

**Oversight of the  
*Public Interest  
Disclosures Act 1994***

**Annual Report 2015–16**

**February 2017**



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## Foreword

It has been five years since the NSW Ombudsman's oversight responsibilities under the *Public Interest Disclosures Act 1994* (PID Act) commenced. In that time we have actively engaged with public authorities to establish and promote internal reporting systems. I am pleased with the progress made by public authorities in ensuring they have appropriate and effective systems in place to deal with disclosures.

A special focus in this annual report on the PID Act is the findings of an audit conducted by my office of the handling of allegations of reprisal across the NSW public sector. The audit found that a surprisingly low number of cases of reprisal were reported by public authorities. We found that there is often a background of workplace conflict in these matters. This underscores the importance of public authorities conducting a risk assessment, developing strategies to mitigate any identified risks and providing support to reporters.

A review of the PID Act is currently being undertaken by the Parliamentary Joint Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission. Our experience to date and engagement with public interest disclosure practitioners helped us to identify the major challenges faced by public officials who wish to report wrongdoing and by public authorities in implementing the PID Act.

I look forward to the outcomes of the review and any recommendations for reform to better support the implementation of the PID Act and its object to encourage and facilitate disclosures in the public interest.

Yours sincerely



Professor John McMillan AO

**Acting Ombudsman**

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## What we do

The *Public Interest Disclosures Act 1994* (PID Act) sets in place a system to encourage public officials to report serious wrongdoing.

The NSW Ombudsman has the following functions under section 6B of the PID Act:

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

Our Public Interest Disclosures Unit coordinates the implementation of our functions under the PID Act and provides support to public authorities and public officials.

## Our objectives

The PID Unit has four objectives:

1. to increase awareness of the procedures for making public interest disclosures (PIDs) and the protections provided by the PID Act
2. to improve the handling of PIDs and the protection and support of people who make them
3. to improve the identification and remedying of problems and deficiencies revealed by PIDs
4. to ensure an effective statutory framework is in place for the making and management of PIDs and the protection and support of people who make them.

## Our observations in 2015–16

The primary focus of our work this year was examining how the reprisal provisions in the PID Act operate in practice. Chapter 1 outlines the findings of a sector-wide audit of the handling of allegations of reprisal across the NSW public sector. Based on information provided by public authorities and recorded by our office, only 2% of PIDs made in NSW over the years 2012–14 led to allegations of reprisal being made.

A detailed examination of reprisal allegations revealed that they are typically characterised by a high degree of conflict, much of which precedes and in some cases triggers the making of the original PID. This means there will be few cases in which it is possible to say that the reprisal provisions in the PID Act have been contravened. In many cases a more appropriate alternative to a formal investigation of the reprisal allegation may be to resolve any concerns and remedy any detriment that led to the allegation. In cases where workplace conflict already exists, public authorities need to conduct a risk assessment and develop strategies to mitigate any identified risks. Providing reporters with adequate support that is tailored to their individual needs is also important, as this may reduce perceptions that reprisals are being taken.

As described in Chapter 2, this year saw a decrease in the number of PIDs received by NSW authorities ( $n=685$ ), largely driven by a decline in PIDs made to investigating authorities. The majority of PIDs continue to primarily allege corrupt conduct. The results of the People Matter Employee Survey conducted across the NSW public service again reveal that the majority of respondents who witnessed misconduct or wrongdoing in the last 12 months indicated that they reported it.

Five years into our oversight role in relation to the PID Act, we continue to assist public authorities and public officials by providing training, advice and guidance as detailed in Chapter 3. While our office received fewer PID-related complaints this year, we made a number of suggestions to public authorities to improve how they assess and investigate PIDs and communicate with reporters. Our audit program of one state government cluster highlighted the importance of communication between business units when moving towards centralised handling of PIDs, particularly in ensuring that an adequate number of officers are nominated to receive disclosures.

## Our performance in 2015–16

What was our statutory function?	What did we want to achieve?	How did we set out to achieve this?	What were our key achievements?
<b>PUBLIC AWARENESS AND ENGAGEMENT</b>			
<p>Promote public awareness and understanding of the PID Act.</p> <p>Provide information, advice, assistance and training.</p> <p>Issue guidelines and other publications.</p>	<p>Engage with stakeholders.</p> <p>Raise awareness of PIDs across the public sector.</p> <p>Support and strengthen the PID coordinator role.</p> <p>Provide advice to public authorities and public officers.</p>	<ul style="list-style-type: none"> <li>• Deliver training.</li> <li>• Attend relevant conferences.</li> <li>• Issue the PID e-News.</li> <li>• Support a national PID oversight network.</li> <li>• Coordinate PID practitioner forums.</li> <li>• Review and develop PID guidance material.</li> <li>• Provide advice in response to enquiries.</li> </ul>	<ul style="list-style-type: none"> <li>• 865 public officials received PID management training and 572 public officials received PID awareness training in 72 sessions across metropolitan and rural NSW – rated positively by 98% of participants.</li> <li>• Distributed three issues of the PID e-News to 1,037 subscribers.</li> <li>• Participated in a national PID oversight network forum.</li> <li>• Facilitated four PID practitioner forums – rated positively by 95% of attendees.</li> <li>• Hosted information stands at two conferences and spoke at four events.</li> <li>• Provided advice in response to 238 PID-related enquiries and reviewed the PID policies of 17 public authorities.</li> <li>• Hosted an online community, the Whistling Wiki.</li> </ul>



What was our statutory function?	What did we want to achieve?	How did we set out to achieve this?	What were our key achievements?
<b>MONITORING AND REVIEWING</b>			
<p>Audit and monitor compliance with the PID Act.</p> <p>Assist the PID Steering Committee.</p> <p>Make recommendations for reform.</p>	<p>Ensure compliance with the Act.</p> <p>Identify emerging trends and areas for future improvement.</p>	<ul style="list-style-type: none"> <li>• Conduct audits of public authorities.</li> <li>• Facilitate the provision of six-monthly statistical reports by public authorities.</li> <li>• Share information with investigating authorities about PIDs.</li> <li>• Provide support to the PID Steering Committee.</li> <li>• Contribute to PID-related research.</li> </ul>	<ul style="list-style-type: none"> <li>• Four face-to-face PID audits conducted.</li> <li>• 149 files reviewed – 59 PIDs and 90 internal reports.</li> <li>• 34 recommendations made to public authorities following audits.</li> <li>• Two sector-wide PID audits finalised.</li> <li>• 887 PID statistical reports received from public authorities.</li> <li>• Three PID Steering Committee meetings held.</li> <li>• Consulted with public authorities about their experience with the PID legislation.</li> <li>• Encouraged public authorities to participate in the <i>Whistling While They Work 2</i> research project.</li> </ul>
<b>COMPLAINT HANDLING AND INVESTIGATION</b>			
<p>Receive PIDs about maladministration.</p>	<p>Ensure timely and efficient handling of complaints.</p> <p>Identify problems and deficiencies to improve the handling of PIDs.</p>	<ul style="list-style-type: none"> <li>• Assess and handle PIDs, purported PIDs and complaints about the handling of PIDs by public authorities.</li> </ul>	<ul style="list-style-type: none"> <li>• 14 PIDs, nine purported PIDs and ten complaints about the handling of PIDs received.</li> <li>• Ten suggestions made to three public authorities about improvements they could make to their PID processes.</li> </ul>

# Chapter 1. Focus on reprisals – conflict, risk assessment and support

**By examining how allegations of reprisal have been dealt with by public authorities, the Ombudsman's office can provide better guidance on preventing, dealing with and remedying these often high-conflict situations.**

## Sector-wide audit of allegations of reprisal

In this reporting period we conducted an audit of the handling of allegations of reprisal across the NSW public sector. We wrote to the principal officers of all major public authorities asking them whether they had received:

- Any reports alleging that detrimental action was taken against a person in reprisal for making a PID.
- Any reports alleging that detrimental action was taken against a person in reprisal because of a mistaken belief or suspicion that the person made or may have made a PID.
- Any reports/advice where a person mistakenly believed they had made a PID and then alleged that detrimental action was subsequently taken in reprisal. This covers purported PIDs – situations where a person may have continued to believe they made a PID, despite the authority assessing that their report did not satisfy the criteria in the PID Act and advising them this was the case.

Of the 225 public authorities that responded, only 22 indicated that they had received any reports of that kind. Of these, 16 authorities (relating to 18 reporters in total) said they had received allegations of detrimental action in reprisal for making a PID, while the remainder had received allegations following a purported PID. These numbers are much lower than we anticipated.

There are a few possible explanations for this:

1. Reprisals don't occur frequently in the context of PIDs – this would be an indication the deterrent aspect of the reprisal provisions in the PID Act is working.
2. Reprisals occur but they aren't reported internally as a result of concerns about doing so. We noted during the course of the audit that a number of reporters who made claims of reprisals were already in some form of conflict with the organisation. Reporters may be reluctant to allege reprisal as their identity may be difficult to keep confidential.
3. Reprisals occur and are reported internally but authorities don't store or record data specifically relating to this and have to rely on the memory of the PID coordinator or other relevant officers.

In Queensland reprisal is a separate category of conduct in the PID Act. This means that data is collected in Queensland showing specifically when allegations of reprisal are made. In 2013–14, of the 725 PIDs made, only five were about reprisals. In 2014–15 of 535 PIDs made, nine were about reprisals. This suggests that the reason the number of allegations of reprisal is low is not because of data capture issues.

We also reviewed the complaints about reprisals that our office received for the same timeframe covered by the audit (1 January 2012 to 31 December 2014). Of the 141 PID complaints, 36 or 25% alleged that the reporter had suffered reprisal for making a PID. The majority were purported PIDs and so the later claims of reprisal were not matters our office could investigate because they related to employment.<sup>1</sup> We received only nine allegations (6% of PID complaints) of reprisal from people who had made reports that were assessed as meeting the criteria in the PID Act.

It is worth noting that the matters we reviewed during the course of the audit represent the minority of cases, in the sense that most PIDs handled by public authorities do not result in complaints being made to our office. Over the years 2012–14, 1,103 PIDs were made in NSW and, on the information recorded by authorities and our office, only 2% ( $n=27$ ) led to allegations of reprisals being made. The low numbers that were reported to us by authorities mean the observations we have made throughout the audit may simply be confined to the cases we have seen and are not indicative of any larger trends.

1. Schedule 1 of the *Ombudsman Act 1974* excludes our office from looking at employment-related matters unless the conduct arises from the making of a public interest disclosure.

## The relationship between the reporter and the subject officer

A commonly held view is that power imbalance is an important factor at play in assessing the risk of reprisal to an employee. On this view, the employee likely to be suffering reprisal is at a more junior level within the organisation, needing the support of management in order to defend themselves against reprisals from a more senior subject officer. In support of this view, a study in the United States found there were four predictors of retaliation, one of which was the power and status of the reporter.<sup>2</sup>

We found that broadly speaking this is true, although reports can be made down the reporting line as well and the fact that the reporter supervises the subject officer does not eliminate claims of reprisals. Reporters came from all levels within the organisation, not necessarily just the lower echelons. Reports were made by a range of reporters including senior managers, senior executive officers and in one case the Chief Executive Officer (CEO).

Of the 19 matters we reviewed, ten (52%) were made by someone about their supervisor or another person in the management structure, six (32%) were made about colleagues and three (16%) were made about a person the reporter supervised. In the cases where the reporter was the supervisor, the claims of reprisal included the following conduct:

- claims of bullying lodged against the reporter by the subject officer
- that employees colluded to lodge workplace grievances against the reporter.

### Case Study 1

#### Secret recordings used in tit-for-tat

The subject of the allegations attended a meeting with her direct supervisor (the reporter) and another team member. There were ongoing management issues between the reporter and the subject officer. During a later discussion the subject officer advised she had recorded the meeting without the knowledge or consent of the other participants. The matter was investigated and recommendations were made that disciplinary action should be taken against the subject officer and that she should be required to delete the recording.

Following this, the subject officer lodged a bullying claim against the reporter. The reporter's line manager requested a meeting to discuss the claims. The reporter raised concerns the bullying allegations had been made in reprisal for making a PID against the subject officer. The PID coordinator met with the reporter and advised that both the line manager and the subject officer were not aware he had lodged the PID. Following this meeting the reporter was satisfied that the inquiries into the bullying claims were not reprisal.

## Workplace conflict as a factor in the making of allegations of reprisal

Allegations of reprisal are seldom made in a vacuum. More often the reporter makes a report in a context where there is already a history of conflict between the reporter and management and/or the reporter and the subject officer.

In 79% of the 18 cases we reviewed there was already a history of conflict in the workplace prior to the PID and allegations of reprisal being made. The conflicts involved either the reporter and the subject officer or the reporter and management. In a number of cases we reviewed ( $n=7$ ) performance management action had been taken by management against the reporter prior to the PID being made and in two cases there were pre-existing workers compensation claims. In the remaining cases there was a history of enmity between the reporter and the subject officer.

2. Near, JP & Miceli, MP 1996, 'Whistle-blowing: myth and reality,' *Journal of Management*, 22(3), pp. 507-526.

## Case Study 2

### Facilitated mediation between warring parties

Two officers were working in a regional office. There was a history of workplace conflict between them which had required varying degrees of management intervention. In late 2011 Officer 1 made a report about Officer 2 engaging in secondary employment when he was supposed to be at work. Officer 2 had a history of performance issues and had received counselling for these issues.

Officer 2 (the subject officer) then made a report to human resources (HR) in early 2012 about Officer 1 engaging in undeclared secondary employment and misusing office resources to conduct a business. This was assessed as meeting the criteria to be a PID. The matter was investigated by the authority and the allegations were substantiated.

Following this Officer 2 reported that he was suffering reprisal in the form of bullying and harassment, favouritism and intimidation from Officer 1. Officer 1 also claimed that she was suffering distress caused by Officer 2.

The authority decided to deal with the allegations of reprisal by way of a facilitated mediation between the parties. The mediator recommended that they be counselled in relation to their unprofessional behaviour, that performance improvement plans be developed and implemented, and that they undergo mediation for a minimum of three months. Following this, if there had not been a significant improvement in their working relationship, they should not be required to work together any more due to their inability to get along.

The *Whistling While They Work* research also found that public interest concerns are often mixed with personal conflicts.<sup>3</sup> The research showed that the following sorts of conflict accompanied reports of wrongdoing:

- dissatisfaction with one or more agency policies
- a decision about a promotion that affected the employee
- failure to renew the employee's contract
- dissatisfaction with work duties
- conflict or serious disagreement or another grievance against managers
- conflict or serious disagreement or another grievance against co-workers.

