

Reporting to the Ombudsman

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What this guideline covers

Agencies are required under the *Public Interest Disclosures Act 2022* (**PID Act**) to report certain information about the voluntary public interest disclosures (**PIDs**) they have received, and how they have dealt with those voluntary PIDs, in an annual return to the Ombudsman. Agencies are also required to include in this annual return information about the measures they have taken during the reporting period to promote a culture in which PIDs are encouraged.

Agencies are required to notify the Ombudsman if they enter into an arrangement with another agency or another entity to exercise any of its functions under the PID Act, at the time this arrangement is entered into.

Agencies also have obligations under the PID Act to notify the Ombudsman in relation to detrimental action offences by, or against, persons associated with that agency or arising from a PID relating to that agency. An agency must also notify the Ombudsman if it refers evidence of a detrimental action offence to the relevant agencies named in the PID Act. The PID Act sets out when these notifications must occur.

This guideline provides an overview of the reporting and notification requirements on agencies. It includes:

- what is to be included in an agency's annual return
- the information that agencies should keep about voluntary PIDs and measures taken to promote a speak up culture, so as to be able to complete their annual return
- the information an agency should report to the Ombudsman about arrangements it enters into to have other agencies and entities undertake their functions under the PID Act
- the information an agency should report to the NSW Ombudsman about detrimental action offences and,
- when agency reporting and notifications should be made to the NSW Ombudsman.

Annual return to the Ombudsman

Under section 78(1) of the PID Act agencies must provide the Ombudsman with an annual return. Clause 5 of the *Public Interest Disclosures Regulation 2022* (**Regulation**) provides detailed information about the information that is to be provided in the annual return. Clause 6 of the Regulation specifies the form in which the annual return is to be made.

The period which is to be reported upon (the return period) is the 12 months to 30 June. This means that usually, the return period will be 1 July to 30 June. In 2024, the return period will be 1 October 2023 to 30 June 2024, as the PID Act commences on 1 October 2023.

This annual return must be provided within 30 days of 30 June each year.¹ The Ombudsman can approve a later time for this to be provided, and would only do so in exceptional circumstances which prevented the agency from providing the return on the legislated date. If agencies require an extension of time, a request should be made in writing to pid@ombo.nsw.gov.au including the reasons why an extension is required. Any request for an extension should be made well before the due date (30 July).

When preparing an annual return, agencies must divide voluntary PIDs into the following two categories and report separately on each:

- Category 1 – voluntary PIDs relating to the agency. A voluntary PID relates to an agency if the disclosure is about serious wrongdoing:
 - (a) by the agency
 - (b) by a public official associated with the agency, or
 - (c) that otherwise affects, or might affect, the exercise of the functions of the agency.²
- Category 2 – other voluntary PIDs.³ These would include:
 - (a) Voluntary PIDs relating to another agency but received by the reporting agency. For example:
 - If Agency A receives a disclosure about serious wrongdoing relating to Agency B and refers that disclosure to Agency B to be dealt with, Agency A will still need to report that disclosure under category 2.
 - If ICAC receives a disclosure about serious maladministration and refers that disclosure to the Ombudsman for the disclosure to be dealt with, ICAC will still need to report that disclosure under category 2.
 - (b) Voluntary PIDs that relate to two or more agencies. For example, if a disclosure is about the conduct of a public official that occurred while that public official was working at different agencies.
 - (c) Voluntary PIDs dealt with by the reporting agency as a result of being in an arrangement under section 81 of the PID Act.

If an agency has arranged to provide an annual return on behalf of another agency or group of agencies, it must give the Ombudsman separate annual returns for each agency.⁴

For information on what is to be included in an agency's annual return see table Information to be included in an agency's annual return.

Important note: The Ombudsman is building a portal through which the annual returns are to be made. This portal will be available for agencies before 30 June 2024. To prepare for this, agencies should maintain the detailed records as outlined in the table below in relation to each voluntary PID received by the agency.

1. *Public Interest Disclosures Act 2022* s 78(2).

2. *Public Interest Disclosures Act 2022* s 20(3).

3. *Public Interest Disclosures Regulation 2022* cl 6(1).

4. *Public Interest Disclosures Regulation 2022* cl 6(2).

