

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

Annual Report 2014–2015

March 2016

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Foreword

I am pleased to introduce our fourth report on the oversight of the *Public Interest Disclosures Act 1994* (PID Act). This report contains an account of our work for the 12 months ending 30 June 2015 and is made pursuant to section 6B of the PID Act.

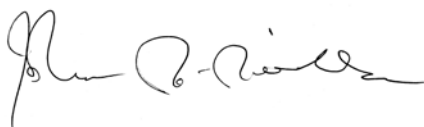
This year is the twentieth anniversary of the PID Act (formerly the *Protected Disclosures Act 1994*). It is also four years since amendments to the legislation gave my office its oversight role. A timeline of key events in this report shows how over time amendments to the PID Act have increased protections for public officials who make public interest disclosures (PIDs). We have seen public authorities progressively establish systems to support reporters.

This report showcases how we engage and work collaboratively with stakeholders. For example, we explored issues such as 'what is serious' in the context of the PID Act with PID practitioners at a forum we hosted. Together with the Commonwealth and Queensland Ombudsman's offices, we also launched an online community named 'Whistling Wiki' to share information with interested practitioners and researchers about PID frameworks, legislation, research, resources, policy and practice.

Our close collaboration with public authorities and understanding of the challenges in handling PIDs has resulted in nearly all authorities we audited accepting the recommendations we made.

Our direct engagement with Local Aboriginal Land Councils (LALCs) led to a substantial increase in the number of PID statistical reports provided to this office. We look forward to continuing to assist them to adopt our model internal reporting policy, which we developed specifically for LALCs.

Yours sincerely



Professor John McMillan AO
Acting Ombudsman

Contents

Foreword	iii
What we do	3
Our objectives	3
Our performance in 2014–2015	4
Chapter 1. Looking back and the way forward	6
Reflecting on 20 years of the PID Act	6
The legislation into the future	8
Changing the culture	12
Chapter 2. Handling PIDs	14
Complaints received	14
Audit program	14
Assessing PIDs	16
Risk assessment	19
Communication	20
Record-keeping	23
Chapter 3. The PID landscape	27
Reporting by public authorities	27
PIDs handled by investigating authorities	32
PIDs around Australia	35
Chapter 4. Working together	36
Whistling Wiki	36
PID oversight forum	36
PID investigating authorities	37
PID Steering Committee	37
Whistleblowing research project	37
Chapter 5. Reaching out	38
Raising awareness	38
Providing advice	40
Providing guidance	41
Supporting public authorities	43

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 performance in 2014–2015

What was our statutory function?	What did we want to achieve?	How did we set out to achieve this?	What were our key achievements?
PUBLIC AWARENESS AND ENGAGEMENT			
<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 disclosures coordinator role.</p> <p>Provide advice to public authorities and public officers.</p>	<ul style="list-style-type: none"> • Deliver training. • Attend relevant conferences. • Issue the PID e-News. • Support a national PID oversight network. • Coordinate PID practitioner forums. • Review and develop PID guidance material. • Provide advice in response to enquiries. • Establish an online community. 	<ul style="list-style-type: none"> • 102 public authorities and 1391 public officials trained in metropolitan and rural areas – rated positively by 98% of participants. • PID e-Learning modules accessed 786 times. • Hosted information stands at three conferences. • Three issues of PID e-News sent to 968 subscribers. • Attended a national PID oversight network forum. • Organised three PID practitioner forums – rated positively by 98% of attendees. • One model internal reporting policy, one template and one fact sheet released. Twelve PID guidelines and one PID template updated. • Provided advice in response to 238 PID related enquiries. • Launched the Whistling Wiki.

What was our statutory function?	What did we want to achieve?	How did we set out to achieve this?	What were our key achievements?
MONITORING AND REVIEWING			
<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"> • Conduct audits of public authorities. • Facilitate the provision of six-monthly statistical reports by public authorities. • Share information with investigating authorities about PIDs. • Provide support to the PID Steering Committee. 	<ul style="list-style-type: none"> • Seven face-to-face PID audits of eight different authorities conducted. • 282 files reviewed – 113 PIDs and 169 internal reports. • 63 recommendations made to public authorities following audits – 94% complied with. • One sector-wide PID audit commenced. • 720 PID statistical reports received from public authorities. • Hosted three liaison meetings with other investigating authorities and shared information about PIDs handled. • Three PID Steering Committee meetings held.
COMPLAINT HANDLING AND INVESTIGATION			
<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"> • Assess and handle PIDs, purported PIDs and complaints about the handling of PIDs by public authorities. 	<ul style="list-style-type: none"> • 21 PIDs, 11 purported PIDs and eight complaints about the handling of PIDs received. • 20 suggestions made to six public authorities about improvements they could make to their PID processes.

Chapter 1. Looking back and the way forward

The anniversary of the PID Act presents an opportunity to take stock – to look back at the last 20 years and reflect on what has changed to help pave the way for future reform.

Reflecting on 20 years of the PID Act

Twenty years ago, New South Wales (NSW) was one of the first jurisdictions in the world to enact legislation dealing specifically with the protection of public officials who report serious wrongdoing. This whistleblower protection legislation was one of the most significant initiatives to flow from the charter of reform signed between the minority government of the day and three independent members of Parliament (MPs). In introducing the first Bill in 1992, Mr Wallace Murray stated:

The government undertook to legislate to provide full protection of the rights and employment of any public sector employee who exposed corruption or matters constituting public maladministration or significant waste. It was also acknowledged in the memorandum that such legislation must not protect exposure of distorted, fabricated or incomplete material.¹

The legislation had a somewhat reluctant beginning and was not welcomed wholeheartedly by the government. Draft legislation was twice tabled in the NSW Legislature, before being referred to a Parliamentary committee for further consideration. These initial proposals were criticised at the time for their limited scope and not establishing a far-reaching scheme of the kind designed in Queensland and South Australia.²

When the Protected Disclosures Bill was eventually debated in the Legislative Assembly, it was described as ‘an important breakthrough’³ and ‘landmark legislation’⁴. The then-called *Protected Disclosures Act 1994* (PD Act) commenced operation on 1 March 1995. Its aims were – and remain – to encourage and facilitate the disclosure, in the public interest, of serious wrongdoing in the public sector. It provided legislative protection to ‘whistleblowers’ in the form of explicit criminalisation of reprisals and defences against liability for disciplinary, criminal or civil action that might be taken as a result of the disclosure (eg breach of confidence, disclosure of secrets, defamation).

Various legislative reviews have seen the protections available to public officials who report serious wrongdoing progressively strengthened, reflecting a growing government commitment to encouraging those ‘in the know’ to speak up when they believe something is wrong. The amendments to the legislation have included:

- Moving from the initial focus on disclosures being dealt with by investigating authorities to requiring public authorities themselves to develop and implement a policy and procedures for receiving, assessing and dealing with PIDs.
- Changing the name of the legislation from a focus on how it is to achieve its objective (that is, by providing protection) to its actual objective (that is, facilitating the making of disclosures in the public interest).
- Expanding the definition of who can report to specifically include contractors and volunteers.
- Expanding the type of conduct that can be reported to include a breach of the *Government Information (Public Access) Act 2009* (NSW) (GIPA Act) and a local government pecuniary interest contravention.
- Increasing the number of investigating authorities who can receive disclosures from three to nine.
- Providing a wider range of legal protections for those reporters who experience reprisals, such as the right to seek an injunction to prevent detrimental action from occurring and to sue for damages for any loss suffered.
- Providing that the taking of detrimental action in reprisal for the making of a PID constitutes misconduct justifying disciplinary action.

Significant reform was made in 2011, after a review by the Parliamentary Joint Committee on the Independent Commission Against Corruption (ICAC). This resulted in our office being given a statutory role in promoting the legislation, providing assistance and overseeing its implementation. While we have always had a role in receiving and investigating PIDs about maladministration, this reflected the broader work we had already been undertaking in providing advice and guidance on the PD Act to public authorities and public officials.

