wrongdoing.

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

If we make an error and do not identify that you have made a voluntary PID, you will still be entitled to the protections under the PID Act.

If you make a report and believe we have made an error by not identifying that you have made a voluntary PID, you should raise this with a nominated disclosure officer or your contact officer for the report. If you are still not satisfied with this outcome, you can seek an internal review or we make seek to conciliate the matter. You may also contact the NSW Ombudsman. Further information on rights to internal review and conciliation is found in section 7 of this policy.

(c) Who can make a voluntary PID?

Any public official can make a voluntary PID — see ‘Who this policy applies to’. You are a public official if:

- you are employed by [agency name]

- you are a contractor, subcontractor or volunteer who provides services, or exercises functions, on behalf of [agency name], or
- you work for an entity (such as a non-government organisation) who is contracted by [agency name] to provide services or exercise functions on behalf of [agency name] — if you are involved in undertaking that contracted work.

A public official can make a PID about serious wrongdoing relating to *any* agency, not just the agency they are working for. This means that we may receive PIDs from public officials outside our agency. It also means that you can make a PID to any agency, including an integrity agency like the Independent Commission Against Corruption (ICAC) and the NSW Ombudsman. Annexure B of this policy has a list of integrity agencies.

Guidance: Agencies should edit this text so that it covers all public officials associated with the agency and makes sense to people who work in the agency.

Agencies can include specific types of public officials that they have in their agency or who are associated with their agency and examples to explain the concept.

For example, they may have a practice of engaging private entities to carry out their functions to the extent that it warrants being highlighted in the policy. A full list of who is a public official is found in section 14 of the Act. Further guidance can be found in the Ombudsman’s guideline ‘Core concepts in the PID Act’.

If the agency engages consultants to assist the agency with their work, it should be noted that these consultants are not considered public officials under the PID Act.

This section should be consistent with the section of this policy ‘Who does this policy apply to?’.

(d) What is serious wrongdoing?

Reports must be of one or more of the following categories of *serious wrongdoing* to be a voluntary PID (in addition to having the other features set out here). 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 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.

When you make your report, you do not need to state to [us/agency name] what category of serious wrongdoing you are reporting or that you are reporting serious wrongdoing.

Guidance: Agencies should consider providing examples of serious wrongdoing that are more directly linked to the work undertaken by the agency. Agencies may also reference the Ombudsman’s guideline ‘What is serious wrongdoing?’

(e) Who can I make a voluntary PID to?

For a report to be a voluntary PID, it must be made to certain public officials.

Making a report to a public official who works for [agency name]

You can make a report inside [agency name] to:

- [head of agency]
- a disclosure officer for [agency name] — a list of disclosure officers for [agency name] and their contact details can be found at Annexure A of this policy
- your manager — this is the person who directly, or indirectly, supervises you. It can also be the person who you directly, or indirectly, report to. You may have more than one manager. Your manager will make sure that the report is communicated to a disclosure officer on your behalf or may accompany you while you make the report to a disclosure officer.

Guidance: If an agency has arranged for an entity to receive voluntary PIDs under section 81(3)(a) of the PID Act, this should be recorded here as a reporting pathway.

There are different meanings of manager for different types of public officials under section 15 of the PID Act. Guidance should be provided on who a manager is for the employees of the agency:

- for a public official who is a *police officer* — a police officer who is of the rank of sergeant or above and is more senior in rank than the public official
- for a person employed under the *Members of Parliament Staff Act 2013* — the chief of staff of the political office holder or Member of Parliament by whom the person is employed
- for a public official who is a person *providing services or exercising functions on behalf of an agency* (including a contractor, subcontractor or volunteer) or an employee, partner or officer of an entity that provides services on behalf of an agency or exercises functions of an agency — their manager is taken to be the public official in that agency who oversees those services or functions, or who manages the relevant contract or volunteering arrangement
- for a person *declared to be a public official in the PID Regulations* — a person declared by the regulations to be the manager of the public official for the purposes of the PID Act
- for *all other public officials* — this is the person to whom the public official reports directly or indirectly, or who supervises them directly or indirectly. Agencies can include examples specific to their operations, for example if they operate on a matrix reporting model or if they have shift supervisors.