### Effect of pre-existing workplace conflict in prosecuting reprisals

The NSW PID Act reprisal provisions require that the detrimental action be taken 'substantially' in reprisal for the making of the PID. This means that the making of the PID (or the report of wrongdoing) has to be the main contributor or primary cause of the detrimental action taken. The provisions pre-suppose that making a PID is a discrete occurrence and that the reporter comes to the making of the report of wrongdoing with clean hands.

In the cases where reprisal is alleged, however, there are usually other factors that led to the detrimental action occurring, many of which may have existed prior to the PID being made. This is one of the reasons why there have been no successful prosecutions for breaches of section 20 of the PID Act and, as far as we are aware, no successful prosecutions for breaches of similar PID-type legislation across Australia.

3. Brown, AJ (ed.) 2008, *Whistleblowing in the Australian public sector*, ANU E Press, Canberra, p. 37.

## Case Study 3

### Is it an act of revenge, pay-back or retaliation?

This year section 20 of the PID Act was examined in *DPP v Murray Kear* (unreported, New South Wales Local Court, Grogin G, 16 March 2016). While there have been previous cases under the *Police Act 1990* and the former *Protected Disclosures Act 1994*, the prosecution was the first of its kind under the PID Act. Mr Kear, the former Commissioner of the NSW State Emergency Service (SES), was alleged to have taken detrimental action substantially in reprisal against Ms McCarthy, his former Deputy Commissioner, by dismissing her from her position at the SES. It was alleged that Mr Kear did so in reprisal for Ms McCarthy making three PIDs, including allegations of corrupt conduct by the other Deputy Commissioner, Mr Pearce.

The charges against Mr Kear were dismissed. On 25 May 2016, Mr Kear made a successful claim for costs.

#### *The decision*

The parties were not in dispute as to whether detrimental action was taken. It was conceded that dismissing Ms McCarthy would amount to detrimental action within the meaning set out in section 20(2) of the PID Act.

In interpreting the reprisal provisions, Magistrate Grogin cited, in relation to the term reprisal, that this 'denotes an act of revenge or retribution from an action of another'. In relation to the term 'substantially' he said that its ordinary meaning is 'of a material nature; real or actual' and the term means that 'it formed an important real and actual basis for the alleged reprisal'.

In relation to whether the action taken by Mr Kear was substantially in reprisal for making the PIDs, it was considered relevant that there was a toxic relationship between Ms McCarthy and Mr Pearce and this fragmented the senior leadership group at the SES. Magistrate Grogin concluded that there were 'many factors behind the dismissal of Ms McCarthy'. As 'there was no element of revenge, pay-back or retaliation', there was no breach of section 20 of the PID Act.

#### *The effect of the decision*

The decision in *Kear* makes the subject officer's motivation for taking the detrimental action a key element of the offence, in that the detrimental action must be motivated by revenge or retribution. It would be difficult for a reporter to demonstrate that such motivation exists. Further, we note that in our audit of the handling of allegations of reprisal, the majority of the claims of detrimental action were levelled at management, as in the *Kear* case, rather than the subject of the PID. In these cases it is likely to be difficult to prove the action taken by management was motivated by revenge.

As case study 3 shows, the fact Ms McCarthy was perceived by Mr Kear and other members of the SES leadership to be difficult and that this caused tension in the leadership group was considered to be relevant to the assessment of whether the action taken was substantially in reprisal for the making of the PID.

In the matters we have reviewed, reporters rarely make a PID with a clean slate. These matters are typically characterised by a high degree of conflict, much of which precedes and in some cases triggers the making of the PID. It would be difficult for reprisal to be proved in such situations. In most cases we have seen in our complaint handling work, the public authority has been able to point to some pre-existing conflict or performance management issues as the reason for taking action against an individual who has made a PID. In other situations the action has been framed as part of a re-structure or due to resourcing issues.

What we can take away from this is that:

1. Unpicking the PID from the pre-existing conflict is difficult. This means there will be few cases in which it is possible to say that the reprisal provisions in the PID Act have been contravened. Even where an authority is satisfied that there is evidence of reprisal, there will be fewer cases where there is enough evidence to warrant a criminal investigation and even fewer that progress to prosecution.
2. Organisational responses such as investigations that seek to establish whether detrimental action occurred in reprisal for making a PID are rarely a useful response.

3. Pre-existing conflict is a key or substantial risk factor in both making and establishing an allegation of reprisal. This means such conflict should act as a red flag to people receiving reports of wrongdoing that a detailed risk assessment needs to be completed for the purposes of preventing reprisal or the perception of reprisal occurring.

## The nature of the PIDs made

The first report from the *Whistling While They Work* research identified that a key risk factor for reported mistreatment both by co-workers and management is the perceived seriousness of the wrongdoing reported.<sup>4</sup>

In the cases we reviewed the PIDs all concerned corrupt conduct, with two concerning both corrupt conduct and maladministration.

The conduct ranged in severity. At the lower end was undeclared secondary employment, recording a conversation with a supervisor without their knowledge or authorisation, and breaches of policy regarding leave and travel allowances. At the higher end were allegations of improper pressure, including false and misleading statements in an official document, failure to declare pecuniary conflicts of interest, inappropriate pressure to cancel legal action and financial mismanagement.

## Who were the PIDs made to?

Research indicates that the large majority of reports of wrongdoing are made internally and usually to generalist managers in the direct management chain of the organisation, including supervisors, senior managers and the CEO.<sup>5</sup> The first people reporters are likely to approach are direct supervisors. If the reporters follow up or continue with the initial report then they are likely to approach a senior manager. Beyond these two groups, the recipients of initial reports are spread within organisations between CEOs, HR, and audit and fraud units.

During the course of our audit work we have observed similarly that the majority of matters are reported initially to immediate supervisors and then generally up the 'chain of command'.

In the matters we reviewed for the audit, all of the reports had been treated as PIDs so had been received either by an investigating authority, the principal officer of a public authority, the PID coordinator or an officer nominated to receive disclosures. Fourteen (74%) PIDs were made internally: five (26%) to the principal officer or authority head (if part of a cluster), four (16%) to the direct supervisor of the reporter and one to the next most senior manager. Four were made to the PID coordinator of the organisation. Five (26%) of the PIDs were made externally – four to our office and one to another oversight body.

Perhaps not surprisingly, almost all of the reporters who suffered or perceived that they suffered reprisals following the making of the PIDs made complaints to our office. Of the matters reported internally, in ten cases the reporter made a complaint to our office about the public authority's handling of the PID or claims of reprisal. All of the reporters who made their reports externally later made a complaint to our office.

## The type and source of reprisals

The *Whistling While They Work* research showed that often management is identified as the source of mistreatment, rather than co-workers. In the cases we reviewed management was the source of the alleged reprisals in 56% of the cases and subject officers in 39% of the cases. In one case the source of the alleged reprisal was co-workers.

The alleged reprisals took several different forms including:

- issues with workload and feeling a lack of support in the organisation
- a confidential report containing details of the reporter was accessed and a copy emailed to the reporter
- the subject officer sent an email to the office stating that she had been exonerated and the making of the PID was a 'malicious attempt to discredit her'
- disciplinary investigation into misconduct by the reporter ( $n=4$ )
- performance management action ( $n=2$ )
- bullying complaint made about the reporter

4. Ibid, p. xxix.

5. Ibid, p. 87.

- bullying and harassment of the reporter ( $n=2$ )
- restructure affecting the viability of the reporter's role ( $n=2$ )
- termination
- threat of termination
- the reporter was asked to resign.
- the reporter's contract was not renewed.

## The role of assessment and risk assessment

In the majority of cases the PIDs received internally were assessed to determine whether they met the criteria to be PIDs. Of the three that were not assessed, the reporters contacted our office after facing detrimental action and we made a decision that, in our view, the matters should have been treated as PIDs by the public authority. Of the matters we reviewed only one authority completed a risk assessment following the receipt of the PID.

### Case Study 4

#### Identification of risk must lead to action

The reporter had indicated to the public authority that she had no confidence in her manager and that she was concerned the manager was aware of the alleged conduct and had failed to take action. The risk assessment completed by the authority covered the following areas:

- threats to the reporter or past experience of threats
- analysis regarding whether confidentiality could be maintained
- the significance or seriousness of the reported wrongdoing
- the vulnerability of the internal reporter
- an impact analysis covering:
  - likely detriment to the reputation of the subject officer from the report
  - likely disruption to the workplace
  - the likelihood that the reporter might make a report to an external body before the organisation had an opportunity to deal with the matter.

The risk assessment identified the risk level as medium, however it is not clear from the risk assessment or the file provided to us what strategies the authority put in place to prevent reprisals occurring. The risk assessment identified that it was likely the reporter's identity would become known during the course of the investigation as the reporter had already raised the allegations internally. However, it does not appear any proactive steps were taken by the authority in order to manage any risks arising from this. The name of the reporter was redacted from the investigation report although it was clear from its content who had made the allegations.

Following the investigation into the allegations, part of the confidential report was placed on the desk of a manager of the area. One of the documents contained the name of the reporter. The acting manager and another employee accessed the report while it was on the desk of the manager and took photographs of it. They then sent the photographs to the reporter.

In this case, given the reporter's identity was likely to become known during the course of the investigation, one approach that may have assisted in mitigating the risk of reprisal would have been to explicitly state that a PID had been made, explain the protections in the PID Act and warn employees in the affected area that it is an offence to take reprisal against the reporter. In this case, if the employees had been aware of the consequences of their actions and that they faced punitive action for them, they most likely would not have taken the action they did.

One public authority completed risk assessments after two reporters complained to our office that they were suffering reprisals in the workplace and the authority had not taken steps to mitigate the risk of reprisal. The risk rating assigned by the authority was high in both cases. In one case the risk assessment did not identify how the authority was going to mitigate any of the risks identified by the assessment. In the other case a detailed internal reporter support strategy was completed which suggested the following steps be taken in order to protect the reporter:

- providing temporary secure parking for the reporter for a period of three months
- investigating options of an expedited police response in the event of an incident
- notifying the reporter's supervisor or principal officer immediately of any reprisals or conflict.

In three cases, while it does not appear a written risk assessment was conducted, the public authority took proactive steps to minimise the risks of reprisal to the reporter:

- In one case the steps taken by the authority included putting a restructure (that was perceived by the reporter to be a form of reprisal) on hold, hiring an experienced HR manager to act as the manager of the reporter (the previous manager had left the organisation) and asking the husband of the subject officer to work at a different location due to ongoing tensions. The authority also sent letters to the subject officers reminding them about section 20.
- In the other two cases the reporters were asked whether there were any performance reviews or disciplinary action pending against them. One reporter indicated that he was concerned about being 'restructured out of a job'. It was not clear to us from the file how the public authority managed this issue. The other reporter was moved to an office in another location as a result of concerns about reprisals.

In each case we reviewed as part of the audit, a risk assessment was warranted and would have assisted the public authority in managing and preventing reprisals occurring. In 58% of the cases confidentiality was not able to be maintained following the receipt of the PID or during the course of the investigation and a risk assessment would have been helpful in identifying risks to the reporter. In addition, most of the cases we reviewed involved pre-existing workplace conflict – an element that we have identified as a key risk factor.

There were some cases that clearly warranted a risk assessment, including one where the workplace was small and regionally based. In this case, the identity of the reporter was known to the subject officers, although it was not clear how the subject officers became aware of the identity of the reporter. During the course of the investigation the subject officers were suspended and the reporter expressed concerns about their return to work. The subject officers identified the reporter as having made a PID when they returned.

## Support for reporters

In the majority of cases no formal support was provided to the reporter after he or she made a PID. In those cases the only resource identified as available to reporters for the provision of support were general employee support services such as the Employee Assistance Program. This aligns with findings that show the overwhelming majority of public authorities only provide support from generalised employee welfare services which are not tailored for whistleblowing.<sup>6</sup>

In a number of cases we reviewed, the reporters perceived that they were suffering reprisals as a result of the stress they were under, deteriorating relationships in the workplace and feelings of isolation. In these cases if the reporter had been provided with more structured support throughout the investigation process, the claims of reprisal may not have eventuated. For this reason public authorities should incorporate into their risk assessments an assessment of whether the reporter is likely to need more specific support and what form that support might take. This should be done in collaboration with the reporter.

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6. Ibid pp. 208–209.



## Case Study 5

### Lack of support and feelings of isolation

In November 2014 a reporter lodged a PID about her colleague engaging in fraudulent conduct. The matter was referred to police and the colleague was eventually charged and convicted on multiple counts of fraud.

The reporter was a temporary employee and in December 2014 her temporary contract expired and was not renewed. She formed the view that her contract was not renewed by the director of the area as reprisal for her making the PID.

Following making the PID to the director, the reporter felt isolated and said that she was bullied and harassed. She alleged she was made to write a statement of her version of events under pressure and was given little guidance about the process that would be followed in investigating the allegations. She said that her immediate manager stopped talking to her on advice from HR and she was told she could not discuss the matter with anyone. She was advised the subject officer could sue for defamation if she did speak to anyone. The reporter said she felt blamed for 'causing trouble' and she would have appreciated support and understanding from management.

The reporter said she was invited to a meeting to discuss resourcing and at that meeting she was advised her contract would be terminated. This was despite the fact that throughout the year she had been given the understanding her contract would be renewed.

In this case if the reporter had been adequately supported during the reporting process she may have been better placed emotionally to handle the news of her contract termination. Instead, by isolating the reporter, the public authority made her feel as if they did not welcome her coming forward and making the report of wrongdoing. It is not surprising under these circumstances that she viewed the termination of her contract as reprisal for making the report.

It also would have been helpful if the authority had given some thought to the timing of the news of the contract termination and how this might appear to the reporter under the circumstances.

At the time of the audit, the authority was undertaking an investigation into the allegations of reprisal.

In two cases we reviewed the reporter was provided with support but only after they had made allegations that they had suffered reprisals. In these cases the public authority developed a support plan. One matter was discussed on page 10.

The support plan in the second case identified a senior officer sponsor and a support officer for the reporter to provide mentoring and refer matters requiring attention to the senior officer sponsor. A workplace monitor, who was the manager of the area, was appointed to implement the support plan in the workplace, monitor the workplace for any issues and report to the sponsor monthly, and promote a positive workplace culture on the reporter's return to work.

