

Oversight of the
***Public Interest
Disclosures Act 1994***
Annual Report 2021–22

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The Hon Matthew Mason-Cox MLC
President
Legislative Council
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The Hon Jonathan O'Dea MP
Speaker
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Parliament House
SYDNEY NSW 2000

Dear Mr President and Mr Speaker,

Public Interest Disclosures Oversight Annual Report

Enclosed is my annual report to Parliament under the *Public Interest Disclosures Act 1994 (NSW)* (the PID Act). This report meets the requirements of:

- (a) section 6B(3), which requires me to report on my work and activities under the Act for the 12 months ending 30 June each year, and
- (b) sections 6B(1)(e) and (f), which requires me to monitor, audit and report on the exercise of functions under, and on compliance with, the PID Act by public authorities.

In accordance with section 31AA of the *Ombudsman Act 1974*, I ask that you make this report public.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Paul Miller". The signature is fluid and cursive.

Paul Miller
NSW Ombudsman

9 December 2022



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Foreword

It is my privilege as the NSW Ombudsman to present the annual oversight report for the *Public Interest Disclosures Act 1994* (NSW) (the PID Act). This report outlines the activities undertaken by my office in supporting officials who make public interest disclosures (PIDs), in providing advice and education to the agencies that receive them, or whose conduct may be the subject of them, and in monitoring and auditing the operation of the PID Act.

The report also highlights key initiatives that we have carried out to date to prepare for the new Act, the *Public Interest Disclosures Act 2022* (NSW) (the PID Act 2022).

During the reporting year, my office continued to navigate the challenges posed by the COVID-19 pandemic. This report outlines how we were able to support agencies with online training to adapt to COVID-19 conditions, and to continue our audit and monitoring activities.

This year has seen some significant accomplishments, the most noteworthy being the passage of the PID Act 2022, which received assent on 13 April 2022. The Public Interest Disclosures Bill 2021 (the PID Bill) was tabled in Parliament in October 2021, four years after the NSW Government committed to introducing new legislation to address the recommendations made in the Report: *Review of the Public Interest Disclosures Act 1994* (Parliament of NSW, Report no 3/56 – October 2017) by the Committee on the Ombudsman, the Law Enforcement Conduct Commission, and the Crime Commission.

The PID Act 2022 contains fewer obstacles for potential whistleblowers, including permissible recipients of PIDs being expanded to now include a person's manager, and by protecting the makers of PIDs even if the disclosure is made to an agency which the PID does not relate to. It provides more comprehensive protections, including for witnesses and those involved in investigating PIDs, and there are duties on agencies to take appropriate steps to deal with the disclosures they receive. It also introduces enhanced requirements on agencies to report data about PIDs to my office, with mandatory notifications in certain circumstances whilst a PID is being dealt with.

I welcome the new PID Act and now look forward to supporting its implementation in the NSW public sector. We are confident it will better support a culture where public officials are encouraged to report serious wrongdoing, and have increased confidence that they will be protected if they do so.

Since the PID Act 2022 was passed through Parliament, we have begun the significant work of planning for the implementation of the Act. We have stood up a new dedicated unit, and recruited an Assistant Ombudsman, to lead the implementation. We are developing resources, including comprehensive PID Guidelines, training packages, advisory materials, and implementing a communication strategy, to ensure agencies are prepared and supported.

This report

The PID Act requires the Ombudsman to provide an annual report to the NSW Parliament on the Ombudsman's activities under s6B of the Act. Sections 6B(1)(e) and (f) of the PID Act require the Ombudsman to report to Parliament specifically on any monitoring and auditing activities.

This report meets those requirements and outlines the work we have undertaken to meet our responsibilities under the PID Act.

Part 1 briefly describes the PID Act, and the various roles and responsibilities outlined within it.

Part 2 details key information from reports about public interest disclosures provided to our office by public authorities and investigating authorities for the reporting year.

Part 3 provides an overview of our role to promote the objects of the PID Act, to provide training about the PID Act, and to advise and assist public authorities in meeting their obligations under it.

Part 4 covers my responsibilities as chair of the PID Steering Committee, and our provision of advice on the administration of the PID Act. It includes an overview of the work the PID Steering Committee has done to advise the government on the drafting of the PID Bill. It also highlights key initiatives that we are doing to prepare for the PID Act 2022, as well as a discussion about the role of managers under the new Act.

Part 5 provides an overview of our auditing work in the reporting year.

One of the Ombudsman's functions under the PID Act is to convene the PID Steering Committee, established under s 61A of the PID Act. In accordance with s 6A(6) of the PID Act a separate Annual Report of the PID Steering Committee will be presented to the Ministers responsible for administering the PID Act, being the Premier and the Attorney General.

Paul Miller

NSW Ombudsman



Part 1.

Public interest
disclosures

The aim of the PID Act is to encourage public officials to report serious wrongdoing in the public sector, by providing them with protections if they do so.

The object of the PID Act is to encourage and facilitate the disclosure, in the public interest, of:

- corrupt conduct
- maladministration
- serious and substantial waste
- government information contraventions, and
- local government pecuniary interest contraventions.

PIDs may be made by a public official to an authority concerned - being the authority the official works for or otherwise belongs to, and/or the authority whose conduct is the subject of the disclosure. Under the current PID Act, a disclosure to such an authority will be recognised as a PID, only if it is made to the principal officer of the authority or to a person who has been specified as a “disclosure officer” of the authority, under its internal PID reporting policy.