Making a report to a recipient outside of [agency name]

You can also make your report to a public official in another agency (meaning an agency you do not work for) or an integrity agency. These include:

- the *head of another agency* — this means the head of any public service agency
- an *integrity agency* — a list of integrity agencies is located at Annexure B of this policy
- a *disclosure officer for another agency* — ways to contact disclosure officers for other agencies is located in an agency's PID policy which can be found on their public website
- a *Minister or a member of a Minister's staff* but the report *must be made in writing*.

If you choose to make a disclosure outside of [agency name], it is possible that your disclosure will be referred back to [agency name/us] so that appropriate action can be taken.

Making a report to a Member of Parliament 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 must have first made substantially the same disclosure (described here as a 'previous disclosure') to someone who can receive disclosures.
- The previous disclosure must be 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.
- You did not receive the following from [agency name]:
 - notification that [agency name] will not investigate the serious wrongdoing and will also not refer the previous disclosure to another agency, or
 - the following information at the end of the investigation period:
 - notice of [agency name] decision to investigate the serious wrongdoing
 - a description of the results of an investigation into the serious wrongdoing
 - details of proposed or recommended corrective action as a result of the previous disclosure or investigation.

Investigation period means:

- after six months from the previous disclosure being made, or
- after 12 months 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.

(f) What form should a voluntary PID take?

You can make a voluntary PID:

- *in writing* — this could be an email or letter to a person who can receive voluntary PIDs.
- *orally* — have a private discussion with a person who can receive voluntary PIDs. This can be face-to-face, via telephone or virtually.
- *anonymously* — write an email or letter or call a person who can receive PIDs to make a report without providing your name or anything that might identify you as the maker of the

report. A report will only be considered anonymous if there is no reasonable or practical way of communicating with the person making the report. Even if you choose to remain anonymous, you will still be protected under the PID Act. It may be difficult, however, for [us/agency name] to investigate the matter(s) you have disclosed if we cannot contact you for further information.

Guidance: Agencies should include details of any procedures that have been established to facilitate reporting and include those as a way employees can make reports. For example:

- if an agency has created an online reporting portal, a dedicated phone line or email address to which reports can be made
- if the responsibility of receiving voluntary PIDs has been delegated to another entity under section 81(3)(a) of the PID Act, information about how a report can be made to that entity.

(g) What should I include in my report?

You should provide as much information as possible so we can deal with the report effectively. The type of information you should include is:

- date, time and location of key events
- 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 explanation of the matter you are reporting
- how you became aware of the matter you are reporting
- possible witnesses
- other information you have that supports your report.

(h) What if I am not sure if my report is a PID?

You should report all wrongdoing you become aware of regardless of whether you think it is serious wrongdoing. It is important for [us/agency name] to understand what is or may be occurring.

We are then responsible for making sure your report is handled appropriately under the PID Act, or if it is not a PID, in line with our other procedures. Even if your report is not a PID, it may fall within another one of the agency's policies for dealing with reports, allegations or complaints.

(i) Deeming that a report is a voluntary PID

The [head of agency/delegate] 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'.

By deeming that a report is a voluntary PID, it ensures that reporters are provided with protections under the PID Act.

If you make a report that has not met all the requirements of a voluntary PID, you can refer your matter to [head of agency/delegate] to request that they consider deeming your report to be a voluntary PID.

A decision to deem a report to be a voluntary PID is at the discretion of the [head of agency/delegate]. For more information about the deeming power, see the Ombudsman's guideline 'Deeming that a disclosure is a voluntary PID'.

Guidance: Agencies should include information about the process for referring a report for consideration for it to be deemed a voluntary PID. If the deeming power has been delegated, details of the delegate should be provided.

(j) Who can I talk to if I have questions or concerns?

Guidance: This should include contact details for business units or disclosure officers who can provide further information so that concerns can be addressed. You should include information about how someone can do this confidentially.

2. Protections

(a) How is the maker of a voluntary PID protected?

When you make a voluntary PID you receive special protections under the PID Act.

We are committed to taking all reasonable steps to protect you from detriment as a result of having made a PID. We are also committed to maintaining your confidentiality as much as possible while the PID is being dealt with.

We will not tolerate any type of detrimental action being taken against you because you 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 cannot 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 [agency] that concerns serious wrongdoing relating to [agency] has been made, [we/agency name] 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 unlawful 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.

Guidance: Agencies should provide agency specific context relating to the mandatory reports that staff are required to make as part of their role. Information about secrecy and confidentiality provisions relevant to the agency's work should also be included.