### Good practice: Rural Fire Service documents reporters' support network

In the process of adopting a range of PID template documents, the Rural Fire Service created a new form for internal reporters titled 'support network form'. It outlines the range of internal and external support networks available to members involved in an investigation process, including the Employee Assistance Program, Member Assistance Program, Chaplaincy Services and Family Support Program, Critical Incidents Support Services, and external bodies such as union representatives, welfare organisations and medical practitioners. The form notes that this assistance is available throughout every stage of the investigation process, as well as after, and that all access to these services will remain confidential.

### The organisational response

The responses of public authorities to the claims of reprisal by reporters were varied. The allegations of reprisal were only investigated by the authority or an investigating authority in 25% of cases. Table 1 sets out the responses from authorities in the cases where the allegations were not formally investigated and our assessment regarding how appropriate this response was given the allegations made.

**Table 1. Responses to allegations by public authorities**

Type of reprisal reported	Management response	Was this appropriate?
Lack of support, workload issues and false misconduct allegations made against the reporter.	The report was referred to the Independent Commission Against Corruption (ICAC) and the Office of Local Government (OLG) – both assessed the allegations. The ICAC said there was no evidence of corrupt conduct. The OLG looked at the substantive issues but not what had happened to the reporter in the workplace.	In this case there was no evidence that the action taken against the reporter was reprisal. The reporter's performance was being managed action prior to making the PID.
A confidential report with details pertaining to the reporter was accessed by colleagues and photographed. A copy of the photograph was sent to the reporter.	The colleagues were questioned about their conduct. They admitted to accessing the report and sending photograph but said that this was not malicious. Letters were sent to the colleagues warning them about their conduct.	Yes, there was no indication of malice and the colleagues and the reporter needed to maintain their relationship.
The reporter was terminated for poor performance.	Lawyers for the authority responded and advised the reporter that she was terminated because of performance issues rather than for making a PID.	In our view this report probably should not have been accepted as a PID. The authority provided evidence that the reporter had been advised of performance issues prior to making the PID.
A bullying complaint was made by the subject officer about the reporter.	The reporter was advised that the subject officer was not aware a PID had been made.	Appropriate action was taken in the circumstances.
Allegations related to a disciplinary investigation, remedial transfer and an unknown person switching off the reporter's computer and lowering her chair.	The authority assessed that the matters reported did not meet the criteria to be PIDs.	We agreed that this did not meet the threshold to be a PID.
Issues with return to work on a performance management plan, restriction on hours of work and demotion.	The authority developed an internal reporter support strategy.	In this case there was no evidence that the action taken against the reporter was reprisal. The reporter was subject to performance management action prior to making the PID.
The reporter was demoted and asked to be reinstated.	A copy of the letter was referred to the Premier, our office and the ICAC – none of these agencies decided to take any further action.	The action appeared to be appropriate in the circumstances.
The subject officer sent an email around her office stating that she was recently subject to a PID and that no adverse findings had been made – she said this was a 'malicious attempt to discredit me'.	We wrote to the authority and asked them to consider issuing a notice to the subject officer stating that her email was not appropriate, as well as sending an email advising staff that seeking to intimidate someone making a PID will not be tolerated. The authority did this.	Appropriate action was taken in the circumstances.

Type of reprisal reported	Management response	Was this appropriate?
A notice of motion to terminate the reporter's employment.	An injunction was obtained in the Supreme Court to prevent the termination of her employment (interlocutory injunction granted). Upon review this was withdrawn as the subject officers were not aware of the PID at the time, only that matters had been referred to the ICAC.	Appropriate action was taken in the circumstances.
The reporter was issued a notice of termination of employment.	The reporter commenced proceedings in Fair Work Australia claiming reprisal and unlawful dismissal. Lawyers for the public authority challenged the jurisdiction of Fair Work Australia to hear the matter and the case was resolved with a settlement. The reporter signed a Deed of Release.	Under the circumstances (i.e. legal proceedings against the authority) an investigation into the allegations of reprisal would not have served any useful purpose. A settlement appears to have been appropriate under the circumstances. We note that signing the Deed of Release does not override the rights and protections in the PID Act.

## Should allegations of reprisal be formally investigated?

In many cases it may not be appropriate to formally investigate the allegations of reprisal. If the subject officer or colleagues were the alleged source of the reprisals this may aggravate a situation that is already delicate and cause irreparable damage to relations between the parties. If the subject officer or colleagues are not dismissed following any investigation, the working relationship between the parties may become so strained as to be untenable.

We have seen a number of examples of 'tit for tat' complaints made by persons who were the subjects of adverse findings from PID investigations. We have been concerned at the level of seriousness attached by public authorities to what could only be described as minor workplace issues. Case study 6 highlights the apparent reluctance to deal with a matter as a workplace management issue. In this matter, we questioned the need to engage an external investigator.

### Case Study 6

#### A heavy handed approach

We received a complaint from a public official who was one of four reporters who made PIDs about a number of workplace code of conduct issues. Many of the original allegations were substantiated.

One person who had been the subject of the PID subsequently lodged a complaint about various issues which related to the way the reporter had interacted with her in the workplace. This person also alleged that she had been excluded from conversations and prevented from providing input into work issues.

The authority responsible obtained external legal advice and commenced an investigation into these allegations. The reporter complained to us that this action was reprisal for making a PID.

We did not understand why the authority decided to commence a formal investigation. We considered these issues to be workplace matters which could have been dealt with more efficiently by performance management action.

In the coming year, we will be releasing a guideline to assist public authorities when responding to allegations of reprisal. This advice will include, for example, some of the factors to consider in determining an appropriate response, such as:

- the evidence in support of the allegations
- the seriousness of the alleged conduct
- the length of time over which the alleged conduct has occurred
- the seniority of the person(s) alleged to have engaged in reprisal
- how many people are alleged to have engaged in reprisal
- the intention of the person(s) alleged to have engaged in reprisal
- how public or overt the act of reprisal was
- the desired outcome
- the history of conflict or dissatisfaction in the workplace
- what attempts at resolution have been made
- whether the reporter and subject officer need to maintain a professional working relationship and the most effective way to achieve such an objective.

Public authorities should conduct an initial assessment of reports of reprisal and decide whether such reports themselves should be treated as PIDs and whether they warrant investigation or other action to resolve the issues raised. An informal review or preliminary fact finding inquiries may need to be conducted in order to obtain information to make a fair and informed decision.

## Alternatives to investigation

Public authorities have many options for responding to allegations of reprisal and should consider what option would best address the issues raised. The options set out below are not exhaustive and may be utilised by authorities in conjunction with another informal or formal response:

- alternative dispute resolution such as mediation or conciliation
- requiring a formal apology be given to the reporter
- informal counselling or training (focussing the message on the reporter's **perceptions** of reprisal/bullying rather than asserting that the subject officer's conduct **was** reprisal/bullying)
- a clear request or instruction that certain conduct stop
- altering employment arrangements such as relocation or reorganisation
- an intervention to change the culture of a workplace.

## Supporting authorities to manage risks

As identified in the audit, public authorities should carefully assess risk of reprisal and decide what, if any, strategies should be put in place to protect the reporter. Good practice suggests that this assessment also consider the risks to any subject officer, any investigation and the authority.

We developed a PID risk assessment template for recipients of PIDs to document how their authority:

- identifies the risks:
  - of the reporter's identity being known
  - of reprisal
  - of adverse consequences for any subject officers
  - to the authority's functions, services and reputation
  - of workplace conflict
- analyses the seriousness of the consequences and likelihood of the risks to determine how they might affect the reporter, any subject officers and the authority
- rates the risk on a matrix
- develops strategies to eliminate, minimise or manage risks.

A feature of the PID risk assessment is the PID risk matrix, which allows for risk ratings. Where possible and practical, protecting the reporter's identity is the best protection from reprisal. We have incorporated this view in our risk rating, where an assessment of a low risk is appropriate when the reporter's identity can be maintained.

**Figure 1. Risk rating matrix from our PID risk assessment template**

Low risk	Medium risk	High risk
<p>Confidentiality as to the reporter's identity can be maintained or the reporter's identity is known and the reporter and assessor are confident that reprisal will not be taken against the reporter for making the PID.</p> <p>The subject officer(s) is and is likely to remain unaware that a PID has been made and/or that an investigation is progressing.</p> <p>The authority is compliant with its internal reporting policy and obligations under the PID Act.</p>	<p>Confidentiality as to the reporter's identity cannot be maintained.</p> <p>There is potential for low level reprisals against the reporter, workplace conflict or other difficulties in response to making a PID.</p> <p>There are concerns about the conduct of the parties involved (i.e. reporter, any subject officer or witnesses).</p> <p>There is the possibility the authority is not compliant with its internal reporting policy and obligations under the PID Act.</p>	<p>Detrimental action against the reporter that is substantially in reprisal for the reporter making a PID is likely. Detrimental action includes (PID Act, section 20(2)):</p> <ul style="list-style-type: none"> <li>a) injury, damage or loss</li> <li>b) intimidation or harassment</li> <li>c) discrimination, disadvantage or adverse treatment in relation to employment</li> <li>d) dismissal from or prejudice in employment</li> <li>e) disciplinary proceeding.</li> </ul> <p>The reporter is in conflict with any subject officers, colleagues or management.</p> <p>The parties involved (i.e. reporter, any subject officer or witnesses) will not comply with the internal reporting policy.</p> <p>The authority is not compliant with its internal reporting policy and obligations under the PID Act.</p>

We want our PID risk assessment template to be practical and easy to use, so we asked public officials to comment on the draft document by emailing us or contributing to a discussion about it in the *Whistling Wiki* (see Chapter 3). Feedback indicated that additional prompts to help authorities consider relevant issues could be helpful. We also asked whether authorities had developed a risk assessment that they would be willing to share.

### Good practice: Southern Cross University's risk assessment templates

Southern Cross University has developed its own *PID risk assessment* and *Post PID assessment interview file note*. The file note is a particularly useful resource to document consultation with an internal reporter during the risk assessment process.

In developing our draft PID risk assessment, we initially included an extensive suite of prompts. It seemed however that the template could become cumbersome and time consuming for PID practitioners to use, and possibly intimidating. There may also have been a perception that it is an exhaustive list of risks and a 'check the box' exercise. We thought it was instead important to emphasise that the reporting experience is unique to each reporter and risks are contextually based.

Our final version of the PID risk assessment template will take on board the feedback from PID practitioners and include more prompts about risks. A proviso is that identifying risks occurs in consultation with the internal reporter, who has a sense of the risks they may or may not experience in making a PID. We are also developing an accompanying fact sheet that suggests possible mitigation strategies to address identified risks.

## In summary

Dealing with allegations of reprisal is difficult. We found in the audit and also through our complaint handling work that reporters rarely make PIDs in isolation. In most cases the PID is just one of many avenues that the reporter uses to ventilate their concerns. This means that in many cases the identity of the reporter is already known within the organisation and maintaining confidentiality is impracticable. In addition often there is a background of workplace conflict that precedes the making of the PID.

Public authorities should be focusing on identifying and remedying workplace conflict in its early stages before it escalates to the point where it cannot be resolved. In cases where workplace conflict already exists, conducting a risk assessment and developing strategies to mitigate any identified risks, can assist in reducing and addressing claims of reprisals. Finally, providing reporters with adequate support that is tailored to their individual needs is important, as this may reduce perceptions that reprisals are occurring.

## Chapter 2. The PID landscape

**We examined the 685 PIDs made internally to public authorities and externally to investigating authorities over the year, how this compares to other jurisdictions and what public service staff say about reporting wrongdoing.**

### Reporting by public authorities

Since 1 January 2012, the PID Act has required public authorities to report certain statistical information about their activities under the Act directly to our office every six months (section 6CA), as well as in their own annual report (section 31). To facilitate the secure provision of statistical reports to our office by authorities, we developed the PID online reporting tool. We use the information provided by authorities to inform and appropriately target our future awareness and auditing activities.

### Statistical reports provided to our office

Table 2 shows the number of statistical reports provided to our office as at 30 November 2016 for each of the nine six-month reporting periods from 1 January 2012 to 30 June 2016.<sup>7</sup> Given the broad scope of the definition of a public authority, it is difficult to work out the exact number of authorities with responsibilities under the PID Act. In 2015–16, 16% of identified public authorities did not provide reports to our office. While it appears as though there has been a decline in the proportion of authorities providing reports, this is largely because we continue to follow-up with authorities to provide reports for previous periods. For example, since the release of our 2014–15 annual report, we have received an additional 150 statistical reports from public authorities for earlier reporting periods.<sup>8</sup>

**Table 2. Statistical reports provided by public authorities to our office over time**

	Number of statistical reports provided	Proportion of identified authorities
<b>Jan – Jun 2012</b>	429	95%
<b>Jul – Dec 2012</b>	422	93%
<b>Jan – Jun 2013</b>	427	94%
<b>Jul – Dec 2013</b>	407	90%
<b>Jan – Jun 2014</b>	403	90%
<b>Jul – Dec 2014</b>	396	89%
<b>Jan – Jun 2015</b>	395	89%
<b>Jul – Dec 2015</b>	374	85%
<b>Jan – Jun 2016</b>	363	83%

A common recommendation made to public authorities arising out of audits is to amend the statistical reports previously provided to our office. This may be because the authority has failed to identify certain reports as PIDs or alternatively they have included matters which in our view do not meet the criteria set out in the PID Act.

7. In May 2016, the Minister for Local Government announced the creation of 19 new councils, by amalgamating existing councils and through boundary adjustments. Given that the former councils were separate public authorities for the bulk of the January to June 2016 reporting period, we took the view that each former council should provide a report for this period. To reduce the compliance burden on councils, we did not consider it necessary that the newly merged councils also provide a report. We have written to each new council requesting the contact details for the person responsible for providing reports from 1 July 2016 onwards.

8. Some information contained in last year's report has therefore been updated.

## In focus: Local Aboriginal land councils (LALCs) congratulated for significant improvement in providing their PID reports

In April 2016, we publically congratulated LALCs for their efforts in providing PID statistical reports to our office in a NSW Aboriginal Land Council’s (NSWALC) online network message. At that point, 84% of LALCs had provided at least one PID report since January 2012 when the legislative reporting requirements commenced. This has been a significant improvement in reporting.

The NSWALC and LALCs have actively engaged with our office, including at PID presentations we delivered at NSWALC regional forums. These helped LALCs to better understand the legislative requirements in relation to PID reporting.