1 Hansard, Legislative Assembly, 30 June 1992, Second Reading Speech of Whistleblowers Protection Bill, Mr Wallace Murray, page 4812.
 2 Goldring, J, ‘Blowing the Whistle’, 1992, *Alternative Law Journal*, 17, page 298.
 3 Hansard, Legislative Assembly, 15 November 1994, Mr John Hatton, page 5029.
 4 Hansard, Legislative Assembly, 15 November 1994, Ms Clover Moore, page 5030.

Period	A timeline of key milestones
Pre 1994	Although there was nothing in the <i>Ombudsman Act 1974</i> to prevent public officials from making complaints, few public officials exercised this right where their own departments were concerned.
1994–1995	In February 1995 the Audit Office, the ICAC and our office produce <i>Internal Reporting Systems Guidelines</i> . On 1 March 1995 the PD Act commences operation. It is intended to be an Act to provide protection for public officials disclosing corrupt conduct, maladministration and waste in the public sector.
1995–1996	Our office publishes the first <i>Protected Disclosure Guidelines</i> in 1995. The ICAC research <i>Monitoring the Impact of the Protected Disclosures Act: Survey of NSW Public Sector Agencies and Local Councils</i> reveals a less than satisfactory implementation of the legislation amongst agencies, both state and local government. The findings lead to the formation of a Steering Committee comprising the ICAC, the NSW Ombudsman, the Auditor-General, the Department of Local Government, the Public Employment Office and the Cabinet Office to facilitate effective implementation of the PD Act.
1996–1997	A Premier's memorandum, issued in November 1996, called on all state public sector agencies to establish internal reporting procedures for protected disclosures that provide clear and unequivocal protection to employees who make protected disclosures. In 1996 the Joint Parliamentary Committee on the Office of the Ombudsman and the Police Integrity Commission (JPC) produces a report on the review of the PD Act. One of its recommendations is that statutory provision be made for regulations requiring public authorities to adopt uniform standards and formats for statistical reporting on protected disclosures. It also recommends locating a Protected Disclosures Unit within our office.
1997–1998	An amendment to clause 12 of Schedule 1 to the Ombudsman Act clarifies our office can investigate complaints about detrimental action in reprisal under the PD Act.
1998–1999	An amendment is made to the PD Act to reverse the onus of proof for reprisal action taken against a person for making a protected disclosure.
1999–2000	We audit agencies' internal reporting policies and provide brief feedback to over 90 agencies.
2000–2001	The JPC conducts a second review of the PD Act. It notes the legislation had not changed significantly since the last review, despite support from stakeholders for the recommendations made. It emphasised the need for public sector agencies to inform staff of their internal reporting systems and recommended amendments to improve the reprisal offence provision.
2005–2006	The Australian Research Council-funded Linkage Project <i>Whistling While They Work: Enhancing the Theory and Practice of Internal Witness Management in the Australian Public Sector</i> is formally launched. We are one of the partner organisations. It is believed to be the largest study of whistleblowing in the world.
2008–2009	On November 2009, the Joint Parliamentary Committee on the ICAC reports on the effectiveness of current laws, practices and procedures in protecting whistleblower employees who make allegations against government officials and MPs. The report contains 31 recommendations 'that will serve to set up an optimal system of 'whistleblower' laws, practices and procedure that can be administered and applied over the next five years'. One recommendation was that our office be given functions to oversight the legislation.
2011–2012	On 3 March 2011, the PD Act becomes the PID Act. Public officials can now make a protected disclosure about a failure to comply with the GIPA Act and local government pecuniary interest contravention. The amendments to the PID Act give our office a statutory role in promoting the legislation, providing assistance and overseeing its implementation. We establish a specialist PID Unit in 2011 to support the coordination and oversight role, and to champion internal reporting good practice across the NSW public sector.
2014–2015	The 20th anniversary of the legislation.

* Table sourced from NSW Ombudsman and Oversight of the PID Act annual reports.

In focus: Our work over 20 years

Since 1995, we have:

- dealt with 1,289 protected disclosure (PD) or PID-related complaints
- responded to 1,960 PD or PID-related enquiries from public officials and public authorities
- released seven editions of our PID guidelines and 30 issues of the PID e-News.

The legislation into the future

The public sector landscape does not stand still and the legislative framework needs to continue to evolve to deal with new challenges.

Under section 32 of the PID Act, 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 Joint Parliamentary Committee. The statutory review is due to be undertaken after November 2015. The PID Steering Committee has a statutory role to consider improvements to the legislation (see Chapter 4) and will make a joint submission to the review.

Equivalent legislation in Queensland and the Commonwealth jurisdictions is being reviewed at the same time. We will collaborate with the Commonwealth and Queensland Ombudsman's offices to learn from what has worked in the implementation of our differing schemes. There may be areas we can look towards consistency across jurisdictions, for example, by requiring public authorities to collect similar information about PIDs to enable benchmarking.

To inform the review, we are considering the issues encountered by public officials, public authorities and investigating authorities in the implementation of the Act and what more could be done to improve or strengthen the current regime. Some of these are discussed below.

In focus: The Information Commissioner

The Information Commissioner (IC) believes a key strength of the PID Act lies in the categorisation of complaints that establishes a regime of investigating authorities. This enables targeting of investigative activities by those authorities with expertise in the administration of the underpinning applicable legislation.

Further this categorisation approach enables investigating authorities to progress their inquiries/investigation appropriately to management and to seek redress consistent with the requirements and expectations of the legislation in which they hold the expertise and knowledge. It facilitates procedural fairness at the same time as maintaining the protections intended under the PID Act.

More generally for the investigating authority it also provides opportunity to identify areas where guidance may be beneficial more broadly on their legislation to the sector generally.

Recipients of reports

One of the pitfalls for public officials wanting to make a disclosure is the possibility of making it to the wrong person. Under the PID Act, protections will only apply if certain conditions are met, one being that the report is made to one of the people specifically authorised by the Act to receive them (such as the principal officer of a public authority, another officer of the authority nominated to receive them or a specified investigating authority). Another condition is that, if being made to an officer in a public authority, the officer needs to be in the authority to which the reporter belongs or to which the wrongdoing relates.

The state government structure of ten principal departments and their 'clusters' of agencies raises questions about what constitutes a 'public authority' and who is the 'principal officer' of the authority. These clusters bring together a group of entities to allow similar and complementary government services to be coordinated more effectively within broad policy areas. While Schedule 1 of the *Government Sector Employment Act 2013* provides some guidance around separate and executive agencies, the position is not clear in relation to statutory authorities. Nor is it always clear whether the principal officer of an authority is the secretary of the principal department or the agency's own chief executive. The underlying problem is the PD Act was written for a time when the public sector was structured very differently from now.

Reporters are unlikely to be aware of these complexities. The consequence is staff may unintentionally miss out on the protections of the PID Act if they make a disclosure to the wrong public authority or person. While the PID Act provides for misdirected disclosures, this section only relates to disclosures made to the incorrect investigating authority. One solution may be to extend this section of the Act to reports made to incorrect public authorities or an incorrect officer within an authority.

We have also had enquiries from public authorities about whether they can nominate officers to receive disclosures who are employed outside the authority, such as senior executives or staff providing shared services. The PID Act also does not contemplate disclosures being made to hotlines (including via telephone, email or an online form), which is the preference of many reporters. It may be the legislation should be widened to allow public authorities to nominate any person to receive a report. Alternatively, the requirement that PIDs must be made by staff of the relevant authority or to the authority where the conduct occurred could be removed.

More broadly, the Act could provide for a PID to be made to any public authority the reporter believes to be appropriate or in a position to take action. Disclosures about a cluster agency should be able to be made to a hotline provided by the principal department, for example. This would also address the fact there are many entities which have a role in overseeing or dealing with certain matters but are not included in the definition of 'investigating authorities', such as the NSW Aboriginal Land Council, Office of the Registrar of the *Aboriginal Land Rights Act 1983*, the Health Care Complaints Commission or the NSW Electoral Commission.