PIDs may also be made directly to the relevant investigating authority for particular types of wrongdoing – corrupt conduct to the Independent Commission Against Corruption (ICAC), maladministration to the NSW Ombudsman, and so on.

In certain limited circumstances, the PID Act recognises PIDs that are made to third parties – journalists and Members of Parliament. The PID Act requires public authorities to establish systems to deal with, and investigate, PIDs.

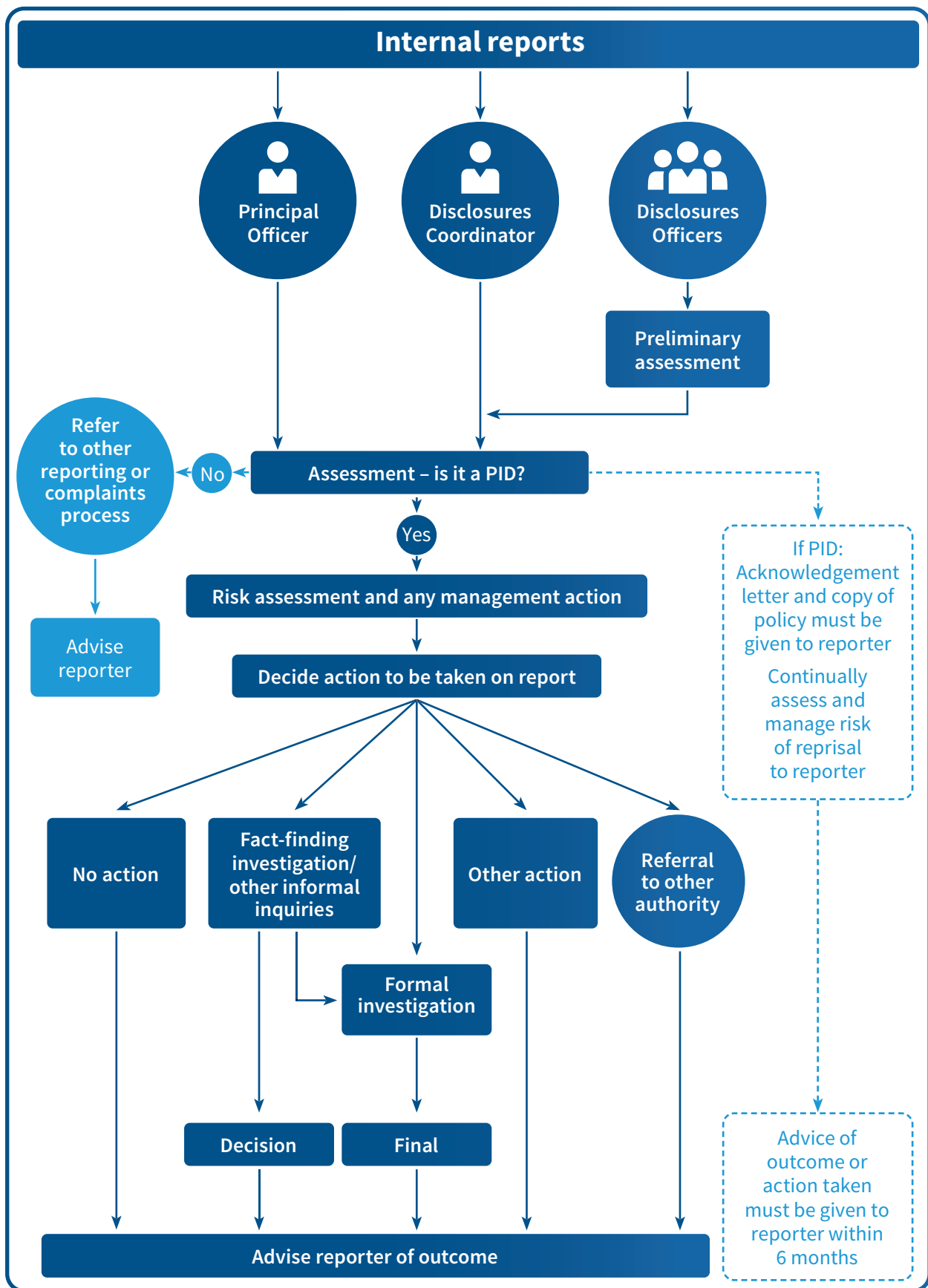
Roles and responsibilities in respect of public interest disclosures

Public authorities

Section 6E of the PID Act states that the principal officer, or other head of a public authority, is responsible for ensuring that:

- the public authority has a policy that includes procedures for receiving, assessing, and dealing with PIDs. This policy must have regard to guidelines developed by our office. [Guidelines](#) are available on the NSW Ombudsman website
- the staff of the public authority are aware of the policy and the protections under the PID Act
- the public authority complies with its policy, and its obligations, under the PID Act
- the policy designates officers to receive PIDs, commonly referred to as nominated disclosures officers.

Figure 1. The internal reporting process



Our model internal PID policy allows for a disclosures coordinator to be appointed. Together with the principal officer, they are responsible for:

- deciding whether to treat a report of wrongdoing as a PID, which they must do if it meets the criteria set out in the PID Act
- assessing the risks of reprisal and other detrimental action that a reporter may face and implementing strategies to mitigate any identified risks
- determining how to deal with a report, which may include: referring the disclosure; making informal inquiries; formally investigating the allegations; or taking no further action
- communicating with, and supporting, the reporter of the PID through the process.