In our communication with LALCs about the requirement to provide a PID report, we provide our model internal reporting policy for LALCs. This policy is specific to the structure of LALCs and outlines the role of the CEO and chairperson in particular. We also promoted Fact sheet 9: Reports of serious wrongdoing – A quick guide to public interest disclosures for LALCs. This practical resource outlines the responsibilities of LALC CEOs when a report of serious wrongdoing is received and includes a step by step guide on how to handle such matters.

## In focus: Explanation on counting

The Public Interest Disclosures Regulation 2011 (PID Regulation) outlines the information a public authority is to provide in their report to our office. Clause 4(2)(b) states this should include the number of PIDs received by the authority.

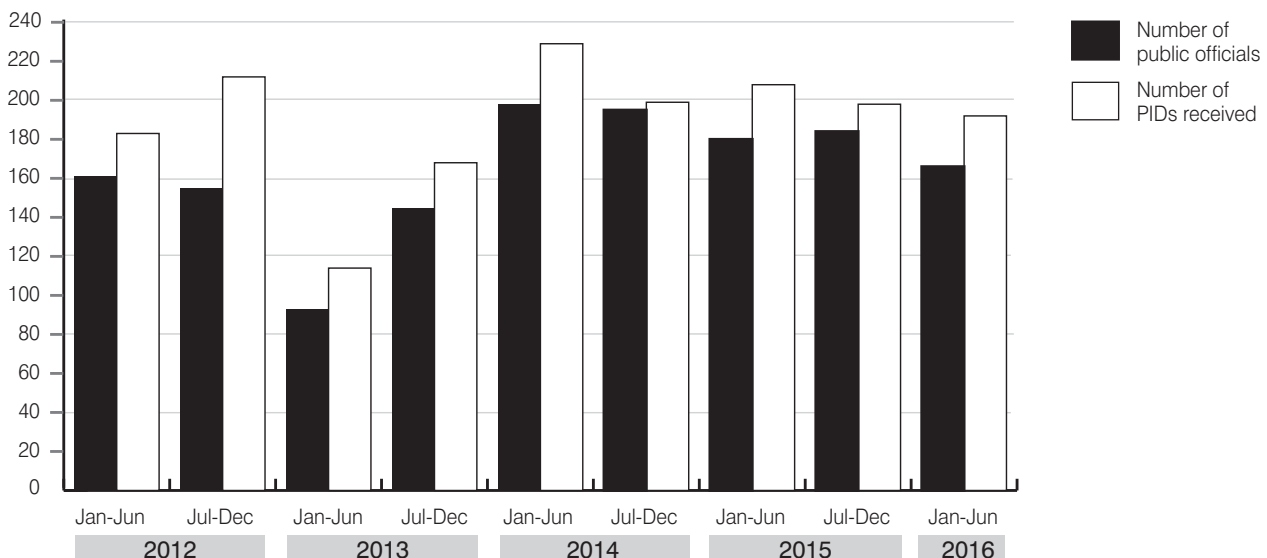
We told public authorities the number reported to our office should refer to PIDs the authority took responsibility for handling, regardless of whether they were made directly to the authority or referred by another public or investigating authority under sections 25 or 26 of the PID Act. It should not include PIDs made directly to the authority and subsequently referred for handling by another authority under the PID Act.

This is to make sure PIDs are not double counted. A PID made directly to Authority X and then referred under section 26 of the PID Act to Authority Y should only be counted as one PID, despite the fact two authorities were involved in its handling. In future, it would be useful to collect additional information about whether PIDs were made directly to public authorities or referred from another authority.

## PIDs reported by public authorities

Figure 2 shows the variation in the number of public officials who made PIDs directly to public authorities and the number of PIDs received by authorities over time. It shows the number of PIDs received has been declining since the start of 2014. In 2015–16, 22% of public authorities ( $n=85$ ) reported receiving 390 PIDs, a slight decrease from the 398 received by public authorities in 2014–15.

**Figure 2. Number of public officials who made PIDs directly to, and number of PIDs received by, public authorities over time**





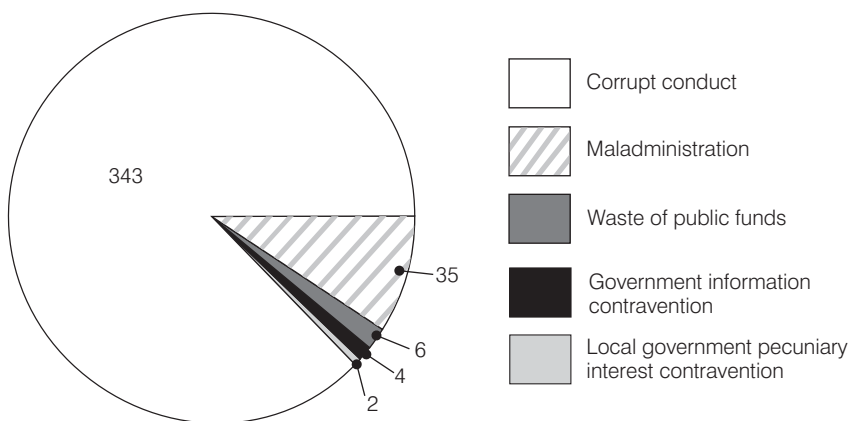
Consistent with previous years, most identified public authorities (78%,  $n=306$ ) did not report receiving any PIDs over the year. State government principal departments were the type of authority most likely to receive PIDs (90%,  $n=9$ ), followed by universities (80%,  $n=8$ ) and state owned corporations (42%,  $n=5$ ).<sup>9</sup>

## Subject matter of the PIDs

Where a PID contains multiple allegations that could fit more than one category of wrongdoing in the PID Act, we asked public authorities to only report the primary category of wrongdoing alleged – that is, the most significant or serious breach. We do not know how many PIDs primarily about corrupt conduct also contained allegations of maladministration or other categories of wrongdoing.

Consistent with previous years, Figure 3 shows that the large majority of PIDs received by public authorities in 2015–16 continue to primarily allege corrupt conduct (88%,  $n=343$ ). Very few PIDs received by authorities allege serious and substantial waste of public funds (1.5%,  $n=6$ ), a government information contravention (1%,  $n=4$ ) or a local government pecuniary interest contravention (0.5%,  $n=2$ ).

**Figure 3. Primary category of wrongdoing alleged (PIDs received by public authorities in 2015–16)**

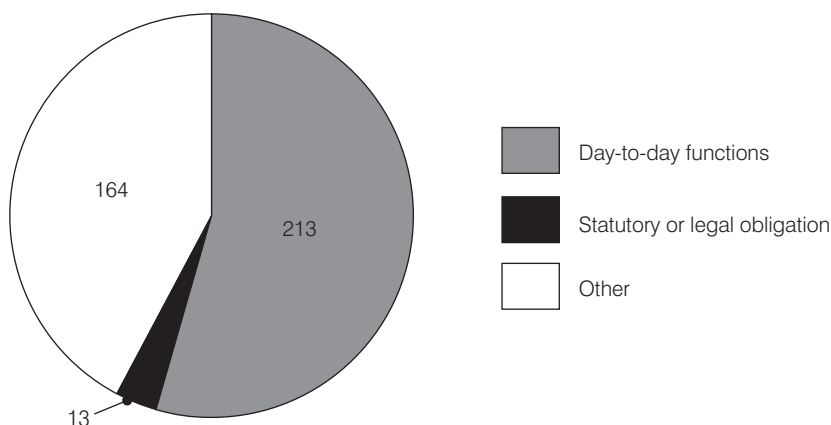


## Role of public officials making PIDs

The PID Act does not distinguish reports made by public officials performing their day-to-day functions (such as managers, internal auditors, corruption prevention staff and investigators) and reports made by staff outside of their ordinary responsibilities. As long as a report is made by a public official and it meets the other requirements of the Act, it may be a PID.

Since 1 January 2014, public authorities have been required to provide our office with information about the role of public officials making PIDs. As seen in Figure 4, more than half (55%,  $n=213$ ) of all PIDs received by authorities over the year were reportedly made in the performance of a public official's day-to-day responsibilities.

**Figure 4. Role of public officials making PIDs (PIDs received by public authorities in 2015–16)**



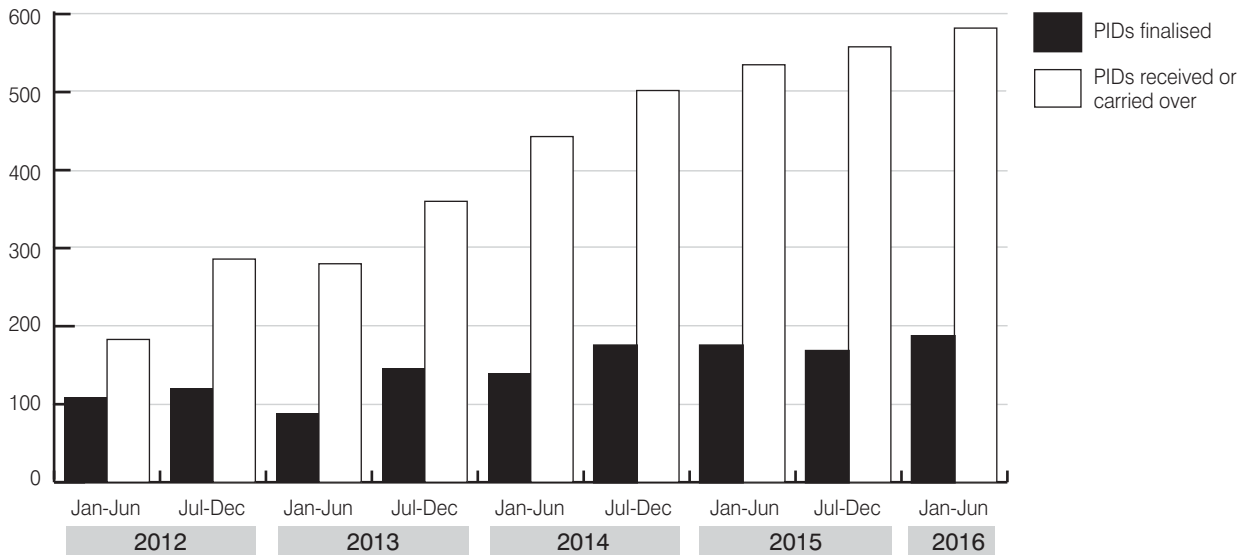
9. For the purposes of this analysis, if a public authority has only submitted a report to our office for one six-month period, we assumed that they did not receive any PIDs in the period for which we do not have information.

In responding to enquiries from public authorities and clarifying reports provided, we have noted misinterpretations of these categories – for example, the belief that PIDs referred to or from the ICAC should be included in the ‘statutory or other legal obligation’ category. Many authorities also report all PIDs received as being made by public officials performing their day-to-day functions. The reliability of the information provided about these categories is therefore questionable and we believe there is little value in requiring it.

### PIDs received that were finalised

Figure 5 shows the number of PIDs received by public authorities that were finalised in each six-month period, as well as the number of new PIDs received or PIDs carried over from a previous reporting period. Interpreting this information is difficult. Instead of the number of PIDs received or carried over continuing to grow, it may be some authorities are not counting PIDs as being finalised if they were received in a previous reporting period. Based on the information provided, we are also unable to tell how long it takes an authority to finalise a PID. To address these issues, authorities could be required to provide information relating to individual PIDs (for example, the date received and the date finalised) rather than numbers of broad categories as is currently required.

**Figure 5. PIDs received by public authorities that have been finalised over time**



### Internal reporting policies

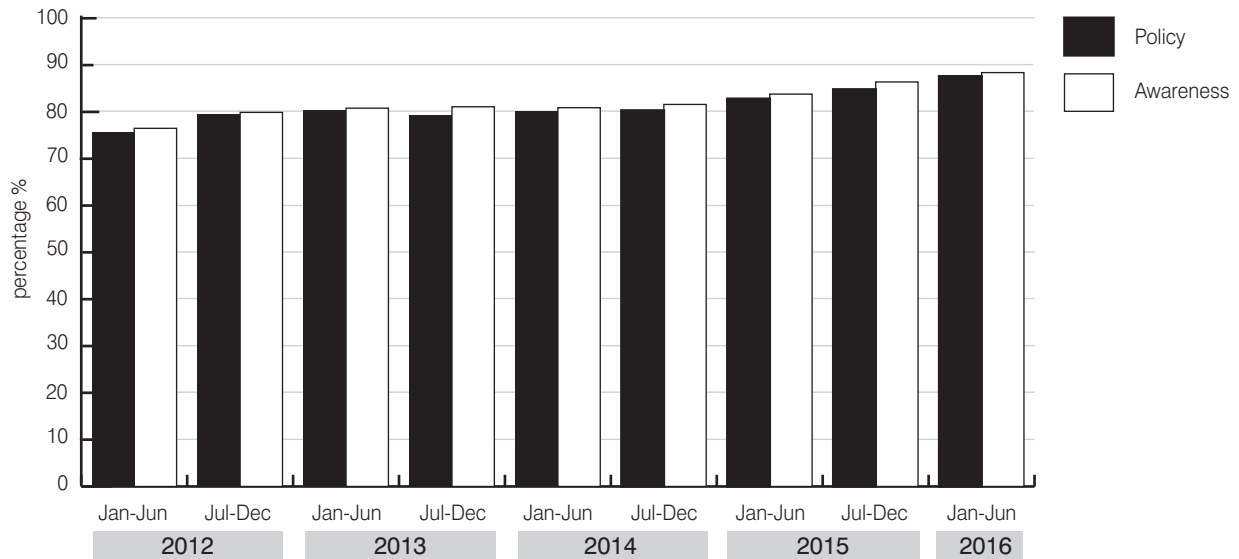
An internal reporting policy is a critical starting point for public authorities to clearly demonstrate their commitment to supporting the reporting of wrongdoing by staff and to properly handling such matters. Under section 6D of the PID Act, all authorities must have a policy that provides for their procedures for receiving, assessing and dealing with PIDs.

#### Good practice: The University of Sydney’s oversight of a wrongdoing policy

The University of Sydney’s Serious Complaints Committee is responsible for overseeing the functioning of its Reporting Wrongdoing Policy, monitoring the outcome of investigations, and evaluating factors contributing to wrongdoing. Any PID information given to this committee is redacted to protect the identity of the internal reporter.

The six-monthly reports provided to our office by public authorities show there has been a steady increase in the proportion indicating they have an internal reporting policy, from 76% in the first reporting period (January to June 2012) to almost 88% in the January to June 2016 period (see Figure 6).