Our audits of public authorities have also confirmed research that most disclosures of wrongdoing are made to direct supervisors. If the supervisor then forwards this report to a nominated officer, it may be that the supervisor receives the protections of the PID Act rather than the initial reporter. In their review of the Commonwealth *Public Interest Disclosures Act 2013* (as required to be undertaken by section 31B of the PID Act), the PID Steering Committee recommended all supervisors be able to receive PIDs to ensure the majority of staff who report wrongdoing are protected for doing so.

Misunderstanding the protections

Since the introduction of the legislation, concerns have been raised about its misuse by public officials; some perhaps vexatiously motivated, with many others misunderstanding the nature of the protections provided and when they would apply. When the PD Act was first debated in Parliament, it was noted:

The Government's intention is to protect the public interest and to ensure that the public system works effectively. That cannot be done by granting total immunity or a high level of immunity to people who are mischievous, vexatious or motivated by malice or ill-will and who have a reckless disregard for the truth. This objective is not achieved by encouraging such people, by providing them with a shield to which they are not entitled.⁵

Safeguards were built into the Act to ensure people are not protected if their information is false or misleading or unless they provide sufficient information to support the allegations. Despite these mechanisms, our office views the misuse of the PID Act as a continuing challenge. For example, we see many cases where people:

- Purport to make a PID about alleged workplace bullying which, on assessment, appears to involve conduct more appropriately categorised as a grievance and not a matter of broader significance in the public interest. Others question policy decisions. As noted in Chapter 2, we continue to receive reports we assess as not meeting the criteria of the PID Act. The lack of understanding among public officials about what constitutes a PID is an ongoing challenge.
- Allege they have been subjected to conduct amounting to reprisal (in the form of bullying/harassment), which the public authority counter-claims was conduct more appropriately categorised as reasonable management action taken to address pre-existing unsatisfactory performance or misconduct issues.
- Make what could well be pre-emptive disclosures about one or more managers in circumstances where they may have suspected or believed those managers were about to make them the subject of management action for unsatisfactory performance or misconduct, possibly to be in a position to claim that any such action is reprisal for the disclosure.

The IC also has the view that, while generally the PID Act has operated effectively, there have been challenges in recent times. Specifically, they have observed instances of repeat application by individuals about the same issue to multiple investigating authorities as well as to the primary public authority. Accordingly better case management

⁵ Hansard, Legislative Assembly, 15 November 1994, Mr Chris Hartcher, page 5035.

outcomes may be facilitated through mechanisms which enable, in appropriate cases, the sharing of some information between investigating authorities.

Legislative change may also assist. For example:

- The Queensland legislation specifically provides that nothing in the legislation prevents a manager from taking reasonable management action in relation to an employee who has made PID.⁶ Inserting a similar provision in the NSW Act would emphasise that reporters are only protected from detrimental action taken because they have made a PID.
- The Commonwealth Act places obligations on public officials to use their 'best endeavours to assist' an investigation under the Act.⁷ This obligation applies to all public officials, including those who make disclosures and those who are the subject of disclosures.

Reprisal

One of the key protections provided by the PID Act is that the taking of detrimental action in reprisal for the making of a PID is a criminal offence. By providing that those found guilty of an offence may be subject to penalties of up to two years imprisonment, it sends a strong statement such behaviour is wrong and will be taken seriously. The deterrent effect of such a provision is likely to be significant, particularly in association with the reverse onus of proof in the Act.

Case study 1 outlines a decision during the year by the Director of Public Prosecutions (DPP) to initiate the prosecution of such an offence. We await the findings of this matter with interest. To date, we are aware of only four other cases in relation to reprisal. Two relate to private prosecutions instituted under the PD Act and the others were taken under the 'protected allegation' provisions of section 206 of the *Police Act 1990*. All were unsuccessful primarily due to technical and evidentiary issues and show the difficulties of the legal protections. Examining the reasons for this failure can provide insight to improve the Act.

Case Study 1

DPP decides to prosecute

Following its investigation into the conduct of the Commissioner of the State Emergency Service (SES), 'Operation Dewar', the ICAC was of the opinion that the advice of the DPP should be obtained with respect to the prosecution of the Commissioner for an offence under section 20 of the PID Act for taking detrimental action in reprisal for a person making a PID.

In May 2013, a reporter's employment contract was terminated. This followed disclosures to the then Commissioner alleging a range of conduct, including the Deputy Commissioner entering into two contracts without due process, the use of SES funds to purchase roof racks and electric brakes for the Deputy Commissioner's car, personal use of work vehicles and other financial mismanagement.

The ICAC provided a brief of evidence to the DPP in September 2014. In February 2015, the DPP advised that there was sufficient evidence to charge the former Commissioner with taking detrimental action in reprisal for a person making a PID. The hearing commenced in late 2015 and was then adjourned until February 2016.

During this reporting period the former Commissioner tendered his resignation, and the reporter and Deputy Commissioner found other employment.

Unlike other jurisdictions, there is currently no provision in the NSW PID Act explicitly obliging public authorities or principal officers to take reasonable steps to protect reporters or to assess risks of reprisal.⁸ Such a proactive approach aims to make sure that disclosures are managed in a way that best prevents adverse consequences for the people who make them. Inclusion of a similar provision in the NSW PID Act would balance the existing provisions that instead focus on remedying damage to a reporter after the fact.

⁶ Section 45 of the *Public Interest Disclosure Act 2010* (Qld).

⁷ Section 61 of the *Public Interest Disclosures Act 2013* (Cth).

⁸ For example, see section 59 of the *Public Interest Disclosures Act 2013* (Cth).

While advice about ways to proactively protect reporters is provided to public authorities in our PID guidelines and model internal reporting policies, evidence obtained through audits conducted by our office has shown this to be an area of great difficulty for authorities and would benefit from legislative amendment. For example, few of the authorities audited to date have conducted risk assessments about possible reprisals against reporters (see Chapter 2).

Next year we will continue to examine the circumstances in which reprisals occur through our sector-wide audit of such allegations (see Chapter 2). This will include developing guidance on how public authorities should respond to allegations of reprisal. Due to the common experience of the outcomes of formal disciplinary actions and ongoing working relationship between the reporter and the subject officer, we have come to the view that in some circumstances such allegations are better dealt with through informal resolution (aimed at prevention) rather than a formal investigation (focusing on punishment). Our aim is to identify the factors that should inform this decision, such as whether the reprisal is overt. Case study 2 is an example where, because of the public nature of the detriment, we believe strong action should have been taken to emphasise such conduct is not acceptable.

Case Study 2

Handle with care

We received a PID from a public official which alleged that a manager within a public authority had processed an application in which the manager had a personal interest without authorisation. We referred the PID to the authority.

The public authority engaged an external investigator who made a number of adverse findings relating to how the application was processed and how the manager failed to declare a conflict of interests. It was also recommended the manager be subject to management counselling and personal development plan strategies be developed to address the risk and exposure issues identified by the investigation.

The manager claimed she was told by the principal officer of the authority that no adverse findings arose from the investigation. The manager subsequently sent an email to her various subordinates. In that email the manager wrote:

As many of you are aware, or may have heard, I was recently subjected to a Public Interest Disclosure from the NSW Ombudsman. This allegation alleged I had undeclared conflicts of interest, and may have engaged in fraudulent, corrupt and unethical conduct.

An investigation into this allegation was undertaken by an independent consultant, and the report concluded that no adverse findings were made against me. I have now been formally notified in writing of this successful result...

This allegation was obviously a malicious attempt to discredit me, but without a successful result.

I ask that there is no further discussion regarding this issue, but as many of you were involved in this investigation, I felt the need to formally advise you of the outcome.

We found this email concerning. We considered it may well have constituted an attempt to cause harm to the person who made the disclosure or at the least to silence any further reports. We were told that the person who made the PID had been provided with a copy of the email. The contents of the email appeared to us to be in sharp contrast to the actual findings and recommendations in the investigation report.