Information to be included in an agency's annual return

<p>Information about measures taken to promote a speak up culture</p>	<p>Include information about measures taken by the agency during the return period to promote a culture in which PIDs are encouraged and public officials feel confident coming forward with reports of serious wrongdoing.⁵ This should include, but not be limited to:</p> <ul style="list-style-type: none"> • steps taken to ensure all public officials associated with the agency have awareness of the matters set out in s 48(1) of the PID Act • steps taken to ensure the persons listed in s 48(2) of the PID Act have received the necessary training.
<p>Voluntary PIDs</p>	<p>Include the following information about each voluntary PID received or dealt with by the agency during the return period:</p> <ul style="list-style-type: none"> • how the agency received the disclosure (whether it was made in writing or orally, whether it was anonymous, and who received the disclosure and whether it was a direct disclosure or referred from another agency) • the date on which the agency received the disclosure • whether the disclosure was a purported PID (the definition of purported PID can be found below under 'Purported PIDs' within this table) • the nature of the serious wrongdoing the disclosure was about (this means identifying the type(s) of serious wrongdoing identified in the disclosure (for example, corrupt conduct or serious maladministration) and a summary of the content of the disclosure) • the relationship between the maker of the disclosure and the public official whose serious wrongdoing the disclosure was about (this means identifying whether the public official subject of the disclosure was the supervisor of the maker (direct or indirect), supervised by the maker (directly or indirectly), a co-worker or any other relevant relationship) • whether the serious wrongdoing involved 1 public official or more than 1 public official – if more than one public official, the agency should specify which types of serious wrongdoing were attributed to each of the public officials in the report and the nature of the relationship between each public official and the maker) • action taken by the agency to deal with the disclosure (whether the disclosure was investigated, referred or ceased to be investigated), including the date on which the agency ceased to deal with the disclosure • if the agency investigated the serious wrongdoing - a description of the results of the investigation, and • corrective action taken, proposed to be taken or recommended to be taken by the agency.⁶ <p>Agencies are not expected to include identifying information about either the PID maker or any public official whose conduct is the subject of the PID in its annual return.</p> <p>Further information on voluntary PIDs can be found in the guideline <i>Dealing with voluntary PIDs</i>.</p>
<p>Purported PIDs</p>	<p>Information on purported PIDs that were not in fact PIDs:</p> <ul style="list-style-type: none"> • the number of disclosures received by the agency during the return period (this should specify whether these were direct disclosures made to the agency or referrals from another agency)

5. *Public Interest Disclosures Act 2022* s 78(3)(c).

6. *Public Interest Disclosures Regulation 2022* cl 5(1).

**Purported PIDs
(cont.)**

- the number of disclosures that were made by public officials
- the reasons the agency did not deal with, or ceased dealing with, each of the disclosures as a public interest disclosure.⁷

The term purported PID is defined in the Dictionary of the PID Act as a disclosure that is:

- made in compliance with section 27 of the PID Act — meaning the maker made the report to a recipient of voluntary PIDs
- not a mandatory PID or a witness PID and,
- stated by the maker of the disclosure to be a PID, whether or not it is in fact a PID.

7. *Public Interest Disclosures Regulation 2022* cl 5(2).

Notifications to be made to the Ombudsman

Agencies must notify the Ombudsman when a reportable event occurs. These notifications must occur as soon as possible after the reportable event occurs. The table below details each reportable event and the information that is to be provided to the Ombudsman in the notification.

The NSW Ombudsman is building a portal through which these notifications will be made. Until this portal is built, these notifications should be sent to pidadvice@ombo.nsw.gov.au with the subject line 'PID Reportable Event'.