**Figure 6. Proportion of public authorities that reported having an internal reporting policy and raising staff awareness over time**



The improved reporting compliance of LALCs has had the effect of lowering the overall proportion of public authorities that report having an internal reporting policy and undertaking staff awareness. Many LALCs indicate they do not have an internal reporting policy or have not raised staff awareness – 33% and 23% respectively in the January to June 2016 period. We continue to promote our model internal reporting policy designed specifically for LALCs when engaging with them and are pleased that many have reported adopting it.

## Staff awareness

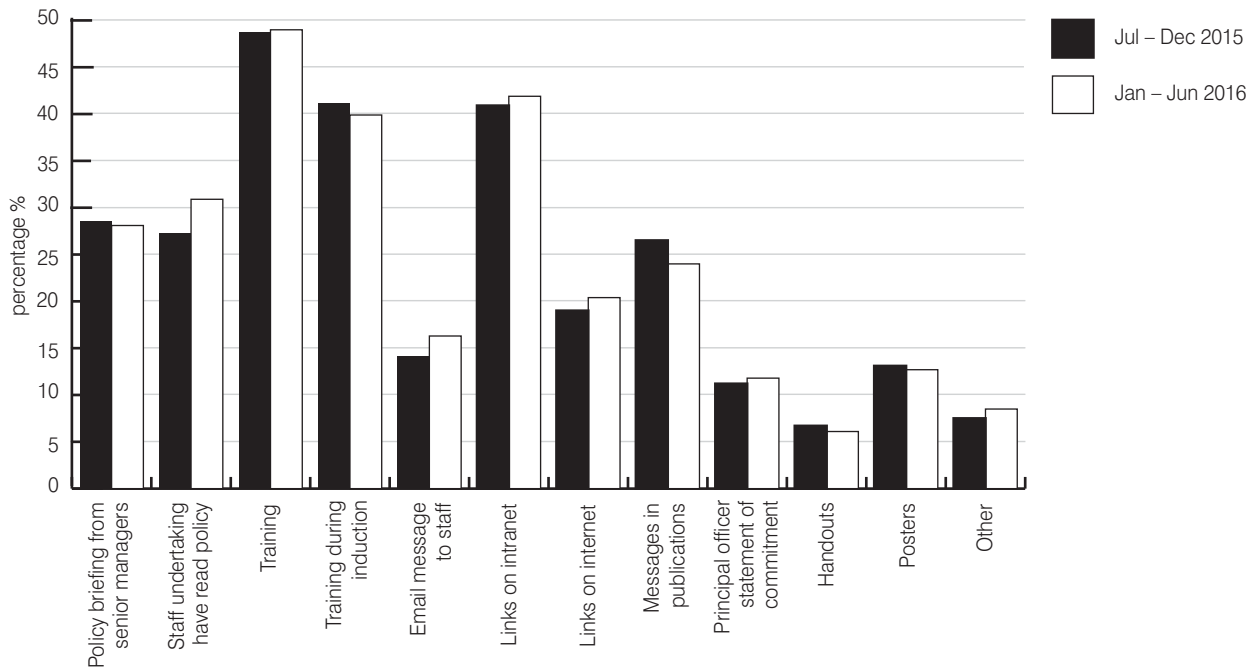
The heads of public authorities are responsible under section 6E(1)(b) of the PID Act for ensuring their staff are aware of the contents of the authority's internal reporting policy and the protections provided under the Act. There has been an improvement over time in the proportion of authorities that report the head of the authority had taken action to meet their staff awareness obligations, up from 77% in the January to June 2012 period to 88% most recently (see Figure 6).

Figure 7 shows the range of actions taken by public authorities to raise staff awareness. The majority reported adopting a number of strategies, including training staff, linking to their internal reporting policy on the intranet and providing information during staff induction programs. These have been the most common strategies over all reporting periods to date. We are pleased to see a slight increase in the proportion of public authorities that require staff to sign an undertaking that they have read the authority's policy.

### Good practice: Bland Shire Council's internal reporting policy

Bland Shire Council's internal reporting policy is signed by the Mayor and General Manager. Staff must sign that they have read, understood and will abide by council's comprehensive statement on organisational commitment to an ethical workplace and internal reporting.

**Figure 7. Proportion of public authorities that reported adopting each awareness strategy in 2015–16**



### Good practice: Raising staff awareness

Organisation-wide consultation was undertaken by **icare** during the development of their new reporting wrongdoing policy.

**Transport for NSW** released an awareness package with the tag line ‘Report corruption. We’ll support you’. Promotional materials – including post-it notes, packets of lollies, post cards and posters – provided details of how to contact the Fraud and Corruption Prevention Unit confidentially via telephone, e-mail and online.

Bookmarks as well as posters were produced by **Warringah Council** and distributed to staff.

The **Office of Environment and Heritage** consulted with nominated disclosures officers (NDO) in developing NDO guidelines to support their new PID internal reporting policy and procedures. The PID coordinator also scheduled meetings with the heads of business areas and senior leadership teams to discuss aspects of their authority’s ethical framework, including PIDs.

**Roads and Maritime Services** have an online PID reporting form on their intranet.

**Murrumbidgee Local Health District** developed an information bulletin specific to their authority, as well as an information package for managers. A presentation was given to senior managers and the PID coordinator attended operations meetings at the authority’s two largest sites to discuss PIDs.

**Blayney Shire Council** and **Dungog Shire Council** discussed PIDs in toolbox talks with staff.

## PIDs handled by investigating authorities

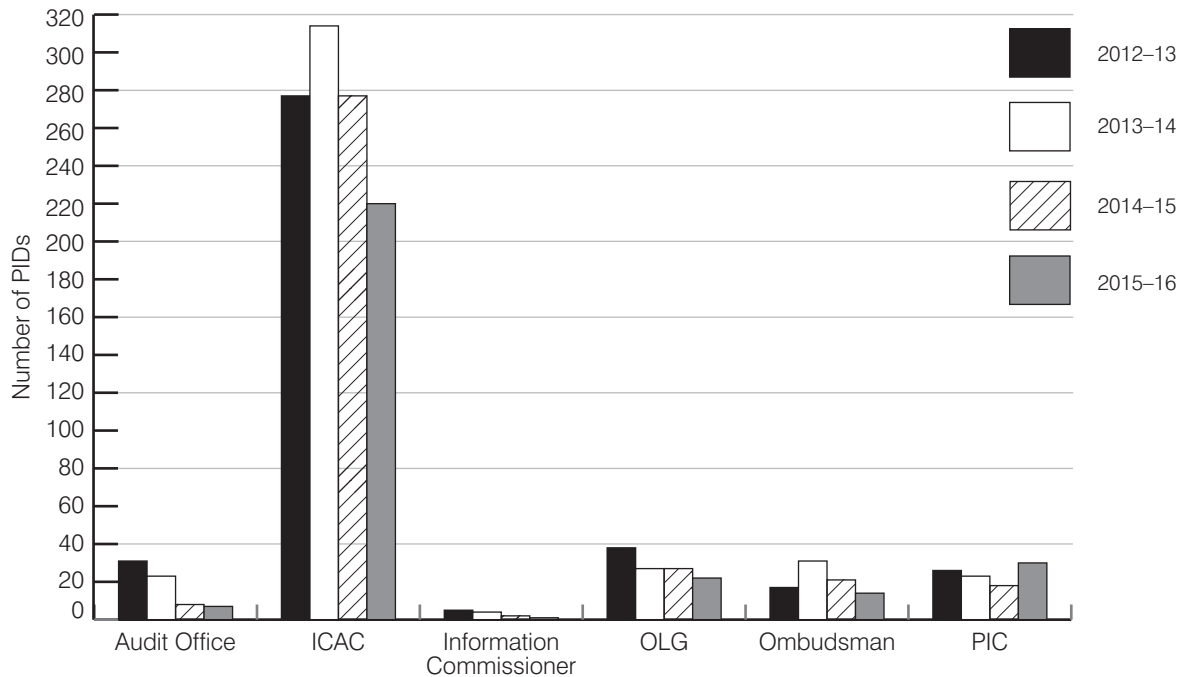
Investigating authorities are not required under the PID Act to provide statistical reports to our office in their capacity as investigating authorities. However, we coordinate the sharing of statistical information between investigating authorities about the PIDs handled in their capacity as investigating authorities to obtain a full picture of PIDs in NSW. There are nine investigating authorities under the PID Act:

- Audit Office
- ICAC
- Information Commissioner
- OLG
- Ombudsman

- Police Integrity Commission (PIC)
- Inspector of the ICAC
- Inspector of the NSW Crime Commission
- Inspector of the PIC.

Figure 8 shows the number of PIDs received by key investigating authorities over time. In addition, the Inspector of the ICAC received one PID alleging maladministration in 2015–16, while the Inspectors of the PIC and the NSW Crime Commission did not receive any PIDs in the reporting period.

**Figure 8. Number of PIDs received by key investigating authorities over time**



In total, investigating authorities received 295 PIDs in 2015–16, a 17% decrease on the number of PIDs received in the previous financial year ( $n=354$ ). The decline is largely attributable to the ICAC receiving fewer PIDs; although we note that the proportion of PIDs to the total complaints received by the ICAC has remained steady. By comparison, while the number of PIDs to our office decreased by 33%, the number of complaints from members of the public continues to increase. As noted in Section 3, the number of purported PIDs and complaints about the handling of PIDs by public authorities to our office remains steady. The only investigating authority that received an increased number of PIDs compared to 2014–15 was the PIC.

## Audit of annual reporting requirements

Section 31 of the PID Act requires authorities to report information about their obligations under the PID Act in their annual report. The reporting requirement creates transparency and accountability in that the information about authorities' obligations should be tabled in each house of Parliament by the relevant Minister and be available publicly. The reporting year will either be a financial or calendar year depending on the authority's usual reporting cycle as outlined in the *Annual Reports (Departments) Act 1985* or the *Annual Reports (Statutory Bodies) Act 1984*.

We conducted an audit to analyse the extent to which public authorities complied with section 31 for three financial years (2014–15, 2013–14 and 2012–13). This showed that there has been a steady decline in the number of annual reports forwarded to our office, as required by section 31(1). In 2012–13 46 councils, 20 state government agencies and one independent authority provided reports, while in 2014–15 this was halved to only 22 councils, 11 state government agencies and two independent authorities. This is a low proportion of the total number of public authorities in NSW (approximately 450).

The local government sector experiences particular difficulties in meeting the annual reporting requirements set out in the PID Act. Section 31 is based on the annual reporting requirements of state government agencies and is in many ways inconsistent with the annual reporting requirements for local government set out in section 428 of the *Local Government Act 1993*. This has led to many councils submitting a separate annual report specific to PIDs

to the NSW Ombudsman and the Minister in order to meet the requirements set out in the PID Act. This practice imposes an additional regulatory burden on councils that appears to be of no value and runs counter to the intention that the information be publicly available.

This issue was recently canvassed in the Independent Pricing and Regulatory Tribunal's review of the regulatory burden on local government.<sup>10</sup> At that time, we submitted that section 31 of the PID Act be amended in the following ways so as to reduce the compliance burden:

- Require the information to be included in council's annual report under the Local Government Act.
- Extend the timeframe in which the annual report should be provided from four to five months to be consistent with the timeframe provided in the Local Government Act.
- Remove the requirement for the Minister to table the report in each House of Parliament as the Local Government Act already requires that the report be publicly available on council's website.
- Remove the requirement for public authorities to submit a copy of the annual report to the NSW Ombudsman.

To ensure the same Parliamentary oversight, an alternative option is that our office be required to include the detailed information provided by public authorities under section 6CA in future PID oversight annual reports that are required to be tabled. Such an amendment would also ensure information about PIDs dealt with by public authorities that are otherwise not required to produce an annual report, such as LALCs, is publicly available and tabled in Parliament.

## People Matter Employee Survey

The online People Matter Employee Survey was open to all staff across the NSW public service (excluding local government and universities) in May 2016. The survey is coordinated by the Public Service Commission working in collaboration with public sector departments and agencies and provides an important opportunity for public officials to have a say about their workplace. The 2016 survey resulted in the highest response rate to date, with 36% of all public sector employees ( $n=127,191$ ) responding.

The survey includes three questions relevant to the PID Act, which are a helpful indicator as to public authorities' overall performance in creating a positive reporting culture. The results in comparison to the previous survey are in Table 3:

- Only 22% of respondents were not confident they would be protected from reprisal for reporting misconduct/wrongdoing. Almost half were confident and just under a third (28%) neither agreed nor disagreed. Unfortunately, this result is not comparable to the 2014 survey result because of a change in the response scale.
- One quarter of respondents witnessed misconduct/wrongdoing at work in the last 12 months (defined in the survey as 'behaviour that is unethical or wrong, that breaches your organisation's code of conduct, or that compromises your duties'). This was a 5% decrease in respondents who had witnessed misconduct/wrongdoing since 2014.
- Of those respondents who witnessed such behaviour in the last 12 months, 63% said they reported the misconduct/wrongdoing – a similar result to 2014.

**Table 3. People Matter Employee Survey results**

Survey question	2016	2014
I am confident that I would be protected from reprisal for reporting misconduct/wrongdoing (positive rating)	49%	NA*
In the last 12 months I have witnessed misconduct/wrongdoing at work (yes)	25%	30%
If yes, have you reported the misconduct/wrongdoing you witnessed in the last 12 months (yes)	63%	62%

\*2014 results are not comparable because the Likert scale changed from a 4 point scale in 2014 to a 5 point scale in 2015.

10. Independent Pricing and Regulatory Tribunal 2016, *Review of reporting and compliance burdens on local government – Draft report*, pp. 123–125.

We are currently analysing the survey results to identify differences across agencies to assist in prioritising our audit and training activities.

## PIDs around Australia

All Australian jurisdictions have adopted legislation to encourage the disclosure of wrongdoing and provide protection to public officials who make public interest disclosures.

A direct comparison of the number of PIDs across each jurisdiction is not possible because each state and territory varies in regards to who can make a disclosure, what conduct can be disclosed, how a disclosure can be made, how disclosures are responded to, and how those who make disclosures are managed and protected. The following review of Commonwealth, state and territory oversight agencies' annual reports reveals these differences, including distinct differences in the PIDs reported.

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### Disclosures in other Australian jurisdictions, 2014–15

**Australian Capital Territory:** The Australian Capital Territory Ombudsman received one disclosure that was referred to the head of the authority under the *Public Interest Disclosure Act 2012* (ACT).