After our intervention the principal officer advised that the sending of the email by the manager was dealt with as a disciplinary matter. A number of other issues raised in the PID were also investigated by external consultants.

This case highlights the need for robust management of PIDs and clearly conveying investigation outcomes to relevant parties. The reporter in this instance felt isolated and victimised; when in reality they should have felt vindicated by the outcome.

Changing the culture

Legislation alone is not enough. It is the practical protection of people who make disclosures that is the foundation on which the success of the PID Act relies. Its effective implementation relies on management commitment and action to creating a culture where it is ok to speak up and concerns raised are listened to. Protecting reporters and responding appropriately to their disclosures are key management obligations.

The reporting culture in NSW has changed over the past 20 years. A survey conducted by the ICAC in 1994 found that nearly 75% of NSW public servants feared they would suffer if they reported corrupt conduct and 25% said there would be no point in reporting corruption because it was unlikely action would be taken.⁹ It concluded that safe and effective reporting mechanisms would be of little use if people did not believe there was any point in using them.

Further research released by the ICAC a few years later in 1997 noted a 'lacklustre response' and 'less than satisfactory' implementation of the legislation amongst both state and local government agencies. Two thirds of staff surveyed said they had never heard of the PD Act and they were cautious about the potential benefits of the Act and its power to protect them. The report stated:

*The research findings starkly raise the questions: do public sector organisations really understand and embrace the value of having employees who are willing to speak out to management about organisational wrongdoing?; or do they prefer to perpetuate the ethos of "turning a blind eye"?*¹⁰

Fortunately, the *People Matter Employee Survey* conducted in 2014 by the Public Service Commission found that 65% of respondents of state government staff said they were confident they would be protected from reprisal for reporting misconduct/wrongdoing. This statement showed one of the largest improvements from the 2012 responses to the same survey (up 7% from 58%). Although there remains room for improvement, knowledge of the legislation has also improved, with 63% of respondents stating they were aware of the PID Act.

Since the statistical reporting requirements commenced three and a half years ago, we are now better able to quantify the extent to which the PID Act is being applied. Public authorities in NSW have reported receiving 1,300 PIDs, with a further 1,355 received by investigating authorities. The work of our office in auditing public authorities suggests this is an underestimate of the number of reports of serious wrongdoing being made internally within public authorities. We have observed that authorities do not always identify internal reports as PIDs and are dealing with issues through normal management processes. It is clear today's public officials believe there is a point in reporting matters of public interest.

Through our oversight role, we have seen the overall commitment to good internal reporting frameworks and practices across most NSW public authorities, many of which are highlighted in this report. Rather than being seen as disloyal, we are seeing more and more evidence that reporters are welcomed. Speaking up against public interest wrongdoing should simply be an everyday, ordinary part of the duty of public officials.

The ongoing challenge for public authorities is to continue to reinforce a culture where staff understand that reporting what they observe to be wrong is a professional and ethical obligation – not just an option. The NSW Police Force (NSWPF) is an example of an authority that has come a long way over the past twenty years in changing their reporting culture. The number of internally generated complaints has grown from less than 200 in the late 1980s to more than 1,000 every year since 2004–2005. This is evidence that officers themselves have confidence in the complaints system.

⁹ Independent Commission Against Corruption, *Unravelling Corruption: A Public Sector Perspective*, 1995.

¹⁰ Independent Commission Against Corruption, *Monitoring the Impact of the NSW Protected Disclosures Act 1994: Encouraging NSW Public Sector Employees to Report Corruption*, 1997, Foreword.

Period	Milestones relating to the NSWPF
1984–1985	Our office notes a recent development of police complaining about police, a development which shows police are becoming aware of the advantages of having our office as an independent body of review of such complaints. For the first time, two police from Sydney's North Shore area allege serious administrative improprieties, prejudice and favouritism by senior officers towards the police under their control.
1985–1986	We receive a number of complaints from police officers about the conduct of police officers, some of whom are quite senior, attached to the Internal Affairs Branch and the Internal Security Unit.
1989–1990	Where a serving police officer, or the police administration itself, generates a complaint under the Police Act the complaint is described as 'police internal complaint'. The Commissioner of Police advises us of 191 police internal complaints.
1992–1993	Our office notes a dramatic increase in the rate of notification of internal complaints by the Police Service.
1993–1994	The NSWPF implements an Internal Informers Policy. We recommend that the Police Commissioner's Instructions clearly define a police officer's right to complain anonymously and prohibit police from attempting to identify such complainants. This is adopted.
1994–1995	The NSWPF establishes an Internal Witness Support Unit (IWSU). It has nine staff who directly report to an Assistant Commissioner.
1995–1996	An early evaluation of the IWSU finds significant improvement in reporter satisfaction.
1997–1998	Section 206 of the Police Act, which commenced on 1 January 1997, makes it an offence for an police officer to take detrimental action against another police officer, or former police officer, substantially in reprisal for that person making a protected allegation (an allegation of misconduct or criminal activity made in the course of a police officer's duty or in accordance with the Police Act). The term detrimental action is defined in s.206 in similar terms to the PD Act.
1998–1999	Amendments to the PD Act and the Police Act commencing on 27 November 1998 put it beyond doubt that police officers can make protected disclosures under the PD Act.
2000–2001	A new section 12A is inserted into the PD Act to provide for disclosures about police to be made to the Police Integrity Commissioner.
2010–2011	Of the 5000 complaints made about police officers, 1,750 are internally generated. 50% of the internally generated issues are sustained, compared to only 10% of externally generated issues. While many of the internally generated issues were process related and mandatory for officers to raise, it also shows the faith officers have in using the reporting system.
2014–2015	Of the 3,434 formal complaints about police officers received by our office, 1,203 (35%) were made by other police. For the past 10 years, complaints from officers have consistently made up between 35–40% of all complaints. Of the 313 police officers charged with criminal offences as a result of complaints investigated by the NSWPF and oversighted by our office between 2010–11 and 2014–15, 79% were charged as a result of concerns reported by their fellow officers. This is a healthy indicator.

* Sourced from NSW Ombudsman annual reports, the NSW Ombudsman supplementary submission to the Review of Police Oversight in NSW and a speech given by Inspector Kerrie Lewis from the NSWPF at the National Investigations Symposium on 8 November 2012.

Chapter 2. Handling PIDs

Information on PID-related complaints received by our office and PIDs reviewed as part of the audit program provides a useful insight into areas where public authorities can improve their handling of PIDs.

Complaints received

We received 40 complaints relating to PIDs in 2014–2015. This was the same number as in the previous financial year.

PIDs

21 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 to the relevant public authority and two to another investigating authority after determining they could most appropriately deal with the matters raised.

We declined to take action in response to 11 PIDs. Eight of these were from staff of one public authority making related allegations and, while we undertook a comprehensive analysis of the information provided, we were unable to conclude maladministration had occurred. We made inquiries in response to four PIDs until we considered the matters raised were resolved. This included making four suggestions to one public authority under s.31AC of the Ombudsman Act.

Handling of PIDs

Eight complaints received were about the handling of a PID by a public authority. This led to us making inquiries with six authorities 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 16 suggestions to five authorities under s.31AC of the Ombudsman Act about improvements they could make to their PID processes.

Purported PIDs

11 complaints received were purported PIDs – that is, the person making the complaint claimed it was a PID, but we assessed it as not meeting the criteria set out in the PID Act. In half of these matters, we determined that the concerns raised did not constitute one of the five categories of conduct provided for in the PID Act. Five 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. Another complaint was from a union and therefore could not be a PID as the reporter was not a public official.

Audit program

During 2014 and 2015 we audited the handling of PIDs across different clusters within the NSW public sector. We have observed a trend towards centralising functions such as the handling of PIDs and the human resource functions in the principal department of the cluster. As noted in Chapter 1, 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.

Audit of compliance

In February 2015 we conducted an audit of compliance with the recommendations made arising from our audits between 2012 and June 2014. We received a response from all of the public authorities audited during this time. The authorities audited accepted 94% of the recommendations made.