Investigating authorities

Outside their own organisation, public officials can make PIDs directly to the following investigating authorities and in relation to different types of conduct:

- NSW Ombudsman Office
- NSW Audit Office
- ICAC
- NSW Information Commissioner
- Law Enforcement Conduct Commission (LECC)
- Office of Local Government (OLG)
- Inspector of the ICAC
- Inspector of the LECC
- Office of the Children’s Guardian¹.

These investigating authorities deal with PIDs in accordance with their own governing legislation. PIDs made to these authorities must also be made in accordance with such legislation.

The PID Steering Committee

The PID Act establishes the PID Steering Committee, a statutory advisory mechanism for key stakeholders to provide advice to the Ministers responsible for administering the PID Act, these being the Premier and the Attorney General.

The NSW Ombudsman is the chairperson of the Steering Committee. The other members of the Steering Committee are nominated representatives from the:

- NSW Audit Office
- ICAC

1. Since March 2020 under the *Children’s Guardian Act 2019* (NSW), the Office of the Children’s Guardian (OCG) was added as an investigating authority in s 4 of the PID Act. However, apart from the general provision permitting disclosures to be made to investigating authorities (s 8), there is no specific provision relating to the types of disclosures to be made to the OCG.

- Information Commissioner
- LECC
- OLG
- Office of the Children’s Guardian²
- Department of Premier and Cabinet
- The Public Service Commission
- The NSW Police Force.

The PID Steering Committee prepares an annual report on its work, which is required to be tabled by the responsible Minister in Parliament.

NSW Ombudsman

The Ombudsman has responsibility to oversight the PID Act. Our functions are to:

- promote public awareness and understanding of the PID Act and to promote its objectives
- provide information, advice, assistance, and training to public authorities, investigating authorities and public officials on any matters relevant to the PID Act
- issue guidelines and other publications to assist public authorities, investigating authorities and public officials
- monitor, and provide reports to Parliament on, the exercise of functions under the PID Act and compliance with the PID Act by public authorities
- audit, and provide reports to Parliament on, the exercise of functions under the PID Act and compliance with the PID Act by public authorities
- provide reports and recommendations about proposals for legislative and administrative changes to further the objectives of the PID Act.

In performing our statutory functions, we aim to:

- increase awareness of the procedures for making PIDs and the protections provided for by the PID Act
- improve the handling of disclosures and the protection and support for people who make them
- improve identification and remedying of problems and deficiencies revealed by disclosures
- ensure an effective statutory framework is in place for the making and management of disclosures and for the protection and support of the people who make them.

As an investigating authority, we also receive, investigate, and otherwise deal with PIDs made to our office about maladministration.

2. Since March 2020 under the *Children’s Guardian Act 2019* (NSW), the Office of the Children’s Guardian (OCG) was added as an investigating authority in s 4 of the PID Act. However, apart from the general provision permitting disclosures to be made to investigating authorities (s 8), there is no specific provision relating to the types of disclosures to be made to the OCG.

Part 2.

Public authorities:
reporting
public interest
disclosures

Under section 31 of the PID Act, public authorities are required to prepare a report of statistical information on their compliance with their obligations under the PID Act. This report must be submitted to the responsible Minister for the public authority and tabled in Parliament. In practice, most public authorities fulfil this obligation by including this information in their annual report.

Public authorities are required to provide us with a copy of their report. They are also required to provide us a 6-monthly report with this information.

The information public authorities must report on is detailed in regulation 4(2) of the *Public Interest Disclosures Regulation 2011* (PID Regulation), as follows:

- 1) the number of public officials who have made a PID to the public authority
- 2) the total number of PIDs received by the public authority and the number of PIDs received by the public authority relating to each of the following:
 - corrupt conduct
 - maladministration
 - serious and substantial waste of public money or local government money (as appropriate)
 - government information contraventions
 - local government pecuniary interest contraventions
- 3) the number of public interest disclosures finalised by the public authority
- 4) whether the public authority has a public interest disclosures policy in place
- 5) what actions the head of the public authority has taken to ensure that their staff awareness responsibilities under section 6E(1)(b) of the PID Act have been met.

Reports also need to identify the circumstances under which a PID was made; whether by public officials performing their day-to-day functions as public officials, under a statutory or legal obligation, or in any other circumstances.

Public Authority Reports

The information reported to us in 2021–22 is summarised below, with some comparison over a 3-year period.

It should be noted that there are limitations in the data which are detailed below.

Number of reports provided by public authorities in 2021–22

Table 1 shows the number of reports provided to our office for 2021–22, as at 13 October 2022.

Table 1. Reports provided by public authorities to our office

Reporting period	Number of identified public authorities	Number of statistical reports provided	Proportion of identified authorities
July–December 2021	399	362	91%
January–June 2022	399	331	83%

As noted in Table 1, some public authorities did not meet their reporting obligations (9% for the first 6-monthly report and 17% for the second 6-monthly report). Non-compliance with these reporting obligations is an issue that we have consistently highlighted since our first PID Oversight Report in 2011–12. This is despite our office adopting an active escalation process, with direct contact and reminders to agencies, to avoid the possibility of inadvertent non-compliance.

We note that all 10 of the NSW Government’s principal departments met their obligations and provided reports for both reporting periods.

Due to the data limitations noted below, and in particular the possibility that agencies are reporting as part of a ‘cluster arrangement’ which we are not aware of, we have chosen not to publicly identify agencies that appear to not have met their reporting obligations.