Reportable event	Information to be provided to the Ombudsman	Timeframe
<p>Detrimental action offence:</p> <ul style="list-style-type: none"> - allegation of a detrimental action offence - referral of evidence of a detrimental action offence - outcome of a prosecution of a detrimental action offence 	<p>An agency must notify the Ombudsman as soon as reasonably practicable after:</p> <ul style="list-style-type: none"> • becoming aware of an allegation that a detrimental action offence has been committed by a public official associated with the agency • the agency has referred evidence to the Commissioner of the NSW Police Force, and either the Independent Commission against Corruption or the Law Enforcement Conduct Commission under s 34(1) of the PID Act. Further information can be found in guideline <i>Detrimental action offences and how to refer detrimental action offences to relevant agencies</i> • becoming aware of the outcome of a prosecution against a public official associated with the agency for the commission of a detrimental action offence • otherwise becoming aware of a detrimental action offence that has been committed or alleged and arises from a PID relating to the agency.⁸ <p>An agency is considered “aware” of one of the above matters if a disclosure officer for the agency is either aware or ought reasonably to be aware of the matter.⁹</p>	<p>These notifications should occur promptly. There should not be significant delay in notifying the Ombudsman.</p>
<p>Decision to cease or to not investigate a disclosure</p>	<p>If an agency makes one of the following decisions concerning a voluntary PID, it must provide written reasons to the Ombudsman explaining:</p> <ul style="list-style-type: none"> • its decision to neither investigate the relevant serious wrongdoing nor to refer the disclosure, or • its decision to cease investigating the relevant serious wrongdoing without 	<p>These written reasons must be provided to the Ombudsman as soon as reasonably practicable after a decision has been made. This means at the first available opportunity.</p>

8. *Public Interest Disclosures Act 2022* s 34(4).

9. *Public Interest Disclosures Act 2022* s 34(6).

Reportable event	Information to be provided to the Ombudsman	Timeframe
Decision to cease or to not investigate a disclosure (cont.)	<p>either completing the investigation or referring the disclosure.¹⁰</p> <p>The agency's reasons must also be provided to the maker of the PID.¹¹</p> <p>When providing written reasons to the Ombudsman, an agency should include the following:</p> <ul style="list-style-type: none"> • information about the disclosure, including how it was received and the content of the disclosure • a description of additional information/ documents received by the maker and/ or collected by the agency concerning the disclosure • what (if any) investigative steps were taken by the agency • reasons why the agency either did not investigate or ceased investigating the disclosure (without referring it to another agency to complete the investigation). 	
Delegation of functions of an agency to another agency	<p>The Ombudsman must be notified if an agency, under section 81(2) of the PID Act, arranges for another agency to exercise the agency's functions under the PID Act on behalf of the agency.¹²</p> <p>If an agency enters into an arrangement under section 81(2), it must also publish the details of the arrangement prominently on the agency's website and intranet (or otherwise make it readily accessible to all public officials associated with the agency).¹³</p>	<p>The Ombudsman should be notified after the arrangement has been entered into and the agency should provide the Ombudsman with a link to the agency's website where the details of the arrangement are published. This notification is to include which agencies have entered into the arrangement and which functions under the PID Act have been included. This should also specify which agency will be providing the annual return on behalf of the delegating agency.</p> <p>The Ombudsman should be notified when and if this arrangement is amended or comes to an end.</p>
Arrangement between an agency and an entity for that entity to exercise functions on behalf of an agency	An agency must notify the Ombudsman if an agency, under section 81(3) of the PID Act, enters into an arrangement with an entity (that is not an agency) and the arrangement allows the entity to exercise 1 or more of the following functions on behalf	The Ombudsman should be notified after the arrangement has been entered into and the agency should provide the Ombudsman with a link to the agency's website where the details of the arrangement are

10. *Public Interest Disclosures Act 2022* s 55(3).

11. *Public Interest Disclosures Act 2022* s 59(2)(c).

12. *Public Interest Disclosures Act 2022* s 81(4)(b).

13. *Public Interest Disclosures Act 2022* s 81(4)(a).

Reportable event	Information to be provided to the Ombudsman	Timeframe
<p>Arrangement between an agency and an entity for that entity to exercise functions on behalf of an agency (cont.)</p>	<p>of an agency:</p> <ul style="list-style-type: none"> • receiving voluntary PIDs • dealing with voluntary PIDs by investigating relevant serious wrongdoing, or • the provision of training under section 48 of the PID Act.¹⁴ <p>If an agency enters into one of these arrangements, it must also publish the details of the arrangement prominently on the agency’s website and intranet (or otherwise make it readily accessible to all public officials associated with the agency).¹⁵</p>	<p>published. This notification is to include the names of the parties to the arrangement and which functions under the PID Act have been included.</p> <p>The Ombudsman should be notified when and if this arrangement is amended or comes to an end.</p>

14. *Public Interest Disclosures Act 2022* s 81(4)(b).

15. *Public Interest Disclosures Act 2022* s 81(4)(a).