- *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.

Guidance: Under section 43(3)(a) of the PID Act, agencies must include information about the protections available to makers of voluntary PIDs.

(b) Protections for people who make mandatory and witness PIDs

Apart from PIDs that are made voluntarily by public officials, there are other types of reports 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. 	✓	✓

Guidance: Under section 43(3)(b) of the PID Act, agencies must include information about the protections available to makers of witness and mandatory PIDs in an agency’s PID policy.

3. Reporting detrimental action

If you experience adverse treatment or detrimental action, such as bullying or harassment, you should report this immediately. You can report any experience of adverse treatment or detrimental action directly to [agency/us], or to an integrity agency. A list of integrity agencies is located at Annexure B of this policy.

Guidance: Agencies should explain how people who experience detrimental action can alert the agency. This may be by contacting a disclosure officer or a particular unit within the agency. Agencies should also include ways a person can report detrimental action, that is, by email and phone, and provide those contact details.

4. General support

Guidance: Agencies should list what supports will be made available to people who have made a report and how they can access these supports.

Agencies may refer to the NSW Ombudsman if an employee has questions about the PID Act and reporting generally.

For example, agencies should allocate to the maker of the report a person who will be their key contact person and who will take steps to protect their interests, for example, if they are at risk of detrimental action.

Agencies may also link the person who has made the report to wellbeing support through the Employee Assistance Program or another program.

5. Roles and responsibilities of [agency name] employees

Certain people within [agency name] have responsibilities under the PID Act.

[Head of agency]

(a) The [head of agency] is responsible for:

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

(b) Disclosure officers

Disclosure officers are responsible for:

- receiving reports from public officials
- receiving reports when they are passed on to them by managers
- ensuring reports are dealt with appropriately, including by referring the matter to the appropriate complaint unit (if relevant)
- ensuring that any oral reports that have been received are recorded in writing.

Guidance: If an agency has designated other roles such as a 'Disclosure Coordinator' or 'Chief Disclosure Coordinator', then the responsibilities for those persons should also be listed in this section.

(c) Managers

The responsibilities of managers include:

- receiving reports from persons that report to them or that they supervise

- passing on reports they receive to a disclosure officer.

(d) All employees

All employees must:

- report suspected serious wrongdoing or other misconduct
- use their best endeavours to assist in an investigation of serious wrongdoing if asked to do so by a person dealing with a voluntary PID on behalf of [agency name]
- treat any person dealing with or investigating reports of serious wrongdoing with respect.

All employees must not take detrimental action against any person who has made, may in the future make, or is suspected of having made, a PID.

Guidance: These are the minimum roles under section 43(2) of the PID Act that must be included in an agency's PID policy (with the addition of 'all employees'). If agencies have given responsibilities to different persons, other roles or specific units within the agency, then this information should be included. Agencies should also modify any content to appropriately reflect the responsibilities of the head of agency and disclosure officers.

6. How we will deal with voluntary PIDs

(a) How [we/agency name] will acknowledge that we have received a report and keep the person who made it informed

When a disclosure officer in [agency name] receives a report which is a voluntary PID, or looks like it may be a voluntary PID, the person who made the report will receive the following information:

- You will receive 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/agency name] deals with the report
 - provide clear information on how you can access this PID policy
 - provide you with details of a contact person and available supports.
- If the report is a voluntary PID, we will inform you as soon as possible how we intend to deal with the report. This may include:
 - that we are investigating the serious wrongdoing
 - that we will refer the report to a different agency (if appropriate) to deal with the voluntary PID. If we do this, we will provide you with details of this referral
 - If we decide to not investigate the report and to not refer it to another agency for it to be investigated, we will tell you the reasons for this decision. We will also notify the NSW Ombudsman of this decision.
- If we decide to investigate the serious wrongdoing, we will provide you with updates on the investigation at least every three months. During this time, if you would like more frequent updates, you should contact the contact person who was nominated when you made the report.
 - If we investigate the serious wrongdoing, we will provide you with the following information once the investigation is complete:

- a description of the results of the investigation — that is, we will tell you whether we found that serious wrongdoing took place.
- information about any corrective action as a result of the investigation/s — this means we will tell you what action we took in relation to the person who engaged in the serious wrongdoing or if the serious wrongdoing was by our agency, what we have put in place to address that serious wrongdoing.
- 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 you. 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 you have made an anonymous report, in many cases we may not be able to provide this information to you.