**Commonwealth:** The Commonwealth Ombudsman received 53 complaints relating to the handling of a PID by an authority under the *Public Interest Disclosure Act 2013* (Cth), while a total of 639 PIDs were reported as being received by agencies.

**Northern Territory:** The Commissioner for Public Interest Disclosures handled 50 PIDs, including 19 matters that were carried over from the previous years. Almost two-thirds concerned government departments and 14% were about local government.

**Queensland:** 535 PIDs under the *Public Interest Disclosure Act 2010* (Qld) were reported to the Queensland Ombudsman by agencies, a 26% decrease on the previous year. Most (78%) of the PIDs reported were about corrupt conduct. Changes to the Queensland PID Act have had an impact on the number of PIDs reported in this period.

**Tasmania:** The Tasmanian Ombudsman received four approaches which might potentially be seen as disclosures under the *Public Interest Disclosures Act 2002* (Tas).

**Victoria:** The Independent Broad-based Anti-corruption Commission (IBAC) received 1,966 potential protected disclosures and assessed 210 allegations as protected disclosures under the *Protected Disclosure Act 2012* (Vic). Of those, 89.5% were made directly to the IBAC.

**Western Australia:** The Public Sector Commission received five PID matters which were actioned under the provisions *Public Interest Disclosure Act 2003* (WA). This represented a substantial decline on the 14 PID matters received in 2013–14.

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## Chapter 3. Performing our functions

**Our work includes handling PIDs and related complaints, auditing public authorities, training public officials, building practitioner capacity, providing advice, proposing legislative change, and collaborating with other agencies.**

### Five years on

The NSW PID scheme commenced on 1 March 1995 and is now over 20 years old. Since this time, our office has been an investigating authority for disclosures alleging maladministration. In 2011, our special oversight and awareness functions under the PID Act commenced. At this time, the Ombudsman's office established a specialised PID Unit responsible for performing these functions and providing support to public authorities and public officials.

One of the strengths of the PID Act oversight responsibilities being vested in a single unit in one investigating authority is that intelligence gained through performing a particular function can assist with the performance of others. This ensures that limited resources are employed where they are likely to have the greatest impact. For example:

- Information on PID-related complaints received by our office and PIDs reviewed as part of the audit program provide a useful insight into areas where public authorities can improve their handling of PIDs. Along with the enquiries and requests from public authorities, this has led to issues being flagged for legislative amendment, the development of new resources and the revision of existing publications.
- The selection of public authorities to be audited can be based on a number of sources of information, such as complaints received, the information contained in public authorities' six-monthly reports and intelligence received while delivering training.
- Where public authorities indicate in their six-monthly reports to our office that they do not have an internal reporting policy or have undertaken staff awareness, we can follow-up with an offer to conduct training, provide resources or otherwise assist. For example, in response to the initial low compliance with the reporting requirements by local Aboriginal land councils, we developed strategies to engage with these public authorities, such as by contacting them by phone, releasing targeted publications and conducting training at regional forums.
- Individual PID-related complaints may raise concerns that are better dealt with by auditing the public authority's systems.

### In focus: Snapshot of our work 2011–16

- 7,161 public officials have attended 273 general awareness training sessions and 3,372 public officials have attended 232 management training sessions, with over 98% of participants rating the training positively.
- Four e-Learning modules developed.
- Ten PID practitioner forums facilitated.
- Advice provided to public officials and public authorities in response to 1,083 enquiries.
- Established an online community named 'Whistling Wiki' with the Commonwealth and Queensland Ombudsman's offices.
- Distributed 31 issues of PID e-News, to which there were 1,037 subscribers as of 30 June 2016.
- Developed 23 guidelines, three model internal reporting policies, seven templates for public authorities, nine fact sheets and a promotional poster.
- Issued four PID oversight annual reports.
- Conducted 22 face-to-face audits of public authorities, which included reviewing 682 files (243 PID files and 439 internal reports).
- Made 159 recommendations to public authorities following audits, of which 94% were accepted.
- Conducted three sector-wide PID audits.
- Established an online PID reporting tool and received 3,616 PID statistical reports from public authorities.
- Provided secretariat support to the PID Steering Committee, including during the Committee's review of the Commonwealth legislation (as required by section 31B of the PID Act).



- Assessed and handled 121 PIDs, 72 purported PIDs and 25 complaints about the handling of PIDs.
- Monitored two public authorities' compliance with the PID Act for a period.

## Handling complaints

We received 33 complaints relating to PIDs in 2015–16. This was an 18% decrease compared to the 40 PID-related complaints received in the previous financial year.

### PIDs

Fourteen complaints received were assessed as meeting the criteria to be a PID. As provided for under section 25 of the PID Act, we referred four PIDs to the relevant public authority and two PIDs to another investigating authority after determining they could most appropriately deal with the matters raised. We did not take any action on a further PID as we were aware that another investigating authority was responding to the same allegations.

In six of the matters received, we made inquiries with the relevant public authority. One PID that we received during the period is currently the subject of formal investigation.

### Handling of PIDs

Ten complaints received were about the handling of a PID by a public authority. We made inquiries into all of these matters with the relevant authority about the action they had taken. For example, we asked about their assessment processes, whether they assessed the risk of reprisal and took action to mitigate any identified risks, their communication with the reporter and their investigation of the allegations made. As a result, we made ten suggestions to three authorities under section 31AC of the *Ombudsman Act 1974* about improvements they could make to their PID processes.

## Case Study 7

### An unfortunate sequence of events

We received a complaint from a public official expressing concerns about the handling of his PID. After lodging the PID in October 2014, he wrote to the principal officer of the authority about his confidentiality being breached. Following this, his report of wrongdoing was re-assessed as a grievance rather than a PID. He also complained to us that he suffered reprisals as allegations of misconduct were made against him and investigated.

We made inquiries with the relevant public authority and found it had not conducted a written assessment of the public official's report upon receipt. In reviewing its assessment the public authority stated that, as the reporter did not use the words 'maladministration', 'waste of public money' or 'government information', and the term 'corrupt conduct' only appeared twice, in its view the matter did not constitute a PID.

In relation to the investigation into the allegations about the reporter's conduct, we were advised that while the conduct being investigated allegedly occurred between March 2014 and July 2014, it was only escalated for investigation in October 2014.

We wrote to the public authority advising that we were concerned about the reasons given in its re-assessment of the report. We expressed the view that the allegations made appeared to satisfy the criteria set out in the PID Act.

It also was not clear why the investigation into the reporter's conduct was so delayed. We expressed concerns about the amount of time (8–11 months) that elapsed between when the conduct was alleged to have occurred and the date when the reporter was advised of the allegations. This delay could have affected the reporter's ability to respond effectively to the claims made against him. Given the timing of the investigation, it was not surprising the reporter concluded that the allegations were made in reprisal for the report he made in October 2014.

We suggested that the public authority conduct written assessments in the future. We also asked the public authority to review the delays in the investigation into the reporter's conduct and advise of us any improvements that could be made to the authority's processes.

Case study 8 shows how important it is that public authorities, including their principal officers, are fully aware of the requirements of the PID Act. While authorities may wish to consult or engage external investigators or legal advisers, the responsibilities to properly assess, acknowledge and respond to a PID lie with the authority. Authorities should therefore take care in selecting external investigators and reviewing and approving their work.

## Case Study 8

### Too little too late

A council employee complained to our office that her PID was not assessed appropriately and in a timely manner.

We made inquiries and found that her PID to the general manager was not assessed by the council but by an external investigator who was engaged more than three months after the PID was made. The council also did not acknowledge the PID.

The external investigator that council relied on demonstrated a poor understanding of the PID Act. They considered the PID to be about corrupt conduct when there was no basis for this and the reporter had explicitly alleged maladministration. Additionally, the investigation report contained errors in its description of the PID Act as well as outdated references to 'protected disclosures'.

The reporter was not informed of the outcome of her PID until some eight months after making her report. This is contrary to section 27 of the PID Act which requires authorities to notify the reporter of the action taken or proposed in response to the disclosure within six months of it being made.

We made six suggestions to the public authority under section 31AC of the Ombudsman Act relating to assessing reports of wrongdoing, reviewing any external investigation, developing PID processes, communicating with reporters, revising their internal reporting policy and training staff on handling PIDs. The authority indicated their commitment to making the suggested improvements.

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## Purported PIDs

Nine complaints that we received were purported PIDs – that is, the person making the complaint claimed it was a PID, but we assessed it as not meeting at least one of the mandatory criteria set out in the PID Act. Three complainants did not provide sufficient evidence to demonstrate they had an honest belief on reasonable grounds that their information showed or tended to show wrongdoing. As two of these complaints were made anonymously, we were unable to request further information to support their allegations. In six purported PIDs, we determined that the concerns raised did not constitute one of the five categories of conduct provided for in the PID Act.

Reporters may purport to make a PID when they consider it is in the public interest to raise matters that affected them personally, such as grievance or employment related concerns. It can be challenging both for our office and authorities generally to explain that, for a matter to be considered maladministration of a serious nature, it must be systemic in nature or if an individual occurrence it must be clearly serious. Case studies 9 and 10 are examples of public officials raising concerns that, in our view, were not in the public interest.

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## Case Study 9

### Advice falls on deaf ears

A public official made a complaint to us that a Chief Executive failed to act on the issues he raised with him because the allegations were about the Chief Executive's own conduct. The concerns were about the Chief Executive's decisions in relation to compliance activities, and in particular his response to a media article about them. The reporter told us the Chief Executive failed to manage the conflict of interests by handling a complaint about himself. Further, the reporter claimed that he suffered detrimental action in reprisal as a result of making the disclosure.

Our inquiries with the public authority revealed that the Chief Executive had taken appropriate steps to ensure the matter was handled by senior staff other than himself. The PID coordinator had given the Chief Executive appropriate advice that the concerns raised did not appear to be a PID because they were not about one of the categories of conduct in the PID Act. The public authority reviewed the concerns raised by the reporter, complimented him on his passion about his team, and advised that the issues he had raised about the Chief Executive's conduct were not supported by evidence.

Despite explanations from the public authority and our office, it appeared the public official either had not understood or would not accept the explanation given to him as to why his complaint was not a PID. It was not clear to us how the reporter came to the conclusion that the Chief Executive handled the complaint by himself.

The public official also had an enduring belief that his role later being made redundant was reprisal for having raised the concerns and refused to accept the authority's detailed explanation that his role was made redundant due to an unrelated restructure process. He was told the timing of it had nothing to do with his report, but this seemed to only confirm his suspicion.

## Case Study 10

### Misuse of the PID Act for personal interests

We received an email from a public official attaching what was referred to as a 'PID report'. The essence of her complaint was that she had not been successful in applying for a temporary vacancy at the public authority that she worked in. She was advised by the authority that, as the role was temporary, it could only be filled by someone who was currently at the same level. She disputed this, stating that backfilling the role at the same level was discrimination and an incorrect interpretation of the Government Sector Employment Rules 2014.

We wrote to her advising that, in our assessment, her complaint was employment related (and thus outside of our office's jurisdiction). We also advised that, in our view, her report did not meet the seriousness threshold of maladministration as defined in the PID Act.

Following this, we received two further purported PIDs from the same individual, both of which related to matters concerning her private life. The first related to an application she had made to the NSW Civil and Administrative Tribunal (NCAT) about her tenancy. She said that the NCAT made an administrative error when processing her application and that this was evidence of corrupt conduct. In the second case, she sought to make a PID about the Chief Justice of the Supreme Court as he had declined to take action when she raised complaints about the conduct of the Registrar in a separate private matter.

We advised her that these matters also did not meet the criteria set out in the PID Act. We also explained that the PID Act is not intended or designed for people to pursue their own private interests, unconnected to their employment in the public service.

Upon receiving a purported PID, a considered and timely assessment of whether the report meets the criteria of the PID Act is particularly important. This can help to manage the expectations of reporters, particularly in the context of subsequent claims of reprisal. Case study 11 highlights possible consequences of assessing a report as a PID, while case study 12 demonstrates that not assessing a report in a timely way can lead to confusion for the reporter.

## Case Study 11

### Bullet-proof internal reporter

We received a claim from a public official that he experienced detrimental action in reprisal for making a PID internally. When making his report, the public official stated he was making a PID and the public authority erred on the side of caution and treated it as such.

A consequence of this was that the public official felt all later management action in relation to him could not be taken – for example, a review of his pay which had identified a discrepancy that needed to be rectified. Separately to the report, allegations of misconduct were made against the reporter which the authority considered it needed to consider and progress. The reporter believed these actions were reprisal for making a PID.

For us to consider a complaint about reprisal, we need to form a view that the internal report which led to the alleged reprisal was a PID. After making inquiries with the public authority about their assessment and handling of the internal report, we assessed the report and advised the reporter that, in our view, it did not appear to meet the threshold requirements for it to be a PID. Primarily, this was because the allegations of maladministration did not appear to be supported by any evidence.

The authority incurred considerable expense undertaking an independent investigation of the allegations, despite it appearing that they had no basis. The investigation could not be finalised due to difficulties in gaining the cooperation of the reporter in the context of wider employment issues, including the fact that he was on long term stress leave. This lack of resolution prompted the authority, in consultation with our office, to revisit their earlier assessment of whether the report was a PID and the need for any further investigation.

## Case Study 12

### Delayed assessment opens the door to claims of reprisal

A public official complained to our office that two reports she made to a public authority should have been assessed as PIDs and that she then suffered reprisal after making them. As her complaints described conduct that constituted grievances, which also questioned what appeared to be legitimate management and operational decisions, we did not consider that they met the definition of a PID.

However, we believe that the authority could have better handled the matter by conducting a more timely assessment of the complaints. The authority did not inform the public official of its assessment until six months after the first complaint and three months after the second complaint. By quickly providing the public official with a copy of its internal PID policy but delaying its assessment, the authority created an unhelpful impression on the part of the public official that her concerns were PIDs and the ongoing management actions against her were in reprisal.

## Auditing public authorities

We have a statutory function to audit the exercise of functions under and compliance with the PID Act by public authorities. In 2015–16 we conducted four audits on the handling of PIDs across one cluster in the NSW public sector. This involved reviewing 149 files – 59 PIDs and 90 internal reports.