Going forward, under s 76(e) of the PID Act 2022, the Ombudsman will be required to include in the annual report a statement identifying any agencies that have failed to provide an annual return. Agencies will also have an obligation to advise us of any cluster arrangements, and other arrangements agencies have entered into, in accordance with which they will provide an annual return on behalf of other agencies. In these circumstances, they will be required to provide a separate annual return for each agency in that cluster or arrangement. Under s 78 of the PID Act 2022, agencies will be required to provide in their annual return information about the voluntary PIDs received by the agency during the return period, the action taken by the agency to deal with those matters and what measures they have taken to promote a culture in which PIDs are encouraged. Section 78 also provides for the regulations to further specify the information that is to be included in the annual return³.

We will implement a new external facing portal, which will facilitate the provision of these annual returns by agencies, as well as the other mandatory notifications which agencies must make to our office under the PID Act 2022. As at the time of writing, we are building the business requirements for this portal. This portal will be designed so as to ensure that complete data is received from agencies and that our office can rely on that data when undertaking its functions under the PID Act 2022.

Number of reports by public authorities identifying receipt of a PID

Most public authorities (79%) reported that they had not received any PIDs in 2021–22.

As shown in Table 2, the proportion of authorities that reported the receipt of at least one PID during the year has been relatively consistent over the past three reporting periods.

3. Schedule 3 of the PID Act 2022 sets out the Public Interest Disclosures Regulation 2022. Section 5 of these Regulations sets out further detailed information which an agency must provide in their annual return.

Table 2. Number of PIDs received as reported by public authorities by reporting year and percentage

Total number of PIDs Reported	2019–20 (%)	2020–21(%)	2021–22(%)
0	84	82	79
1	8	6	10
2 to 5	6	8	7
6 to 10	1	2	2
11 to 20	1	1	1
21+	1	1	1

Number of PIDs received

In 2021–22, 75 public authorities reported that they had received PIDs. The total number of PIDs received across these public authorities was 382.

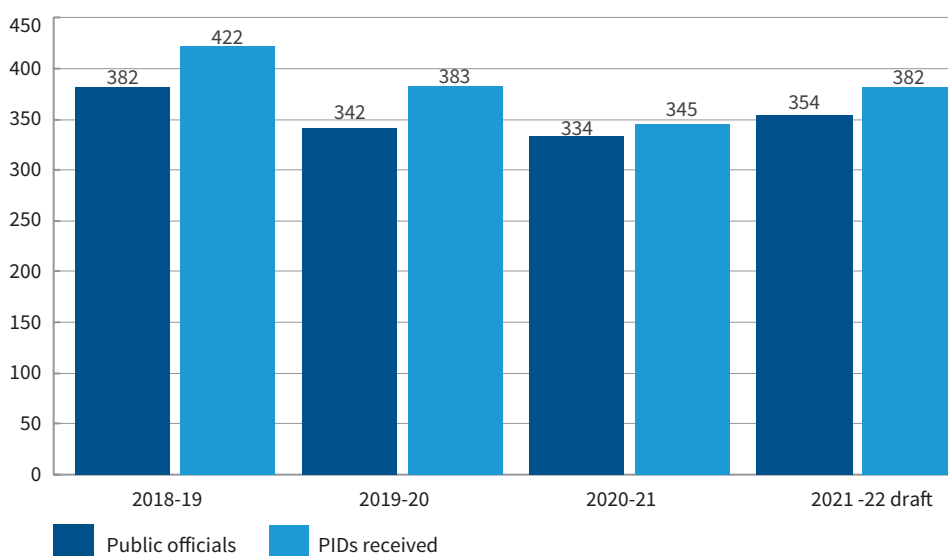
The number of public officials reported as having made a PID directly to a public authority was 354.

This number is less than the number of PIDs received, and there are likely two main reasons for this:

- public officials may make more than one PID
- the number of public officials making a PID is only recorded if they made the PID directly to the public authority that received it. In some cases, a public official may make a PID directly to one public authority (which duly records one PID received, and one public official having made a PID in its report). That PID may then be referred to another public authority who also records a PID having been made but does not record that it was made by a public official.

Figure 2 shows PIDs received in 2021–22.

Figure 2. Number of public officials who made PIDs directly to, and number of PIDs received by, public authorities, since 2018–19



Number of PIDs finalised

Public authorities reported finalising 286 PIDs in 2021–22. That figure may include PIDs received in previous reporting years but finalised in 2021–22.

Type of public authority

The majority of PIDs were reported by state government agencies, followed by local government and state-owned corporations.

Table 3. PIDs received by type of public authority

Type of public authority	Number of PIDs (%) of all PIDs received for 2021–22
State Government agencies	232 (61%)
Local Government authorities	36 (9%)
State owned corporations	33 (9%)
Local Health Districts	50 (13%)
Universities	28 (7%)
Local Aboriginal Land Councils	3 (1%)
Total	382

Subject matter of PIDs

Under the PID Regulations, authorities must report on the number of PIDs received that relate to the following subject matter:

- corrupt conduct
- maladministration
- serious and substantial waste of public or local government money
- government information contraventions
- local government pecuniary interest contraventions.