Some of the more common recommendations made were that public authorities should:

- On receipt of a report, complete a written assessment that considers each of the criteria in the PID Act.
- Appoint additional disclosures officers in appropriate locations.

- Not count as PIDs matters referred to the public authority by the ICAC unless the referral is made under s.25 of the PID Act.
- Complete a written risk assessment for every PID which looks at the risk of confidentiality being breached and the risk of reprisal action if confidentiality cannot be maintained.
- Not advise a subject officer that a PID has been made if sufficient evidence to support the allegations has been uncovered through independent sources.
- Post its internal reporting policy on its website.
- Ensure it keeps adequate records of the receipt, assessment and management of internal reports.
- Ensure letters to reporters and the subject(s) of allegations at the conclusion of investigations include detailed explanations of the reasons for decisions.
- Provide PID training to all line managers who are likely to receive internal reports of wrongdoing.
- Revisit its assessment of certain internal reports and decide if they meet the criteria to be PIDs.
- Amend any of its template documents that still use the term 'Protected Disclosure' to reflect the correct terminology 'Public Interest Disclosure'.

In addition to requesting advice about the implementation of the recommendations, we asked the public authorities audited for feedback on the audit process. Authorities were asked to complete an evaluation form for the audit which covered the following:

- Whether the audit provided valuable and constructive feedback on the authority's PID processes and practices.
- What the most and least useful aspects of the audit were.
- Whether the recommendations made in the audit improved the authority's PID processes and practices.
- If there were any recommendations that were not practicable to adopt.
- Comments on the audit report, including length, comprehension and structure.
- Whether the audit was conducted in a timely manner.
- Whether audit staff were responsive to the disclosures coordinator's needs and those of other staff.
- Whether audit staff communicated effectively throughout the process.
- Comments on timeframes within which the authority had to provide feedback and whether this was reasonable.
- How the audit process could be improved.

We received completed evaluations from four out of the 10 public authorities we asked for feedback. The feedback was largely positive and all authorities agreed the audit provided valuable and constructive feedback and that recommendations made in the audit had improved the authority's PID processes and practices. We received some valuable feedback on specific recommendations that were not practical to implement.

In focus: Comments on the audit program

The most useful aspects

'Sorting out the issues around referrals from the Ombudsman and ICAC as to what needs to be reported for the purposes of counting PIDs'

'Having an opportunity to discuss how to classify disclosures that are not easily identified as PIDs'

'The audit assisted with improving the workpractice between internal audit and workforce'

'Adoption of NSW Ombudsman templates for PID processes'

The least useful aspects

'Lack of feedback and discussion on possible recommendations prior to report'

'Due to the tight timeframe the auditors required a lot of time and attention which resulted in numerous interruptions. Interruptions were accepted knowing they had such little time available'

Our audit process has evolved since the date of many of these audits. We note specifically that all public authorities audited are briefed verbally at the conclusion of the audit as to the likely feedback in the report and any recommendations to be made. We also send a copy of a draft report to the disclosures coordinator for comment before the report is finalised and goes to the principal officer.

Audit of allegations of reprisal

In early 2015 we sent a letter to the principal officers of 289 public authorities in NSW asking them whether they had received:

- Any reports alleging that detrimental action was taken against a person for the making of a PID.
- Any reports alleging that detrimental action was taken against a person because of a mistaken belief or suspicion the person made or may have made a PID.
- Any reports/advice alleging that detrimental action was taken against a person who mistakenly believed they had made a PID. This covers purported PIDs.

Of the 225 public authorities who responded only 22 responded in the affirmative and only 16 authorities said they had received allegations from 18 reporters of detrimental action in reprisal for making a PID. We are conducting an in-depth review of these matters and will report on the outcome of this audit in next year's annual report.

Assessing PIDs

Our complaint handling and audit work suggests there are reports made by public officials that satisfy the criteria in the PID Act but are not categorised as PIDs because they are not identified as such. There also appear to be many misconceptions about when a public authority should treat a report of wrongdoing as a PID. It may be that some of these issues – such as whether disclosures can be made orally, anonymously and without the discloser asserting that they are making a PID – could be clarified in the legislation to put them beyond doubt.

In focus: Common mistakes in the assessment of internal reports

- Not implementing a systematic process for ensuring all internal reports that, on their face, allege one of the categories of conduct are assessed against the criteria in the PID Act – irrespective of how the report is received or who receives it.
- Not documenting the assessment or the reasons why the report is or is not being treated as a PID.
- Changing the assessment and, more importantly, providing inconsistent advice to reporters about whether their report will be treated as a PID.
- Only treating matters as PIDs if the reporter explicitly requests protection or indicates they wish to make a PID.
- Asking reporters whether or not they wish to make their report under the PID Act.
- Failing to consider whether reports from managers and other role reporters may constitute PIDs.
- Conflating the assessment of whether a report is a PID with the assessment of what action should be taken in response to the allegations made.
- Believing allegations need to be substantiated before they are treated as PIDs or undertaking significant inquiries to assess whether the report is a PID.

Lack of systematic assessment

We review internal reports of wrongdoing as part of our audits. The aim is to identify if there are gaps in the triaging procedures of public authorities leading to internal reports that could constitute PIDs not being identified as such.

The most common reason why internal reports are not assessed as PIDs is because they are not made to the principal officer of a public authority or another person nominated to receive them. This is because many matters are handled at the local level by managers. We often recommend managers and other recipients of internal reports be encouraged to conduct an initial assessment of each serious report they receive from a staff member to determine if the matter may be a PID.

Some public authorities have erred on the side of caution when assessing reports of wrongdoing. For example, if the allegations were serious enough then they would treat it as a PID regardless of who the report was made to. The disadvantage of this approach is in raising the expectations of reporters that they are legally protected for making the report when this is not technically correct. Those officers who are most likely to receive reports should be nominated as disclosures officers in the authority's internal reporting policy.

We have also reviewed matters that have initially been identified as PIDs by both the reporters and public authorities, but later the authority determined the reports did not meet the criteria in the PID Act. Often there is no file note explaining why or how this decision was reached – or communication with the reporter about the change in decision.

We recommend public authorities conduct a written assessment of all reports of wrongdoing made by staff, contractors or other public officials that on their face meet the other requirements set out in the PID Act to determine whether such reports should be treated as PIDs. This decision should be made as soon as possible after a report is received.

The intention of the reporter

Some public authorities, while turning their mind to the PID Act, ask the reporter whether or not they wish to make their report as a PID. Other authorities have told us they treat matters as PIDs if the reporter requests this or if they feel the reporter needs protection. While these issues will impact on how the report is managed and the level of support and information provided to the reporter, they are not relevant considerations in assessing whether a matter is a PID.

Whether or not a report is a PID – or treating it as one – is not a discretionary matter. The assessment of whether or not a report is a PID depends on the nature of the disclosure and not the intention of the person making it. If a report satisfies the criteria in the PID Act it is a PID. The assessment about whether the matter should be treated as a PID is for the public authority to make in the public interest.

Reporters do not need to specify that they are making a PID. In many cases, they may not be aware their report amounts to a PID. Case study 3 highlights the concerns of the ICAC that some public authorities are not adhering to the requirements of the PID Act when receiving allegations of corrupt conduct or maladministration in circumstances where the reporter does not specifically claim for themselves protection under the PID Act. This case study also highlights the consequences of not assessing a matter as a PID if detrimental action is then taken against the reporter.

Case Study 3

A PID by any other name

The ICAC received a report from a public authority pursuant to section 11 of the *Independent Commission Against Corruption Act 1998* (ICAC Act) about an allegation that section 20 of the PID Act had been breached. This section makes it a criminal offence to take detrimental action against a person substantially in reprisal for the making of a PID.

The public authority had failed to recognise the fact a PID had been made before the alleged detrimental action taking place because it did not properly consider whether a report by a contractor to a line manager constituted a PID.

After making enquiries with the public authority it became apparent senior management was not conscious of the fact that the PID Act may apply because the reporter had not flagged an intention of the matter to be treated as a PID.