Guidance: Under section 43(1)(b) of the PID Act, agencies must set out the procedures they have in place for what they will do as soon as a report is received by them and the procedures for providing information to the maker of a voluntary PID. This will include acknowledging that the report has been received, setting expectations with the person who made the report about the next steps, and how and when the agency will keep the maker of the report up to date. Agencies should also identify what support structures they will have in place to protect and support the maker of the report. This could include information about:

- the unit within the agency or the person that will update the maker (in many cases it will be the disclosure officer who received the report, or it may be the investigator to whom the matter is allocated)
- the expected timeframes for updates from the agency
- how the acknowledgment and updates will be provided, that is, by way of secure email, by phone discussions or virtually via Teams or another platform
- how the agency will engage with the maker of the report to establish whether they are at risk of detrimental action, whether they need support networks to be put in place and how this will be assessed on an ongoing basis.

(b) How [we/agency name] will deal with voluntary PIDs

Once a report that may be a voluntary PID is received [we/agency name] will look at the information contained in the report to see if it has the features of a voluntary PID. 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.

Guidance: Under section 43(1)(a) of the PID Act, agencies must outline its procedures for dealing with reports that are or may be voluntary PIDs. Agencies should outline what the process will be in the agency once a disclosure officer receives a PID.

Will it continue to be dealt with by that person, or will it be referred to a particular unit within the agency to assess the report and to allocate it to a suitable person?

Will the assessment undertaken be quality checked by someone else, such as by someone who works in the legal section?

Outlining this process here will help set the expectations of people who make a report as to what they can expect.

Your agency may have a slightly different process if a report is received by the head of the agency. If this is the case, then this should also be outlined here.

Report not a voluntary PID

Even if the report is not a voluntary PID, it will still need to be dealt with in a manner consistent with our [name of relevant internal complaints or grievance handling process] or through an alternate process.

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

If you are not happy with this assessment or otherwise disagree with it, you can raise it with the person who has communicated the outcome with you or a disclosure officer, request an internal review or request that the matter be conciliated. [We/agency name] can, but do not have to, request the NSW Ombudsman to conciliate the matter.

Guidance: Agencies should explain where the report will be referred and what supports will be offered. Agencies should also outline any specific processes/documents they have in relation to internal reviews and raising concerns about the assessment of a report.

Cease dealing with report as voluntary PID

[We/agency name] may stop dealing with a voluntary PID because it is not actually a voluntary PID (meaning it does not have all the features of a PID).

Guidance: Agencies should include the procedure they will follow when advising the maker of a report that they have ceased dealing with the report as a voluntary PID.

The PID Act states that agencies must provide reasons to the maker of a purported PID if the agency has ceased dealing with the report as a voluntary PID. A purported PID is one that is made to one of the recipients of voluntary PIDs set out in the PID Act, and it is not a witness or mandatory PID and the maker has stated it is a voluntary PID.

It is best practice to always notify makers of reports that an agency has ceased to deal with their matter as a voluntary PID.

Where the report is a voluntary PID

If the report is a voluntary PID:

- In most cases we will 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. There may be circumstances where we believe an investigation is not warranted — for example, if the conduct has previously been investigated.
- There may also be circumstances where we decide that the report should be referred to another agency, such as an integrity agency. For example, reports concerning possible corrupt conduct may be required to be reported to the ICAC in accordance with section 11 of the *Independent Commission Against Corruption Act 1988*.
- Before referring a matter, we will discuss the referral with the other agency, and we will provide you with details of the referral and a contact person within the other agency.
- If we decide not to investigate a report and to not refer the matter to another agency, we must let you know the reasons for this and notify the NSW Ombudsman.

Guidance: If an agency typically appoints an external investigator, the process for this should be outlined here. This should include who will continue to maintain contact with the maker of the report.

If an agency has a particular process for determining which matters will go down an investigation pathway, this should be mentioned here so that the expectations of the makers of reports are set from the beginning.

(c) How [we/agency name] 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.

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 [we/agency] 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 necessary and authorised under the PID Act.