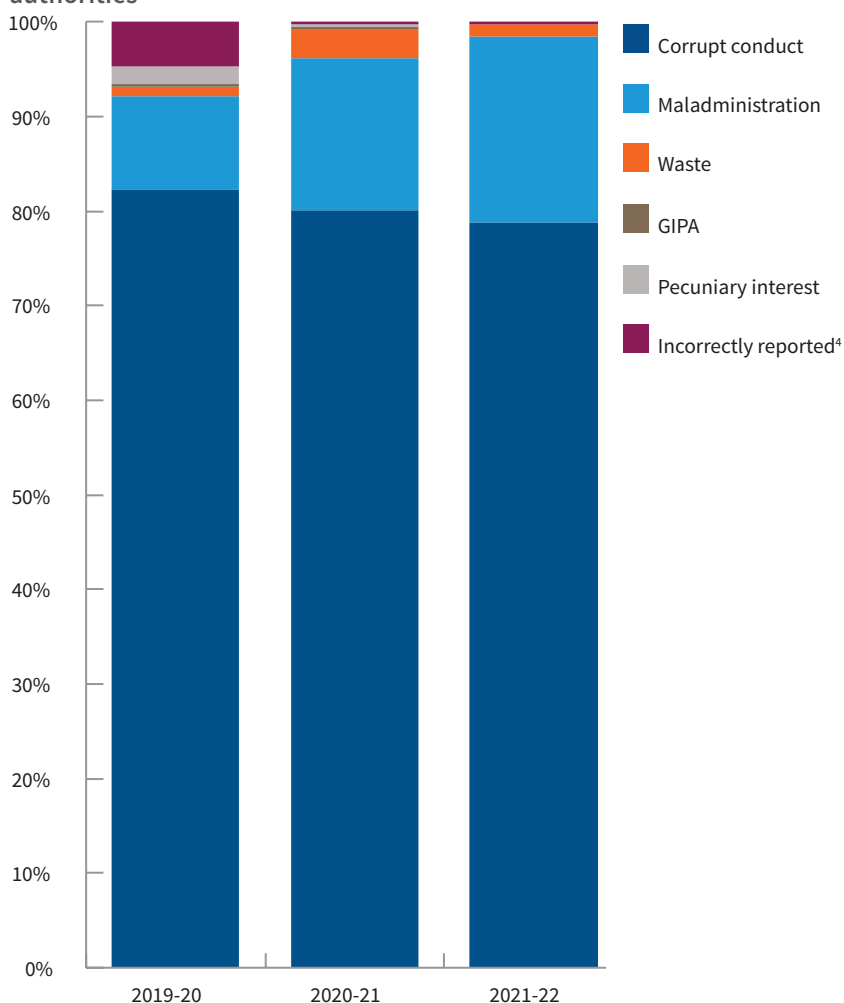
The subject matter of some PIDs may cover several of the above categories – for example, corrupt conduct may also be a form of maladministration. A PID may also allege several types of wrongdoing.

In practice, an authority will report only the ‘primary’ category of wrongdoing. For example, if a PID were to allege both corrupt conduct and a serious and substantial waste of public money, but corrupt conduct was identified as the primary issue, it would be recorded by the authority as corrupt conduct only.

Figure 3, below, shows the primary allegation of wrongdoing in PIDs received by public authorities in the last 3 years. Consistent with previous years, the primary issue in the majority (79%) of PIDs made to public authorities in 2021–22 is alleged corrupt conduct.

The second most common (20%) primary issue recorded (for matters that did not also involve an allegation of corrupt conduct) was alleged serious maladministration.

Figure 3. Most serious allegation of wrongdoing in PIDs received by public authorities



Circumstances under which public officials make PIDs

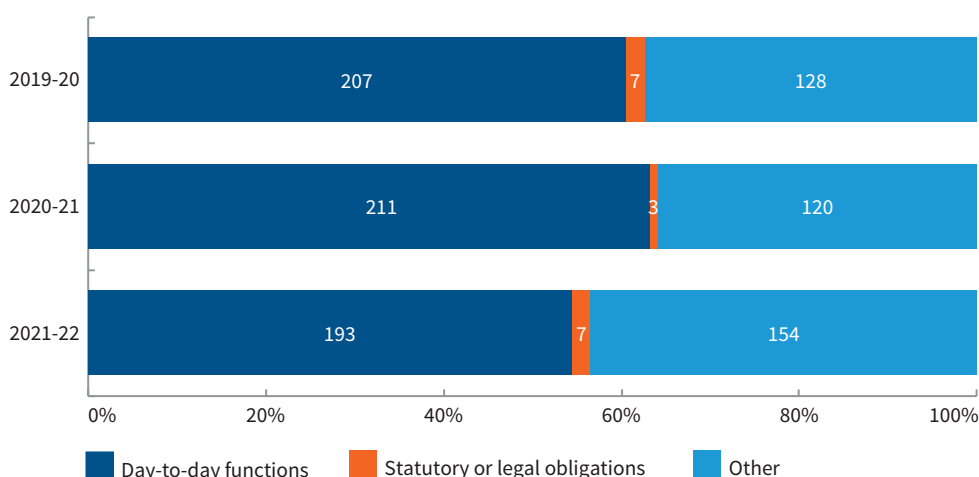
Public authorities are required to provide our office with information about the circumstances under which public officials have identified, and reported, PIDs. PIDs can be made:

- through the performance of a person’s day-to-day functions (for example, by managers, internal auditors, corruption prevention staff, and investigators)
- because of a statutory or other legal obligation (for example, where public officials are required to report possible corrupt conduct to ICAC)
- through any ‘other’ circumstances (for example, employees who become aware of wrongdoing and voluntarily report this using the public authority’s internal reporting policy).