Referrals from managers

It is common for staff to make a report about wrongdoing to their immediate supervisor or manager, who then refers the report to a nominated disclosures officer or a central unit responsible for handling such matters. Many public authorities we have audited do not routinely consider whether reports made by managers are PIDs. While for the most part these mere referrals will not be PIDs, authorities should consider each report to be sure this is the case.

Some public authorities have considered the initial report to the supervisor as a PID. In situations where the original report by a staff member would satisfy the criteria in the PID Act, except for the fact it was not made to an officer nominated to receive it, such an officer should make contact with the original reporter to make sure they are able to rely on the protections provided by the PID Act if necessary.

Considering the report ‘on its face’

We believe staff assessing whether a report of wrongdoing meets the criteria in the PID Act should base their decision on the content of the documents and other information provided by the reporter. The principle that a report should be assessed before any investigation does not prevent a public authority from clarifying the nature of the alleged conduct with the reporter to assist with the assessment.

However, it is not appropriate when assessing a report to make enquiries or conduct an investigation to determine whether in fact the conduct occurred as alleged. It is also not necessary for the allegations to be substantiated for the matter to be treated as a PID (provided it is not a disclosure to an MP or journalist). What matters is the belief of the reporter, in particular whether their disclosure is based on reasonable grounds and they have provided sufficient information to show or tend to show the wrongdoing occurred.

Case Study 4

If it looks like a PID, it could be a PID

A reporter complained to us that he made a report to four officers at different levels of seniority who were all nominated to receive PIDs in accordance with the public authority’s internal reporting policy. Apart from one officer, it did not appear that any of the other officers considered whether or not the public official’s report could be a PID.

Due to the manner and tone in which the reporter raised his concerns about possible maladministration, the public authority determined the reporter was in breach of its code of conduct. While this finding was considered to warrant management action and not disciplinary action, the reporter was not given an opportunity to respond to the allegations against him before the finding was made. This led the public official to believe the finding was detrimental action in reprisal for the making of the report.

Following our inquiries we were of the view that the concerns the reporter raised were not about maladministration or any other wrong conduct and so his reports could not be PIDs. However, we were concerned about the time taken for his report to be assessed against the criteria in the PID Act. The officer who turned her mind to whether the report could be a PID did not conduct an assessment until four months after being contacted by the reporter. The officer indicated she needed time to determine whether the public official’s concerns could involve wrong conduct or merely questioned government policy.

We suggested the public authority remind its nominated officers to be aware reports they receive from staff may be PIDs. It is important these officers acknowledge such reports in the manner required by the PID Act and conduct PID assessments in a timely way.

We pointed out to the authority that nominated officers should distinguish the task of assessing whether a report is a PID on its face (subject to any necessary preliminary enquiries) from the task of investigating to determine if there is wrong conduct. This means a report should be assessed as to whether or not it is a PID as soon as practicable, and the risks of reprisal properly identified and managed, before the substance of the report is investigated.

In the context of the finding the reporter had breached the code of conduct, we advised the public authority to ensure it provides procedural fairness before making decisions that can adversely affect staff. This should include clear and appropriate communication with staff so they can properly understand the action taken and why. This may avoid the perception that any action being taken is reprisal.

The public authority accepted all of our suggestions.

We have also noted a practice by a number of public authorities of seeking advice from external parties, particularly legal advisers or investigators, about whether reports constitute PIDs. Such assessments are primarily fact based, not legally based. It is the authority’s responsibility to make such an assessment and it cannot relieve itself of this responsibility by contracting the decision to a third party. The authority should be able to explain its own reasoning as to why a matter was or was not treated as a PID. Authorities may wish to contact our office for advice.

Risk assessment

Public authorities have a responsibility to make sure reporters do not suffer reprisals as a result of reporting wrongdoing. We recommend authorities conduct a written risk assessment when a PID is received, with details kept on the file. It should identify any likely risks to the reporter, both generally and arising out of how the disclosure may be investigated, and propose solutions to mitigate any identified risks. A comprehensive approach would also consider risk to the subject officer, any investigation and the authority generally. This would include broader workplace issues such as workplace conflict, absenteeism and non-cooperation of relevant staff.

A risk assessment is critical in cases where there are certain 'red flags' or complexities. As shown in Case study 5, concerns about the conduct of reporters are a key indicator of a high risk situation. Damage to the workplace may have been minimised by implementing appropriate strategies to ensure regular communication, the appropriate management of the reporter and timely resolution of the matter. It also highlights the need for clear communication channels between the reporter, managers in their workplace and any investigator.

Case Study 5

Flagging behind – authorities ignore red flags

A public official made a PID alleging systemic use of work time to undertake secondary employment. A detailed external investigation was conducted into the matter over a number of years.

During the investigation, the public official was alleged to have been involved in bullying incidents and other unreasonable behaviours in the workplace. He was also alleged to have made a false statement to the investigator which affected the investigation process and outcomes.

There were extended periods of time where neither the disclosures coordinator nor investigator communicated with the reporter or provided updates on the progress of the investigation. The lack of communication frustrated the public official and he complained to us about this, and that the investigation process was flawed and delayed.

After the investigation was completed, the public official was the subject of a disciplinary investigation. The conduct alleged included:

- behaving in a threatening manner towards the officer the subject of the allegations
- making numerous internal complaints and purported PIDs
- suspected leaking of information to the media during the course of the investigation
- not maintaining confidentiality in the workplace, increasing the likelihood his identity as the reporter would become known
- making a false statement to the investigator.

In our view the above conduct issues were warning signs about the behaviour of the public official and the need to assess risk and implement appropriate management strategies. In the absence of an appropriate and timely response to the problematic behaviour in the workplace, it is possible the situation escalated unnecessarily. While the investigator was aware of these workplace issues, the responsibility for managing the alleged behaviours lay with the public official's employer. The problematic behaviour may have been further fuelled by failing to update the reporter on progress, particularly given the length of time it took to complete what was a complex investigation involving multiple subject officers.

The approaches taken by public authorities

In some public authorities we do not see any documented instances of recipients of reports considering whether there was any risk of reprisal to the reporter and how any identified risks would be managed. Other authorities are to be commended for turning their minds to the issue of risk. For example, one authority rated the risk of reprisal (low, medium or high) and provided brief reasons for that assessment and, where necessary, a brief outline of the strategies for handling those risks.

Some issues we thought were relevant to a risk assessment, such as comments made by the subject officer that suggest they were aware of the identity of the reporter, were not considered. There also tends to be a blanket approach to assessing the risk of reprisal as low for any anonymous reports. However, sometimes previous complaints or the nature of a report will effectively reveal the identity of the reporter – and in these cases the risk of reprisal to the reporter may be considerable.

Throughout our audit and complaint work, we have seen a variety of strategies public authorities have put in place to prevent reprisal. In one authority, while very few of the files contained written risk assessments, it was clear to us the authority used a range of strategies to manage the risk of reprisal to reporters and to try and deal with the issue of confidentiality.

Good practice: Strategies adopted by authorities to mitigate the risk of reprisal

- Not admitting a PID has been made and indicating that the wrongdoing was identified during a random audit or the conduct was uncovered during the course of ordinary management activity, or by gathering sufficient secondary evidence to enable the subject officer to respond to the allegations.
 - Moving the subject officer to another location.
 - Having a senior manager remind the workplace of their obligations under the code of conduct, in particular that taking reprisal action constituted a breach of policies and may amount to a criminal offence.
 - Interviewing the reporter at the same time as other witnesses in the workplace.
 - Interviewing the reporter off-site.
 - Contacting the reporter's manager to notify them that a PID has been made and remind them of their obligation to keep the matter confidential, monitor the workplace for any reprisal action, taking swift action if this is reported or suspected, and being a support officer for the reporter, including monitoring their health and welfare and providing support and assistance.
 - Staying in regular communication with the reporter throughout the course of an investigation to monitor the workplace and reassure the reporter.
 - Advising the reporter to contact the NSWPF if they needed assistance outside of work hours.
 - Conducting a preliminary fact finding inquiry before making the decision to start a more formal disciplinary process. If the preliminary enquiries establish there is no foundation to the allegations then the matter may go no further and the subject of the allegations may not be aware allegations have been made against them.
 - Arranging to contact the reporter at home rather than at work.
 - Providing refresher training in the relevant workplace on the authority's code of conduct or bullying and harassment policy.
 - Conducting PID policy briefings.
-

Communication

Staff who report wrongdoing need to be told how their report is going to be handled so they feel their concerns are being taken seriously. Without providing regular and accurate updates, public authorities run the risk of heightening the concerns and dissatisfaction of the reporter. This in turn can have a negative impact on the workplace.