We will put in place steps to keep the identifying information of the 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 maker of the report can be identified. We will do this by:

Guidance: Under section 43(1)(e) of the PID Act, an agency's PID policy must outline its procedures for maintaining confidentiality in relation to voluntary PIDs and protecting the maker's identity. Agencies should include what steps they will follow to maintain confidentiality. These could include:

- We will limit the number of people who are aware of the maker's identity or information that could identify them.
- If we must disclose information that may identify the maker of the PID, we will still not disclose the actual identity of the maker of the PID, unless we have their consent to do so.
- We will ensure that any person who does know the identity of the maker of a PID is reminded that they have a legal obligation to keep their identity confidential.
- We will ensure that only authorised persons have access to emails, files or other documentation that contain information about the identity of the maker.
- We will undertake an assessment to determine if anyone is aware of the maker's identity and if those persons have a motive to cause detrimental action to be taken against the maker or impede the progress of the investigation.
- We will provide information to the maker of the PID about the importance of maintaining confidentiality and advising them how best to protect their identity, for example, by telling them not to discuss their report with other staff.

If confidentiality cannot be maintained or is unlikely to be maintained, [we/agency name] will:

Guidance: Agencies should list the procedures that apply when confidentiality cannot be maintained. This could include:

- advising the person whose identity may become known
- updating the agency's risk assessment and risk management plan
- implementing strategies to minimise the risk of detrimental action
- providing additional supports to the person who has made the PID
- reminding persons who become aware of the 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.

(d) How [we/agency name] will assess and minimise the risk of detrimental action

[We/agency name] will not tolerate any detrimental action being taken by any person against a person who has made a PID, investigators, witnesses or the person the report is about.

[We/agency name] will assess and take steps to mitigate detrimental action from being taken against the maker of a voluntary PID, the person whose conduct is the subject of a PID, investigators and witnesses.

[We/agency name] will take steps to assess and minimise the risk of detrimental action by:

Guidance: Under section 43(1(c) of the PID Act, agencies must specify what steps they will undertake to assess and minimise the risk of detrimental action. Information that could be included in the procedures includes:

- explaining that a risk assessment will be undertaken, and a risk management plan will be created (including reassessing the risk throughout the entirety of the matter)
- providing details of the unit/role that will be responsible for undertaking a risk assessment
- explaining the approvals for risk assessment and the risk management plan, that is, rank or role of the person who has final approval
- explaining how the agency will communicate with the maker to identify risks
- listing the protections that will be offered, that is, the agency will discuss protection options with the maker which may including remote working or approved leave for the duration of the investigation
- outlining what supports will be provided.

Further information on assessing the risk of detrimental action is found in the Ombudsman's guideline 'Agencies — assessing and managing the risk of detrimental action'.

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.

(e) How [we/agency name] will deal with allegations of a detrimental action offence

If [we/agency name] become(s) aware of an allegation that a detrimental action offence has occurred or may occur, [we/agency name] 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
- refer any evidence of a detrimental action offence to the Commissioner of Police and the ICAC or the Law Enforcement Conduct Commission (whichever is applicable)
- notify the NSW Ombudsman about the allegation of a detrimental action offence being committed.

Guidance: Agencies should set out:

- who is responsible for making referrals about alleged detrimental action offences
- to whom the victim of detrimental action should speak to within the agency
- how the person who the alleged detrimental action has been taken against will be updated and what supports will be offered.

(f) What [agency name] will do if an investigation finds that serious wrongdoing has occurred

If, after an investigation, it is found that serious wrongdoing or other misconduct has occurred, [we/agency name] will take the most appropriate action to address that wrongdoing or misconduct. This is also known as corrective action.

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.

Guidance: Under section 43(1)(f) of the PID Act, agencies must include information about the procedure for taking corrective such as:

- who receives the findings of an investigation (this may change depending on the complexity of the investigation, and will be set out in the Terms of Reference or Investigation Plan)
- what steps will be taken to address any recommendations in the findings
- which person/business unit will be responsible for ensuring corrective action takes place
- how the maker will be notified of the proposed or recommended corrective action.

7. Review and dispute resolution

(a) Internal review

People who make voluntary PIDs can seek internal review of the following decisions made by [agency name]:

- that [agency name] is not required to deal with the report as a voluntary PID
- to stop dealing with the report because [we/agency name] decided it was not a voluntary PID
- to not investigate the serious wrongdoing and not refer the report to another agency
- to cease investigating the serious wrongdoing without either completing the investigation or referring the report to another agency for investigation.

[We/agency name] will ensure internal reviews are conducted in compliance with the PID Act.