Figure 4, below, shows that more than half (55%) of all PIDs received by authorities during the reporting period were made in the performance of a public official’s day-to-day functions. 7 were made by public officials because of a statutory or legal obligation, and 154 were made by public officials through other circumstances.

4. The matters which we have categorised as “incorrectly reported” are those where a Local Aboriginal Land Council has indicated, in error, that they have received a PID about a local government pecuniary interest contravention.

Figure 4. Circumstances under which public officials made PIDs from 2019-20 to 2021-22



Internal reporting policies

Under s 6D of the PID Act, all public authorities must have a policy that sets out procedures for receiving, assessing, and dealing with PIDs. Table 4 shows the proportion of public authorities that reported having an internal reporting policy, broken down by type of agency.

Table 4. Proportion of public authorities that reported having an internal reporting policy

Type of public authority	% reported having an internal reporting policy in 2021-22 (Jan – June 2022 period only)
State Government agencies	95%
Local Government authorities	95%
State owned corporations	100%
Local Health Districts	100%
Universities	100%
Local Aboriginal Land Councils	74%

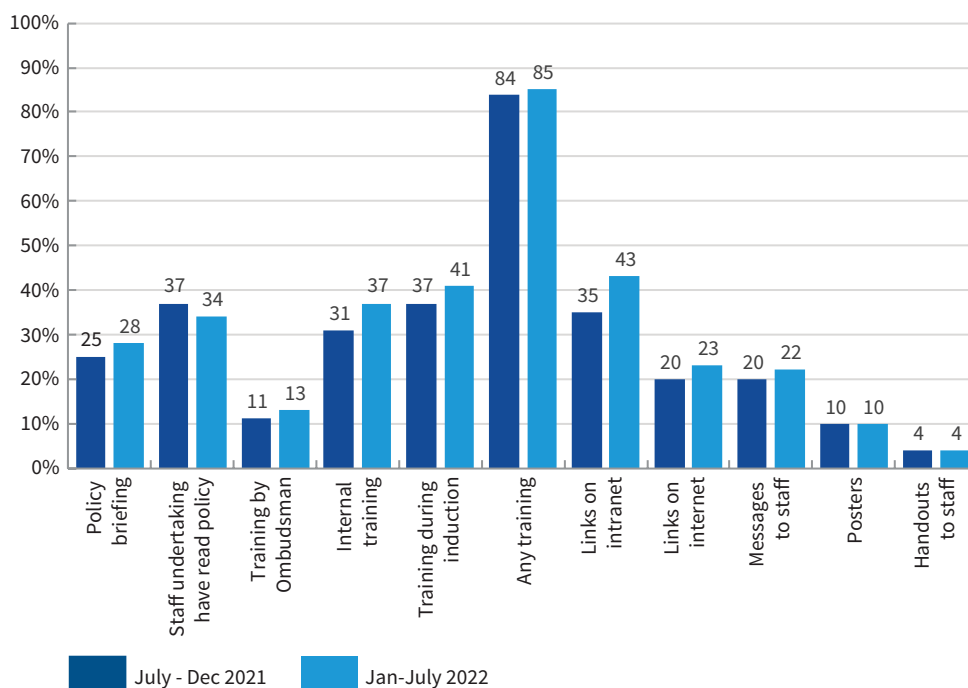
We continue to promote our [model internal reporting policy](#) designed specifically for Local Aboriginal Land Councils (LALCS).

Staff awareness

The heads of public authorities are responsible under s 6E(1)(b) of the PID Act for ensuring their staff are aware of the contents of their internal reporting policy and the protections provided under the PID Act. Public authorities are required to report the different types of awareness raising activities that have occurred within the relevant reporting period.

The majority of public authorities (89%) reported that the head of the authority had taken action to meet their staff awareness obligations. As shown in Figure 5, the most common types of awareness activities reported during 2021-22 were ‘*training*’ and ‘*publishing a link to the PID policy on the agency intranet*’.

Figure 5. PID awareness raising activities



PIDs handled by investigating authorities

Under the PID Act, investigating authorities are not required to report statistical information to our office in their capacity as investigating authorities. However, all the investigating authorities have agreed to provide our office with details of the PIDs they have received as investigating authorities. This information provides us with a better understanding of how the PID Act is operating in practice.

Table 5, below, shows the number of PIDs received by investigating authorities over the past 4 years. In total, investigating authorities received 945 PIDs in 2021–22, in their capacity as investigating authorities. This is slightly less than the 964 PIDs they received in the previous year.

Table 5. Number of PIDs received by investigating authorities, since 2018–19

	2018–19	2019–20	2020–21	2021–22
Audit Office	11	5	6	11
ICAC*	241 (763)	144 (697)	155 (679)	130 (717)
Information Commissioner	2	0	1	0
Inspector of ICAC	0	0	0	0
Inspector of LECC	3	3	0	1
OLG	30	21	35	6
Ombudsman	22	5	14	31
LECC	44	74	56	49

*The number in brackets shows the PIDs also received by ICAC under s11 of the ICAC Act.

Under section 11 of the *Independent Commission Against Corruption Act 1988*, the principal authority of any public authority is under a duty to report to the ICAC any matter that they suspect concerns, or may concern, corrupt conduct. Of the 847 PIDs received by the ICAC, 717 (85%) comprised notifications from principal officers of authorities under this section.

Data limitations

In our previous oversight annual reports, we have noted our concerns about the integrity and limitations of the data currently provided to us by public authorities. We continue to hold these concerns.