In the NSW state government, individual agencies are grouped under a principal department which may take a centralised or devolved approach to decision making, including the handling of PIDs. In recognition of the trend towards centralising functions such as the handling of PIDs and other HR functions in the principal department of the cluster, we chose to audit all of the agencies in a particular cluster or portfolio to compare their practices.

As noted in our previous annual report, the cluster situation was not contemplated by the PID Act and has raised some issues for both our office and the public authorities involved, in terms of responsibilities for receiving reports in the cluster. Both of the clusters that we have audited to date have chosen to adopt a centralised approach to the handling of PIDs with the principal department taking control of the PID process. This has usually been part of a larger process of centralisation, including consolidating the HR function. Prior to this individual agencies in the cluster operated autonomously in relation to the handling of PIDs and had their own internal reporting policies and nominated officers to receive disclosures.

The issues we identified throughout the audits this year included:

- Resentment at a perceived loss of jurisdiction or control over the handling of PIDs and misconduct matters from agencies that once functioned independently from the principal department.
- A trend towards narrowing the number of nominated officers who can receive PIDs and limiting this to officers who are employed in the principal department. In our view, this will likely act as a barrier to reporting as most

employees rarely engage with the principal department. We have suggested that there should be at least one nominated officer in each individual authority/business unit and preferably more, such as one at each worksite.

- Poor communication from the principal department to those at the individual authority/business unit level about these changes and how they affect people.

We made 34 recommendations to public authorities following audits over the year. Some of the common recommendations arising from the audits in 2015–16 were that the public authority should:

- complete a written assessment on receipt of each report that addresses the criteria in the PID Act
- appoint additional disclosures officers in appropriate locations
- complete a written risk assessment that assesses the risk of confidentiality being breached and the risk of reprisal action if confidentiality cannot be maintained
- post its PID policy on the website
- ensure it keeps appropriate records of the receipt, assessment and management of internal reports
- provide PID training to all line managers.

## Audit case study 1

This year one of the public authorities we audited was a large organisation with a high proportion of volunteers, dispersed across the state. Most of these public officials rarely visited head office. The public authority had a strong focus on operational matters but its administrative processes were not sound. We identified a number of issues.

### No reliable systems for tracking PIDs or internal complaints

Prior to the audit it seems the public authority had no reliable system for tracking PIDs made or transferred to it. A list of files provided to our office for the purposes of the audit was not accurate and contained matters that were not PIDs. An Excel spreadsheet was created in 2014 for internal complaints but there was no record of complaints made prior to this date. The spreadsheet was retained in head office and complaints that were handled at the local / regional level were not recorded anywhere.

This meant the statistical reports that the public authority had provided to our office for the relevant periods were not accurate and it had no way of identifying how many PIDs had been received prior to 2014. Files that were considered to be sensitive were locked in a cupboard in the office of the CEO and the CEO had on occasion created new files without advising the PID coordinator.

### Record keeping

Record keeping was poor and the public authority did not have a records management policy. A number of the files we reviewed had no file number. The PIDs we reviewed had been given a reference number when they were placed upon the spreadsheet that was created for the audit, however this did not reflect the reference number on the corresponding files.

The files we reviewed were mostly not in chronological order, which made them difficult to review and comprehend. A number of files appeared to be missing substantial amounts of documentation, including records of telephone conversations, other file notes, investigation reports and the outcomes from these investigations or any ensuing disciplinary action. A number of files did not have the papers on them secured properly and they were loose on the file. We found some papers on the files we reviewed that did not appear to relate to the case at hand and appeared to concern other related matters. As a result of the audit we suggested that the State Records Authority review the public authority's record keeping systems and provide advice about refinements that could be made to improve the system.

### No internal misconduct procedures

The public authority did not have any procedures for handling allegations of misconduct. It acknowledged that there were varying levels of expertise and familiarity with administrative investigations across the organisation and procedures for handling misconduct would provide guidance and ensure a level of consistency in managing such cases as well.

## Investigation issues – delays and procedural fairness

A number of the files we reviewed were characterised by significant delays in investigations. In other cases there were issues raised about procedural fairness, which meant the public authority was unable to take appropriate action. The public authority acknowledged at the audit that understanding about procedural fairness was limited within the organisation.

### Assessing PIDs and risk

None of the files we reviewed contained a written assessment addressing whether the criteria in the PID Act were met. Our office recommends that public authorities conduct a written assessment of all reports of wrongdoing made by staff or contractors in order to determine whether the report should be treated as a PID.

We saw a written risk assessment for only one of the PIDs we reviewed and this risk assessment was not on the file but provided to us after the audit. In particular it was disappointing that a risk assessment did not appear to have been carried out in relation to a matter that our office referred to the public authority under section 25 of the PID Act, as the reporter raised issues concerning fears of reprisal, both prior to and during the investigation.

### Nominated disclosures officers

Under the public authority's internal reporting policy only a handful of officers were nominated to receive PIDs and the majority of these officers were located at head office. As the public authority covered a wide and dispersed geographic area, it appeared to us that this may act as a disincentive to reporting. The majority of reports were made, at least initially, at the local level, and this may have resulted in some reports that may have otherwise been protected not receiving the protections of the Act. There was no process for reporting matters to head office, no systematic recording or tracking of these complaints, and it was left to a supervisor's discretion whether a matter was escalated. On occasions the public authority noted that matters 'bubbled up' due to the insistence of the complainant and the fact that matters remained unresolved at the local level.

## Audit case study 2

Another public authority audited had operated as a separate statutory authority for a number of years and had its own internal unit that was responsible for managing PIDs and misconduct matters. Due to changes effected by the *Government Sector Employment Act 2013* and other cluster wide initiatives, the authority was advised in 2014 that it would no longer have responsibility for receiving and handling PIDs and this would sit with the principal department of the cluster.

Staff of the public authority advised us that they were not consulted during the process of restructure and centralisation of responsibilities for handling PIDs. Prior to the consolidation of the PID function, the authority operated under its own internal reporting policy in which a number of officers were nominated to receive PIDs, including any officer of the position clerical grade 11/12 or above. Under the new cluster wide policy only two officers at the authority were nominated to receive PIDs.

During the period covered by the audit there had been considerable turnover in the area responsible for handling PIDs. Communication with reporters appears to have been poor on a number of occasions. Some matters were significantly delayed or had stalled, perhaps due to staff turnover and incomplete record keeping.

In late 2015 the relevant manager conducted a comprehensive review of all files identified as PIDs. It is not clear to us what state the files we reviewed were in prior to this review, however it was evident at the audit that a great deal of work had been undertaken to get the files in order for our visit. This involved updating reporters on the status of matters that they had received no feedback on, in some cases for years, and checking on the progress of a number of matters that had stalled for various reasons.

We identified a number of issues in the audit report and provided the following feedback to the authority.

In our view the low number of nominated officers would, most likely, act as a barrier to reporting. The majority of reports were made, at least initially, at the local level or alternatively to the recognised internal unit responsible for handling allegations of misconduct. While the numbers of PIDs in recent years has not dropped, this was because the authority had treated reports to the CEO and to it as PIDs during the period that there was uncertainty as to the applicable internal reporting policy. However reports received by these individuals do not satisfy the criteria in the PID Act on a technical basis.

It appears that written assessments were not conducted as a matter of course until late 2015. There was no consistent practice of acknowledging PIDs. Of the 18 PIDs we reviewed that warranted an acknowledgement, nine did not have an acknowledgement letter on the file.

Out of 37 PIDs, we saw three PID risk assessments carried out by the authority. There were a number of cases where we felt that a risk assessment was warranted as there appeared to be a risk of reprisal to the reporter for a number of reasons.

A number of files we reviewed had been referred to the authority by the ICAC. It appears that, prior to 2015, some of these PIDs were counted as PIDs to the authority, despite the fact that they were not referred under section 25 of the PID Act. A PID must be referred under section 25 of the PID Act for the responsibility for managing, handling and counting the PID to pass to the relevant authority.

The authority had made considerable improvements to the handling of PIDs since 2015. It appears these improvements have been largely driven by the director and the manager of the internal complaints unit. We suggested that it was important for the new procedures to be documented so they can be easily referenced in the future. This would ensure the process improvements that have been made are embedded and do not get lost in the event of staff turnover, as well as consistency in approach to the assessment and handling of PIDs.

## Training public officials

We have a statutory obligation to provide PID training to public authorities in NSW.

The PID Unit provides free training sessions to groups of ten or more. These training sessions help public authorities to promote staff awareness of the importance of PIDs, promote a positive reporting environment, reach compliance with the requirements of the PID Act and manage PIDs effectively. We provide one or both of the following training sessions, free of charge, at authorities' nominated venues:

- PID general awareness information sessions – one hour's duration suitable for all staff
- PID management training – three hour's duration suitable for senior staff, supervisors and nominated disclosures officers.

We also offer open workshops at various locations if authorities have a small number of staff who require training.

During 2015–16, we audited training delivery since the commencement of our oversight functions in 2011 and wrote to public authorities to which we have not provided customised in-house training.

### Good practice: Central Coast Local Health District tailors our PID training to meets its needs

The Central Coast Local Health District's (CCLHD) PID coordinator tailored our three hour PID training session to meet the development needs, wishes and issues identified by CCLHD's PID practitioners. In addition to our PID training material, the session included an introduction by the PID coordinator bringing attention to PID issues identified in the district and promoting the value of the training, a presentation by the CCLHD's internal auditor, strategies on how to create a positive reporting environment and promote PIDs, actual case studies to identify possible PIDs, internal processes, actions taken in response to PIDs and information about the ongoing support available.

The audience had a sophisticated understanding of PIDs, with the nominated officers having completed our office's PID management e-Learning module prior to the training. One of the participants told the CCLHD and us that 'with further review of the materials provided, by the Ombudsman and locally, I feel I can do this'.

## Snapshot of PID training in 2015–16

- 79 public authorities received training
- 1,437 public officials in total participated in our PID training
  - 572 public officials in the PID awareness sessions
  - 865 public officials in the PID management sessions
- 22 PID awareness sessions
- 50 PID management sessions

## PID training in NSW 2015–16



### Metropolitan

Brookvale	Liverpool	Sydney
Burwood	Mosman	Tempe
Kensington	Parramatta	Ultimo
Lidcombe	Penrith	Waverley

## Evaluating our training

Our commitment to ensuring our PID training meets every participant’s expectations means we value their feedback regarding how we are performing. This is why we encourage every training participant to provide us with feedback by completing an evaluation form. We take all comments seriously and use this information to identify ways in which to improve or confirm that our training is meeting needs of public authorities.

Most of the 1,437 public officials who attended PID training sessions completed an evaluation form. Participants are asked to comment on the session, the presenter, the content, and their confidence in implementing what they have learned in their workplace. Overall their satisfaction rating is 98% and this feedback has reinforced that our training is useful and relevant.

### Compliment: PID training

‘Thank you for your recent work with State Transit presenting the PID training sessions to our supervisors, managers and NDO’s [nominated disclosures officers]. I have received feedback from a number of the attendees who spoke highly of the course and particularly the engaging manner in which you presented the content. I also appreciate the effort you went to working with [one of our managers] to tailor the workshop to integrate our process and documents.’



## Building capacity

Engaging with public authorities and individuals is an important part of the work of the PID Unit in meeting our statutory requirements. Developing and maintaining professional relationships enables us to promote awareness of the PID Act, provide support and guidance to public authorities and individuals, and identify problems and respond appropriately.

### The role of PID coordinators

PID coordinators have a central role in public authorities' internal reporting systems. They can receive and assess reports, and are the primary point of contact in the authority for the reporter. PID coordinators may be CEOs, directors of corporate services, finance managers, general managers or general counsel, or located in specialist functions such as professional standards, audit or corruption prevention. A survey of public authorities in 2013–14 found that the most common role held by PID coordinators is director of corporate services.

Public sector restructuring affects many public authorities and – along with other reasons such as extended leave, resignations, transfers and promotions – generates a significant turnover of PID coordinators. This affects the continuity of our relationship with authorities. It also compromises authorities' corporate knowledge of the PID Act, including the challenges and strategies associated with implementing internal reporting systems.

We maintain a register of PID coordinator details for each identified public authority under the PID Act. This means that public authorities need to let us know when there is a change of PID coordinator or their contact details. Unfortunately, we commonly only become aware of a change in personnel when emails cannot be delivered to a PID coordinator's email address. In these situations, we are proactive in contacting authorities to brief the new PID coordinator on their responsibilities and the support we can provide. For example, we keep PID coordinators updated about the PID Act, invite them to PID practitioner forums, issue publications and the PID e-News, and assist with their PID-related enquiries.

One strategy to ensure appropriate handover of PID coordinator responsibilities is to recognise this role in duty statements or role descriptions. Over the coming year, we will be developing examples that public authorities can build into the work plans and performance management process for PID coordinators, nominated disclosures officers and supervisors.

### PID forums

Our PID practitioner forums focus on the practical application of the PID Act, working through operational difficulties faced by authorities and using examples of good practice to find better ways of achieving the public interest objectives of the legislation. They also allow participants to raise issues with us and ask questions about better managing PIDs.

We held four PID practitioner forums over the year:

- August 2015 – 'Learning from each other': We invited speakers from Roads and Maritime Services, Sydney Trains, Burwood City Council, the NSW Ministry of Health and Ausgrid to share their approaches and experiences in relation to PIDs.
- February 2016 – 'Reprisals and conflict': The focus was on how the reprisal provisions have operated since the PID Act's commencement and preliminary observations stemming from the sector-wide audit of reprisals. Guest speaker Professor AJ Brown from Griffith University also spoke about the *Whistling While They Work 2* research project.
- May and June 2016 (Sydney and Orange) – 'Consultation – Review of the PID Act': In addition to providing information about the process for reviewing the legislation, we sought practitioners' views on what works and what doesn't, and posed specific questions on key issues identified through our research.

Overall these forums were rated as good or excellent by over 95% of attendees. Feedback has also helped us to identify areas of interest for PID practitioners which we use to inform future forums.

### Compliments: PID practitioner forums

'Finding out how different agencies deal with different aspects of PIDs was really helpful and I made a note of a number of things I'd like to take on for my office.'

'Very productive session and opportunity for collaboration and information update.'

## Attending conferences and events

Attending government conferences and events is one way we publically make ourselves available to connect with and raise awareness of PIDs among public officials. Over the year we hosted information stalls at the NSWALC Statewide Conference on 18 August 2015 and the Corruption Prevention Network Forum on 10 November 2015.