If you would like to make an application for an internal review, you must apply in writing within 28 days of being informed of [our/agency's name] decision. The application should state the reasons why you consider [we/agency's name] decision should not have been made. You may also submit any other relevant material with your application.

Guidance: Agencies should include information about where internal review applications should be sent to, which person or unit within the agency will conduct the review and what timeframes the agency will set for completion of the review.

(b) Voluntary dispute resolution

If a dispute arises between [us/agency name] and a person who has made a report which is, or may be, a voluntary PID, we may request the NSW Ombudsman to conciliate the dispute. Conciliation is a voluntary process and will only be suitable for disputes where [we/agency name] and the maker of the report are willing to resolve the dispute.

8. Other agency obligations

(a) Record-keeping requirements

[We/agency name] must keep full and accurate records with respect to all information received in connection with the PID Act. This ensures that [agency name] complies with its obligations under the *State Records Act 1998*.

Guidance: Agencies should explain how information is stored and confirm that security/access levels will be applied to all communications regarding reports made in accordance with the PID Act.

(b) Reporting of voluntary PIDs and [agency name] annual return to the Ombudsman

Each year [we/agency name] provide an annual return to the NSW Ombudsman which includes:

- information about voluntary PIDs received by [agency name] during each return period (yearly with the start date being 1 July)
- action taken by [agency name] to deal with voluntary PIDs during the return period
- how [agency name] promoted a culture in the workplace where PIDs are encouraged.

Guidance: Agencies should explain:

- who is responsible for collecting information about voluntary PIDs and the other information captured in the annual return
- how that information is stored
- who prepares the annual return.

(c) How [we/agency name] will ensure compliance with the PID Act and this policy

Guidance: It is important for an agency to have mechanisms in place for monitoring the effectiveness of its PID policy and for ensuring compliance with the PID Act. An agency should list:

- what oversight arrangements will be in place at the agency and who will be responsible for this oversight
- the agency's compliance measures — will this be through regular audits and reporting (including review timeframes)?
- what measures the agency will take to address non-compliance
- whether reports about compliance will be provided to audit and risk committees.

Annexure A — Names and contact details of disclosure officers for [agency name]

Annexure B — List of integrity agencies

Integrity agency	What they investigate	Contact information
The NSW Ombudsman	Most kinds of serious maladministration by most agencies and public officials (but not NSW Police, judicial officers or MPs)	Telephone: 1800 451 524 between 9am to 3pm Monday to Friday Writing: Level 24, 580 George Street, Sydney NSW 2000 Email: info@ombo.nsw.gov.au
The Auditor-General	Serious and substantial waste of public money by auditable agencies	Telephone: 02 9275 7100 Writing: GPO Box 12, Sydney NSW 2001 Email: governance@audit.nsw.gov.au
Independent Commission Against Corruption	Corrupt conduct	Telephone: 02 8281 5999 or toll free on 1800 463 909 (callers outside Sydney) between 9am and 3pm, Monday to Friday Writing: GPO Box 500, Sydney NSW 2001 or faxing 02 9264 5364 Email: icac@icac.nsw.gov.au
The Inspector of the Independent Commission Against Corruption	Serious maladministration by the ICAC or the ICAC officers	Telephone: 02 9228 3023 Writing: PO Box 5341, Sydney NSW 2001 Email: oiicac_executive@oiicac.nsw.gov.au
The Law Enforcement Conduct Commission	Serious maladministration by the NSW Police Force or the NSW Crime Commission	Telephone: 02 9321 6700 or 1800 657 079 Writing: GPO Box 3880, Sydney NSW 2001 Email: contactus@lecc.nsw.gov.au
The Inspector of the Law Enforcement Conduct Commission	Serious maladministration by the LECC and LECC officers	Telephone: 02 9228 3023 Writing: GPO Box 5341, Sydney NSW 2001 Email: oilccec_executive@oilccec.nsw.gov.au
Office of the Local Government	Local government pecuniary interest contraventions	Email: olg@olg.nsw.gov.au
The Privacy Commissioner	Privacy contraventions	Telephone: 1800 472 679 Writing: GPO Box 7011, Sydney NSW 2001 Email: ipcinfo@ipc.nsw.gov.au
The Information Commissioner	Government information contraventions	Telephone: 1800 472 679 Writing: GPO Box 7011, Sydney NSW 2001 Email: ipcinfo@ipc.nsw.gov.au