As noted above, not all public authorities comply with their obligations to report to us. In addition, we report the data as received. Its accuracy relies on all public authorities properly identifying, and recording, internal disclosures of wrongdoing as PIDs. Where this is not the case, the number of PIDs being made in NSW is likely to be under-reported.

Conversely, referral paths between investigating authorities and public authorities may result in double-counting of the total number of PIDs received. For example, 2 agencies may report receiving PIDs relating to the same alleged wrongdoing – such as when a staff member discloses a matter internally (reported by the relevant public authority as a PID) and the principal officer subsequently reports the matter to the ICAC (reported by the ICAC as a PID).

As mentioned above, the PID Act 2022 will introduce more comprehensive and clearer data reporting obligations that will provide our office with a more accurate picture of the volume and type of whistleblowing that is occurring across different agencies.

The changes will also enable us to more closely assess whether PIDs are being handled appropriately by authorities. This information will enhance our ability to undertake our oversight functions, by allowing us to better target our audit, monitoring and training programs; proactively engage with different agencies and sectors; and provide more detailed advice to Government and Parliament about the operation of the PID legislation.

Part 3.

Training, awareness,
advice and research

We have a statutory function to promote public awareness and understanding of the PID Act. We do this by providing information, advice, assistance, and training to public authorities on their functions under the Act. We also issue guidelines and other publications.

Training and awareness

Following deferral of training as a result of the COVID-19 pandemic, we resumed PID training services through online delivery in April 2022, with updated virtual training products.

We provided the following virtual PID training programs for public authorities:

- **PID Awareness:** This training focusses on raising awareness among public officials about the PID Act and how to report wrongdoing. In 2021-22, we delivered 2 PID Awareness sessions that were attended by a total of 57 public officials.
- **PID Management:** This workshop-based training, aimed at disclosures coordinators, disclosures officers and managers, is focused on effective PID management. In 2021-22, we delivered 4 management sessions that were attended by a total of 148 public officials.

Our training is designed to build PID management capabilities across the public sector, and covers key aspects of the PID system, including:

- the value of reporting wrongdoing
- creating a positive culture receptive to dealing with PIDs
- how to comply with the PID Act
- strategies to protect and support those involved in the PID process.

We are committed to producing high-quality training that contributes to building understanding of PIDs across the NSW public sector.

Our training continues to receive very positive feedback, with 100% of attendees at PID management sessions, and 100% of attendees at PID Awareness sessions, rating the training favourably.

Participant comments:

What I found most useful was the need to highlight our policy and bring my attention to the need to create a culture of openness, transparency, and confidence in an organisation's governance practice.

Really helpful to have the breakout groups to hear issues and commonalities across agencies and to use this to have a deeper dive into the elements of PID.

It resonated with me that I should be assessing all complaints from a potential PID aspect rather than being prompted by the reporter requesting PID.

Great training, difficult to teach on Teams but you nailed it.

Training delivery updated

We substantially refreshed our PID Act 1994 training and the accompanying handout material. This material was applied to training from April 2022 and is available for download from our website.

Our training vision

Deliver a practical, targeted, and high-quality blended PID learning experience which enables a confident understanding of how to report, assess and manage PIDs and foster a speak-up culture

Since the PID Act 2022 received assent on 13 April 2022, work on our future PID training program has commenced and will include:

- simulating real and relatable scenarios
- the use of a range of platforms for different audiences with different access, including E-learning packages, recorded webinars and materials for face to face delivery
- learning that meets a spectrum of participant needs and has relevance to each participant's role
- aligning training with best practice, suited for the modern learner, and delivered through fit-for-purpose learning technology
- grounding all training in the importance of a positive reporting culture.

PID Roundtable

In October 2021 we participated in a virtual roundtable discussion with other integrity bodies in Australia who have PID responsibilities. This networking opportunity facilitated the comparison of PID systems and the sharing of common issues and trends.

Providing advice

We provide advice to agencies about the interpretation and application of the PID Act.

During 2021–22 we responded to 43 requests for such advice. Public authorities commonly sought advice from us about:

- assessing and managing PIDs
- conducting risk assessments
- dealing with allegations of reprisal
- developing plans to prevent reprisal
- reviews of PID policies and procedures.

Our website provides guidance material to assist public authorities to understand, and meet, their obligations under the PID Act.

During 2021-22 we distributed 4 PID newsletters to 1,471 subscribers:

- [Issue 44](#) – October 2021
- [Issue 45](#) – December 2021
- [Issue 46](#) – April 2022
- [Issue 47](#) – June 2022.

During our training and presentations, we encourage public officials to [subscribe](#) to receive the PID E-Newsletter.

We also publish guidance on our website for public officials who are considering making a report. During the year we refreshed the PID webpages on our external website. All fact sheets have now been converted to webpages. Guidelines are still available for download [here](#).

Throughout the year, we continued to support the [Corruption Prevention Network](#) as subject matter experts on issues relating to public interest disclosures.

Part 4.

Legislative and
administrative
advice

As part of our oversight role, we consider, and advise the Minister about, proposals for legislative and administrative change.⁵ This policy role is generally performed through our work in chairing and supporting the PID Steering Committee.

The PID Steering Committee

The activities of the Steering Committee are summarised in its Annual Report to the Ministers responsible for administering the PID Act, these being the Premier and the Attorney General. It is to be tabled in Parliament by the Ministers as soon as practicable after it is received. Throughout the reporting year, the Steering Committee continued to consider, and provide input to, the passage of the PID Bill 2021.