It is important public authorities provide reporters with enough information to show that adequate and appropriate action was taken. In case study 6, the authority had not only conducted a full-scale investigation, but taken significant action in response to its findings. The reporter's dissatisfaction and subsequent complaint to our office may have been prevented if she had been made aware of the authority's efforts in this regard.

Case Study 6

Great expectations require better communication

A public official made a complaint about bullying and harassment against her supervisor and a senior officer. The allegations were externally investigated and there were no findings substantiated as a result of that process. Working relationships continued to be strained, however, and there was ongoing workplace conflict. The reporter felt the senior officer supported the supervisor due to a close relationship between them.

Later the reporter made a PID which alleged the same staff were involved in wrongdoing. The public authority told the reporter the allegations would be investigated externally as part of a wider range of issues.

The reporter complained to us that the public authority did not advise her of the outcomes of the investigation until prompted to do so when she requested an update 18 months later. Although the authority had already apologised to the reporter for the oversight, we believed the final letter to the reporter did not convey in any detail what action was taken on the PID, such that the reporter felt the evidence she had provided had not been taken seriously.

In response to our inquiries, the public authority wrote to the reporter and explained that although specific details could not be provided, the matters raised were investigated and action was taken where appropriate. The authority was proactive in its response to the issues raised by this matter and undertook an internal review to make sure contact is maintained with reporters and they are told of outcomes from investigations.

It is worth noting in this matter that, given the history of workplace issues, the reporter had higher than usual expectations or needs in terms of communication and support from the public authority. Such matters may be identified during a risk assessment process in which the authority and reporter work together to understand any workplace issues or concerns and strategies to resolve them.

Reporters are likely to be more satisfied if they understand the facts and reasons for decisions made about a report of wrongdoing. This is particularly important if there is insufficient evidence to substantiate the allegations. They should be able to see that the concerns they have raised have been understood and taken seriously. Public authorities could consider advising reporters of the outcome of their reports on a strictly confidential basis or providing it verbally to avoid the risk of any correspondence being circulated inappropriately.

There are also situations where the public authority is not able to provide information to the reporter. For example, the ICAC noted that when they refer a PID under s.25 of the PID Act to a public authority they may, at the request of the reporter, determine not to refer the details of the reporter's identity. In such cases the ICAC provides written advice to the reporter of such action. However, the receiving authority is then unable to comply with the requirement of section 27 to notify the reporter of the action taken or proposed as it is unaware of the identity of the reporter. The ICAC has noted this issue should be considered when the PID Act is reviewed.

Good practice: Communication with reporters

In one public authority we audited, it was evident that regular and planned contact is maintained with reporters. Some particularly good practices we noted included:

Contacting reporters directly and inviting them to make a PID

In situations where a report is made to a manager and not a nominated disclosure officer, contacting the reporter to ensure this person received the PID Act protections.

Comprehensive acknowledgement

On receipt of a report, the public authority would:

- call the reporter to explain the report has been categorised as a PID and the relevant policies and process that apply
- provide the reporter a copy of the report and the internal reporting policy and procedure
- ask the reporter if they wish for their identity to be kept confidential
- remind the reporter to maintain confidentiality

- advise the reporter to contact them immediately if they experience any reprisal
- thank the reporter for coming forward
- provide contact details of the person responsible for handling the report.

Saying ‘thank you’ to reporters for coming forward

This practice provides encouragement for the reporter after coming forward and sends a message to them that reporting wrongdoing is welcomed in the public authority.

After one sustained investigation, where the reporter had come forward at considerable risk to himself to report systemic wrongdoing, the principal officer wrote to the reporter to advise the outcome of the investigation. It stated:

...the [senior management of the authority] are committed to creating an organisational climate of trust and integrity and it is pleasing to me that you had the courage to come forward and report the practices of this team, something I'm sure would not have been easy to do... I wish to thank you for your integrity and courage in reporting the matter and I hope the experience was not a traumatic one. I also wish you success in your future career.

Communicating with the subject of allegations

Much of our focus and guidance material is aimed at providing protection and support to those who report wrongdoing. It is equally important that those who are the subjects of these reports are also treated fairly and reasonably, and where necessary provided with support. Staff need to know that – if an allegation is made against them – it will be dealt with appropriately, they will be treated fairly, and they will be given an opportunity to have appropriate input.

Even when such processes are in place, a great deal of damage can be done to a person who is the subject of allegations, particularly when they are found to have done nothing wrong. Having a report of wrongdoing made about you can be a difficult process and, if not properly managed, can result in stressful interactions with colleagues and managers. Public authorities should consider the risks to the welfare of the subjects of allegations as well as to the reporter.

While public authorities should make sure necessary support and advice is provided to subject officers when allegations are substantiated, there is a real need for support when the allegations are found to be clearly wrong or unsubstantiated. Even after our review, the complainant in case study 7, the subject of unsubstantiated allegations of corrupt conduct, still feels wronged.

Case Study 7

No case to answer and no communication

We received a complaint from a former senior public official who told us he had been the subject of allegations of corrupt conduct which were treated by his former public authority as a PID. At the conclusion of an investigation by an external agency, he was told by the authority that the allegations were not substantiated. Throughout the investigation, however, the poor management of the matter led to considerable sick leave and compensation claims by both the reporter and the subject officer. At the conclusion of the investigation, and after advice from others, the subject officer felt his only workable solution was to resign because he felt he was not appropriately supported by management through the process.

Although a considerable amount of time had lapsed since the matter was finalised by the public authority, the subject of these unsubstantiated allegations complained to us because he still felt he had been wronged.

Upon investigation by us, it became evident that the public authority had not treated the matter as a PID and this very important fact had not been clearly communicated to either the reporter or the subject officer.

We made the following suggestions to the public authority pursuant to s.31AC of the Ombudsman Act as a better way of doing things:

- That the authority promptly and appropriately assess internal reports against the criteria in the PID Act.

- If a matter is to be treated as a PID, that the authority advise the reporter in writing within 45 days of their decision and provide a copy of their internal reporting policy.
- If a reporter has requested a matter be treated as a PID and the authority, after assessment, disagrees with this request, that the authority advise the reporter in writing as soon as possible to clarify the reporter's expectations.
- That the authority consider offering the subject of the allegations an apology for the procedural deficiencies that caused this matter to escalate.

Record-keeping

Many of the PID-related complaints to our office over the year highlighted poor record-keeping practices within public authorities. Authorities expose themselves to unnecessary risk in circumstances where full and accurate records are not kept. Records can provide protection and support for the authority and its staff, for example, if there is a dispute or legal action related to the matter. Failing to make and keep full and accurate records is also potentially a breach of section 12(1) of the *State Records Act 1998*.

Records demonstrate that a report of wrongdoing has been made, whether it is being treated as a PID, how the public authority has responded to the report and what communication has occurred with the reporter. If records of conversations are not made, reasons for decisions are not recorded, and emails and letters are not placed on files, it can be difficult for PIDs to be properly handled. As case study 8 suggests, it can also lead to disputes between the reporter and an authority.

Case Study 8

Write it down!

An officer at a public authority was asked to conduct an audit into an issue where concerns had previously been identified. The officer wrote a report showing that, in the cases she looked at, the practice was continuing.