We were also invited to attend and speak at a range of events over the year, including:

- the Local Government Internal Ombudsman Network meeting on 11 August 2015
- a Corruption Prevention Network lunchtime seminar on managing reprisals on 14 October 2015
- as part of the Governance in Local Government Intensive Course on 11 May 2016
- at the Coffs Harbour LALC regional forum on 30 June 2016.

## PID e-News

We continue to inform people about our work through a regular electronic newsletter. This is an effective and efficient way to disseminate information to the community of PID practitioners and other interested stakeholders. Past issues can be accessed from our website. To subscribe to receive the PID e-News email [pid@ombo.nsw.gov.au](mailto:pid@ombo.nsw.gov.au).

Over the financial year, we distributed three issues of the PID e News to 1,037 subscribers (as at 30 June 2016), which is a 7% increase compared to the 968 subscribers in the previous reporting period. Articles included explaining our PID audit program and the good practice identified through audits, showcasing presentations from guest speakers at a PID practitioner forum and looking back on the development of the PID Act since its commencement over 20 years ago.

## Providing advice

We regularly speak to public authorities to help them respond to individual PIDs, interpret the PID Act and develop internal reporting policies. By providing PID practitioners with information, advice and assistance, we can improve the handling of PIDs across NSW.

We also provide advice to public officials who are thinking about reporting wrongdoing or who have made a disclosure and have questions on the process. We advise on issues including:

- the protections available under the Act
- the information they should provide when making a report
- how to make a report in a way that minimises risks
- the appropriate investigating authority to which a report should be made
- the normal procedures followed by our office on receipt of such a report.

We received a total of 240 PID enquiries during 2015–16, almost the same as in the previous year ( $n=238$ ). Of these:

- 97 were from public authorities with a policy query
- 90 were from public authorities about the management of a report
- 53 were from public officials who had reported wrongdoing or were thinking about doing so.

We also responded to approximately 275 enquiries from public authorities about the administrative processes around submitting a PID report to our office.

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## Compliment: Providing advice

'That's extremely useful, and many thanks again for your thoughts and input this morning.'

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## Snapshot of our advice

<p>A council officer sought advice upon receiving a response from a union representing a staff member. The staff member had been given the opportunity to show cause as to why his employment should not be terminated for certain conduct after receiving multiple warnings. The union had responded that the staff member was not required to show cause until the PIDs that he had made were dealt with by council. We advised the council officer to treat the two matters separately – i.e. to advise the staff member that the disciplinary process against him will be continuing and treated as separate to the handling of his PIDs. We referred the council to our guideline D3 on reporters involved in wrongdoing.</p>	<p>A public authority discussed with us whether allegations made by a staff member met the criteria in the PID Act. The statements made by the staff member were vague, based on gossip and in many cases the issues raised had already been looked into and found to be unsubstantiated. We advised that it did not seem as though this report would meet the PID Act threshold of the reporter having an honest belief on reasonable grounds that shows or tends to show the wrongdoing. We noted that the staff member should be told their report is not being treated as a PID for this reason.</p>	<p>A union employee wanted to make a PID to our office about a principal officer not investigating allegations of bullying and harassment and failing to provide reasons for their decision. We advised her to make clear she is complaining about the handling of the matter rather than the bullying itself – and to provide any evidence that supports her concerns. The matter had already been reported to the Fair Work Commission and the former WorkCover authority. In relation to making a PID, we also advised that as the union official was not a public official she herself could not make a PID – however she could assist a staff member of a public authority to do so.</p>
<p>A public official asked whether there were any penalties in the PID Act (such as fines) for not investigating a PID. We advised there was no requirement to investigate and that, in some circumstances, it would be appropriate not to investigate. We discussed the importance of documenting any such decision and the reasons for it.</p>	<p>A PID coordinator asked for advice about a purported PID. A public official had alleged that people in her team, including herself, were being bullied. None of the other members of the team had lodged bullying complaints. We recommended that the PID coordinator document why the issues raised would not constitute a PID by using our internal assessment template and communicating the findings to the public official using our template letter developed for this purpose. We emailed these documents to the PID coordinator.</p>	<p>A public official sought advice about whether to include a particular matter in their statistical PID report. A staff member had made a report to their manager, and the manager then made the report to a nominated officer. We advised that if the report by the manager otherwise met the criteria in the PID Act, it would be considered a PID made by a public official in the performance of their day-to-day functions. This category of 'role reporters' also included auditors and investigators – essentially anyone who makes a report as part of their everyday work.</p>
<p>An officer from the NSWPF fraud squad told us they had received allegations of reprisal within a council. The officer discussed with us how to progress the matter, such as whether they should refer it to the relevant local area command to investigate. We also advised that if they form the opinion that an offence has been committed, a brief of evidence must be provided to the Director of Public Prosecutions in accordance with section 20(6) of the PID Act.</p>	<p>A PID coordinator called to clarify the difference between the six-monthly and annual reporting requirements under the PID Act. We explained that the six-monthly reports to our office required by section 6CA are to be provided via the PID online reporting tool, while section 31 of the PID Act separately requires PID statistical information to be included in their authority's annual report (usually covering the financial year period). The same information is to be included in both reports.</p>	<p>A public official submitting the authority's statistical PID report asked whether a referral of a PID from the ICAC should be reported in the category 'made under a statutory or other legal obligation'. We advised that this category relates to whether the person making the PID is under a statutory obligation – for example, a principal officer making a notification to the ICAC as required by section 11 of the <i>Independent Commission Against Corruption Act 1988</i>. It was explained that in most cases public authorities would not receive any PIDs in this category as the relevant investigating authority would be responsible for reporting any they received.</p>

## Snapshot of our advice

A PID coordinator had been asked by a senior manager to arrange a meeting between a reporter and the subject of the allegations so they could ‘make peace’. The PID coordinator did not agree with this approach and was seeking our advice on whether it was acceptable. We agreed with the PID coordinator that it was not, particularly as the reporter had indicated that such a meeting would make him uncomfortable. We discussed the importance of providing support to the reporter, as well as more appropriate methods of fact finding to respond to the allegations made.

A PID coordinator called seeking advice on a PID matter. In the process of revising the authority’s internal reporting policy, HR officers were removed from the list of nominated disclosures officers just prior to the policy being approved. The authority’s PID procedure, however, still nominated these officers as appropriate recipients of PIDs. A staff member had recently made a report to one of these HR officers and the PID coordinator was seeking advice on whether or not to treat the matter as a PID. As the PID was initially made using an internal reporting form, we advised the PID coordinator to ask the staff member to provide the information directly to them in order to put beyond doubt that the report satisfies the requirements of the Act.

A person called enquiring about making a PID. She advised that she is no longer a public official but used to work at Centrelink. We explained the difference between the Commonwealth and NSW PID schemes and that our office could only accept PIDs from NSW public officials. As a former Commonwealth public official, she could make a PID to the Commonwealth Ombudsman, but not about a NSW public authority.

## Reviewing policies and procedures

The PID Act requires public authorities to have policies and procedures for receiving, assessing and dealing with PIDs. Over the year, we reviewed the internal reporting or PID policies or procedures of 17 public authorities. In doing so, we check compliance with the PID Act’s current requirements and compare the policy to our office’s relevant model internal reporting policy. We identify good practice and make suggestions for improvements.

### Compliment: PID policy review

‘Thank you for all the assistance you have provided during our drafting process of our new PID policy and procedure documents. The clarification and sound-boarding provided has been very useful.’

## PID webpage

All of our publications are available on our website. This allows public authorities and public officials from metropolitan, rural and remote areas to access the information at a time and place that suits them. Our PID webpage (<http://www.ombo.nsw.gov.au/what-we-do/our-work/public-interest-disclosures/our-public-interest-disclosures-unit>) continues to serve as a useful medium for public authorities and public officials seeking access to practical guidance and procedures for making PIDs.

There were 14,489 visits to our PID information page for public authorities, fact sheets, guidelines and templates on our website in 2015–16, which is a 42% increase in online traffic compared to 2014–15. There was also a 39% increase in unique visitors to the PID web pages with 8,950 visitors in 2015–16. The figures in Table 4 suggest an increase in new visitors as well as public officials returning to access PID information.

**Table 4. Online access of PID resources – guidelines and fact sheets**

2015–16	Page views	Unique page views
PID information for agencies page	1,586	1,091
PID fact sheets	5,766	3,615
PID guidelines and templates	7,137	4,244
<b>Total</b>	<b>14,489</b>	<b>8,950</b>

### Compliment: PID guidelines

'I really do love them. I think they are all very clear and provide advice on the right issues and the layout is great. Particularly, I like the: (a) Why is this important? section which is useful for conveying value to management and staff. (b) The cross-referencing because when you're in the position of having received a report, you need to deal with it quickly and that may not entail having enough time to re-read all of the guidelines. I found that the guidelines went the extra mile and provide real comfort to practitioners.'

## Proposing legislative change

Section 32 of the PID Act provides that a review to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives is to be carried out by a Parliamentary Joint Committee (PJC). The statutory review was to be undertaken five years after the assent of amendments to the legislation in November 2010.

The PJC on the Ombudsman, the Police Integrity Commission and the Crime Commission commenced the review in June 2016.

During 2015–16, we commenced preparing a background paper describing the problems and issues that have arisen in relation to the PID Act to assist the PJC in their deliberations. In doing so, we:

- sought the views of representatives of public authorities, including at two consultation forums focused on the review of the legislation held in Sydney and Orange, as well as via telephone and email
- reviewed PID-related complaints and enquiries received, as well as questions asked during training sessions and practitioner forums
- drew on the findings of, and recommendations arising from, PID audits
- compared PID-related legislation and engaged with similar oversight agencies in Australian jurisdictions, particularly the Commonwealth Ombudsman
- considered relevant research, particularly on best practice PID legislation.

This helped us to identify some of the major challenges faced by public officials who wish to report wrongdoing and by public authorities in implementing the PID Act.

We also worked with the PID Steering Committee to identify four key considerations to be borne in mind in strengthening or improving the operation of the current regime:

- *Simplifying the Act* – Many of the provisions are unduly complex, technical and create barriers to the Act achieving its objective to encourage and facilitate disclosures of public interest wrongdoing and provide broad protection to those who make them.
- *Encouraging prevention* – The primary focus of the legislation currently is on providing legal mechanisms to remedy reprisal, rather than on preventing adverse outcomes through ensuring authorities have strong, proactive systems in place.
- *Reducing administrative burdens* – The legislation should not place unnecessary burdens on public authorities, and any amendments should be practical and able to be implemented.

- *Ensuring accountability* – It is important that information is collected about the use of the PID Act, implementation is oversighted and coordination of investigating and other key authorities occurs (a function currently discharged by the PID Steering Committee).

## Working with others

Collaborating with stakeholders is an integral part of our work. During the year, we worked with other organisations on a number of projects.

### Whistling Wiki

Our Whistling Wiki community is hosted in govdex, a website managed by the Commonwealth Department of Finance. govdex communities are closed communities and membership is only by invitation.

The Whistling Wiki is driven by a Steering Committee comprising our office, the Commonwealth Ombudsman and the Queensland Ombudsman. During the year, we also welcomed Professor AJ Brown of Griffith University to the Committee, with the aim of extending the community to researchers and continuing to build a repository of resources and information.

Along with other Steering Committee members, we continue to share news in the media section, post articles and let PID practitioners know about upcoming events. We also posted our draft PID risk assessment in the Whistling Wiki and were pleased by the discussion this prompted with PID practitioners. We hope to further gain their interest in engaging with us by posting relevant discussion topics and seeking their views on draft guidance.

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### Compliment: Whistling Wiki

'Thanks for your invitation to participate in the Whistling Wiki community. I have found the information very useful.'

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## PID Steering Committee

The PID Steering Committee is made up of the heads of the PID Act investigating authorities, as well as the Department of Premier and Cabinet, the Public Service Commissioner and the NSWPF. The PID Unit provides the Steering Committee with secretariat support.

The statutory functions of the Steering Committee are:

- to advise the Premier on how well the PID Act is operating and recommend changes
- to advise the Premier on reports from our office about our functions under the PID Act
- to provide advice to a PJC in its review of the PID Act.

During the reporting year, the Steering Committee met three times. Matters considered by the Steering Committee included:

- the review of the PID Act and possible legislative amendments
- updates about members' PID-related activities, including the Information Commissioner's development of PID guidance material, the work of the PID Unit and the outcomes from our audit of allegations of reprisal
- implications of the decision in relation to the unsuccessful prosecution under the PID Act of Mr Kear, former Commissioner of the NSW SES
- possible consequences of the Law Enforcement Conduct Commission Bill 2016 for the PID Act.

As required under the PID Act, a separate PID Steering Committee annual report 2015–16 specifically outlines the activities of the Steering Committee during the reporting period.

## **Whistling While They Work 2 research project**

We have partnered with researchers and 22 other integrity and governance organisations in *Whistling While They Work 2: Improving managerial responses to whistleblowing in public and private sector organisations*, led by Griffith University. Spanning Australia and New Zealand, it is the world's largest current research project into whistleblowing.

Speaking at the launch of the research in April 2016, the Acting Ombudsman noted: 'The research will also provide important conceptual and practical advances in systems for handling disclosures. It's in the broader public interest that we identify how systems and legislation can be better designed to facilitate the disclosure of serious wrongdoing and protect the wellbeing of those who come forward.'

During the year, we formally approached the principal officers of all NSW public authorities with more than ten staff to encourage them to complete the threshold survey of organisational processes and procedures. We were also involved in developing the second phase of the research, Integrity@WERQ (Workplace Experiences and Relationships Questionnaire), the project's more comprehensive survey of staff, managers and systems in those organisations that elect to participate in depth.

We look forward to the results informing future legislative reform and the creation of a new Australian Standard on whistleblowing arrangements in organisations.

## **PID oversight forum**

On 5 April 2016, we attended the annual national PID oversight forum hosted by the Commonwealth Ombudsman, along with representatives of the Australian Capital Territory (ACT) Ombudsman, Queensland Ombudsman, South Australian Ombudsman, Victorian Independent Broad-based Anti-Corruption Commission, Northern Territory Commissioner for Public Interest Disclosures, Tasmanian Ombudsman and the ACT's Chief Minister's Office.

The forum is aimed at allowing PID oversight bodies to exchange information about practices, current issues and challenges. We also explored opportunities for inter-jurisdictional collaboration on reviewing our respective pieces of legislation, developing an Australian Standard on whistleblower protection, engaging on the Whistling Wiki and contributing to the *Whistling While They Work 2* research project.

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