The Public Interest Disclosures Bill 2021

On 14 October 2021, the Special Minister of State, the Hon. Don Harwin MP, introduced the PID Bill into the NSW Legislative Council. The Bill was prepared primarily in response to the October 2017 review of the PID Act by the Joint Parliamentary Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission, and the November 2017 report by the Joint Committee on the Independent Commission Against Corruption on Protections for People who make Voluntary Disclosures to the ICAC (the ICAC Protections Report).

Special Report by the NSW Ombudsman on the Public Interest Disclosures Bill

In November 2021, we tabled a special report on the Public Interest Disclosures Bill 2021. This [special report](#) is available on our website.

Commencement of the PID Act 2022

The PID Act 2022 received assent on 13 April 2022 and will commence 18 months after assent, or an earlier date upon the making of a proclamation. Agencies continue to be subject to the PID Act until the PID Act 2022 comes into force.

The PID Act 2022 provides for a delayed commencement to ensure our office, and agencies, have sufficient time to prepare for its implementation. At this stage, we are anticipating a commencement date of 1 October 2023.

The PID Act 2022 addresses many of the weaknesses in the existing PID Act:

- it is simpler and easier to navigate
- it contains fewer obstacles for potential whistleblowers, including by expanding the permissible recipients of PIDs to include a person's manager, and by protecting PID reporters even if the disclosure is made to the wrong agency
- it provides more comprehensive protections, including for witnesses and those involved in investigating PIDs
- it contains a clearer duty on agencies to take appropriate steps to deal with the disclosures they receive

5. S 6B (1) (g)

- it introduces stronger measures to encourage a ‘speak up culture’ within agencies, for example through enhanced requirements around policies and training
- it facilitates more comprehensive and meaningful reporting to our office of data about PIDs.

Preparing the Public Sector for the new Act

We have established a new Systems Oversight Branch led by an Assistant Ombudsman, Louise Lazzarino, who joined our office in July 2022. The PID unit sits within this branch and comprises 3 teams with specific functions, to support both the pre and post PID Act 2022 implementation:

- engagement and training
- audit and monitoring
- advice and notifications.

In accordance with our functions under the PID Act, the PID unit is developing new resources and tools to support agencies in their preparation for the implementation of the PID Act 2022.

We also have a communications and engagement strategy to build awareness and understanding of the PID Act 2022. We will use a wide variety of contemporary platforms and methodologies including social media, infographics and visual media to engage with our stakeholders and clearly communicate our key messages about the PID Act 2022.

The activities we are undertaking include:

- delivery of workshops, on demand webinars and presentations, virtually and in-person, through a number of sector specific networks in metro and regional areas
- development of eLearning modules for agencies to upload to their own eLearning platforms as well as the associated packages to facilitate face to face delivery. These modules will be for PID Awareness, PID for People Leaders and PID for Practitioners
- development of Model PID policies for the three key sectors revised to meet the new legislative obligations
- development of new guidelines and other documents to assist the decision-making processes around PIDs including assessment, management of PIDs and conducting a risk assessment
- development of guidance documents to assist those who want to make a PID to navigate the process and understand their rights
- development of materials to increase the awareness of the PID Act 2022 amongst all key stakeholders, including members of the public and public officials
- development of a suite of data and digital solutions to enhance the implementation of the PID Act 2022, including a PID Portal, an updated website page, an online learning hub and the use of social media to communicate key messages
- PID practitioner forums, newsletters and executive briefings.



Part 5.

PID audits

Section 6B(1)(f) of the PID Act provides that the Ombudsman may undertake audits, and provide audit reports to Parliament, on the exercise of functions under the Act and compliance with the Act by public authorities. Under s 6B(2), an audit report is to be provided to Parliament at least once every 12 months.

Audit of 6 local councils

In 2021, the Ombudsman undertook a PID audit of six local councils. All the councils audited had reported not receiving a PID between 2018 and 2020.

The audit's purpose was to identify any issues in the councils' culture, systems or practices that could result in one or more of the following:

- barriers, including behavioural or cultural barriers, to public officials making PIDs
- the council not identifying disclosures as PIDs
- the council identifying but not reporting PIDs.

We sought to answer the following questions:

- 1) Are staff comfortable raising issues internally?
- 2) Are staff aware of how to make a PID and the protections available?
- 3) Is it easy for all staff to find information about how to make a PID?
- 4) Is making a PID easy and accessible for all staff?
- 5) Are staff with PID responsibilities capable of identifying and handling PIDs?
- 6) Does the council have a PID policy that aligns with best practices?

Selection of councils

Using the data from councils' 6-monthly reports we established the following criteria to determine an initial list of councils for potential audit:

- over 150 staff
- had reported not receiving a PID in the audit coverage period
- had provided their required PID reports to us over the audit coverage period.

We excluded councils that had previously been audited or had recently experienced local natural disasters, such as significant flooding in the local government area.

The final 6 councils were selected because they were the 2 largest metropolitan, regional, and metro-fringe councils by staff number. We used the Office of Local Government geographical classification of NSW councils.

Audit reports

Each of the audited councils received a report containing their specific audit findings and recommendations. We also tabled a report in the NSW Parliament on 21 November 2022 that provided a summary of the de-identified findings for the six councils.

As the report focused on highlighting common themes and issues across the six councils, the six councils were not identified in the report. Agencies may find it useful to review the audit report to identify whether the common themes and issues identified in that report may be applicable to their organisation. The report can be accessed on our external website: [PID Audit report - summary of audits of 6 councils](#).