Later in the year she became aware that the relevant regulatory authority intended to conduct an audit in the same area. She told us she sought to make a PID to her manager, a nominated disclosures officer, as she was concerned the audit would identify the issues she had raised.

According to the reporter, her manager refused to treat her report as a PID and she was subjected to bullying and harassment after this meeting. She also complained to our office of a lack of action by the public authority in response to her report. We made enquiries with the authority about how it had handled her report and about the action it had taken on the substantive issue.

Following our enquiries we were satisfied the public authority had taken substantial and adequate steps to address the issues alleged before the officer wrote her report. The authority also disputed the officer's recollection of the meeting and said that no mention was made of PIDs. However the nominated disclosures officer failed to keep any records of the meeting and a contemporaneous record made by the reporter clearly showed there was discussion at the meeting about PIDs. Other documents provided to us by the authority also supported the officer's contention that PIDs had been discussed at the meeting.

We wrote to the public authority expressing our concerns about the failure by the nominated disclosures officer to keep records of the meeting. We also expressed the view that a written assessment of whether the report constituted a PID should have been conducted by the nominated disclosures officer.

The public authority told us its policy now provides a file note template to assist nominated disclosures officers to record details of verbal reports of wrongdoing. We also recommended that the authority remind all staff with responsibility for receiving PIDs of their obligation to:

1. Record in writing the content of any verbal reports of wrongdoing made to them, irrespective of whether they are of the view the report meets the criteria in the PID Act.

2. Record in writing the content of any verbal reports made to them, in which the reporter claims to be making a PID, irrespective of whether they are of the view the report meets the criteria in the PID Act.
 3. Forward any such reports to the disclosures coordinator so a written assessment can be conducted.
-

When responding to a complaint about the handling of a PID or when auditing a public authority, we will refer to the records kept. Not being able to provide records or supporting documentation detracts from the opportunity to demonstrate to an external authority such as our office that appropriate action was taken by the authority.

Case Study 9

Good record-keeping, they say, keeps the Ombudsman away

A public official made a report about their supervisor in 2011 – the outcome of which was that some misconduct was substantiated. Among other reasons, the reporter complained to our office that they were not told of the outcome of the investigation and that part of her statement and others had been lost from records.

The reporter was of the view they had made a PID while the public authority told us it had assessed the matter as a grievance. The written statement that constituted the initial report, prepared by the unit in the authority handling the matter, said the report was made in accordance with the PID Act.

The public authority provided us with an unsigned copy of a letter which told the reporter the allegations raised did not satisfy the criteria in the PID Act, but would nonetheless be dealt with during a disciplinary investigation. We noted the letter appeared to have been issued six months after the report was made.

We made inquiries about whether the matter was initially assessed as not meeting the criteria of the PID Act, or after some fact finding had been carried out. We sought copies of all relevant documentation including the written assessment of the report. After some searching, including following up with former staff who handled the matter, the public authority told us it could not locate the physical file.

In case study 5, one of the matters the reporter complained about was that the public authority did not communicate throughout its handling of the report and emails from the reporter were not responded to. We were told by the authority that there had been extensive interactions over the phone between the reporters and staff who were investigating the matter, however no records existed of those phone conversations. As a result, we cannot know with certainty when verbal advice was given to the reporters and what was said.

Case Study 10

Sharpening the tools

We received a complaint from a reporter alleging bullying and harassment by staff after disclosing wrongdoing involving the misuse of resources. The reporter complained to us that the public authority should have assessed his disclosure as a PID and protected him from reprisal in the workplace.

While the initial report was not made to a nominated officer, and therefore not in accordance with the PID Act, the reporter told us he also met personally with the head of the public authority about the same matters. We sought access to the authority's records as we were of the view the reporter may have made a PID to the principal officer in accordance with the PID Act or that, at least, an assessment should have been conducted by the authority to determine whether this was so.

The public authority was unable to provide any records relating to that meeting or to any assessment of the report against the PID Act, as no records could be found and the position was no longer held by that officer. In the circumstances, we were unable to conclude whether or not a PID had been made to the principal officer.

During the course of our inquiries, it became apparent the public authority's disclosures coordinator was not aware that the authority had received any PIDs, although the authority's statistical report to our office indicated PIDs had been received. We also learnt the authority had been recently merged with another authority and that there were only two nominated disclosures officers under the internal reporting policy even though staff were dispersed across a number of locations.

We made suggestions under s.31AC of the Ombudsman Act to make sure the internal processes for the handling and recording of PIDs at the new merged authority were robust and widely known amongst staff. All suggestions were accepted and appear to have been thoroughly implemented by the authority. Actions taken include:

- The development of an integrated policy of the merged authority for the management of PIDs with a focus on the responsibilities of supervisors and managers.
- Nominating additional disclosures officers at regional locations and conducting staff awareness training about the internal reporting policy.
- Implementing procedures to ensure written assessments are conducted of all reports of wrongdoing.

Appropriate systems

We expect public authorities will have an organised information management system, with all relevant details about each PID received kept together in one authoritative file, either electronic or physical, kept in a safe and secure place.

During an audit this year, we observed a public authority storing PID files in open access shelving in an area not secured within the building. The front of each file was marked 'Strictly Confidential: Public Interest Disclosure' and stated that only certain people were authorised to access it. Our experience is that drawing attention to files in such a way, in situations where the files are not stored securely, can be counterproductive.

Case Study 11

It's around here somewhere...

We received a complaint from a public official who said he had made a PID to a public authority some nine months prior. He said he hand delivered a document entitled 'Public Interest Disclosure' to the head office of the authority but had yet to receive a response.

We contacted the public authority to find out why it had not responded to the letter and whether it had completed an assessment in relation to the contents of the document. The authority told us it could not locate the document and had no record of receiving it.

The disclosures coordinator advised us that:

- He would assess the document we had provided the public authority to determine if it met the criteria to be a PID.
- If the report met the criteria to be a PID, the authority would consider that the protections in the PID Act applied from the date the reporter said he hand delivered the document.

The public authority conducted an assessment of the contents of the document and determined it did not meet the threshold to be a PID. The disclosures coordinator also told us that he had arranged for protocols to be established for the handling of correspondence left at reception at head office so such a situation could not occur again.

Good practice in record-keeping

Many of the public authorities we have audited maintain comprehensive, well presented files that show the chronological progress of the handling of a report. Key interactions and the critical thinking of the officers involved in making decisions are documented in file notes.

Some public authorities have developed a number of template documents that assist with critical facets of the handling of PIDs. Providing disclosures officers and relevant others with templates to assist at various stages of the process helps to make sure these individuals record their assessments and reasons for decisions. This can provide clarity to those seeking to understand the decision making processes at the authority, including investigating authorities such as our office and the ICAC. This may also support consistency in assessments and decision making.

Our office has also developed two templates to assist public authorities with the initial assessment of an internal report by the person receiving it and the detailed assessment of an internal report by the disclosures coordinator.

Good practice: Examples of records and templates kept on PID files

- A running sheet at the front of the file setting out the key details and milestones in the handling of a matter.
 - An 'assessment for investigation' form setting out the allegations made, the outcome of any preliminary inquiries, a recommendation for dealing with the matter (including suggested lines of inquiry) and whether it should be notified to the ICAC as possible corrupt conduct.
 - A 'case intake assessment' form outlining the details of the person completing the assessment, the details of the allegations, whether the matter is a PID, why the matter is not a PID, an assessment of the risk of reprisal to the reporter, the type of conduct alleged, the details of the subject officer, an assessment of the gravity of the allegations and the decision made about action to be taken (for example, investigate or otherwise).
 - Where a decision has been made to discontinue an investigation, documenting in a file note an overview or summary of the matter, the action taken to date and the reasons for closing the matter.
 - Template notices sent to the subjects of allegations clearly setting out the particulars of the allegations made against the individual, the requirements of procedural fairness, the date upon which any interview is to be held, the process of interview and investigation, the right to access a support person and the confidentiality requirements incumbent on the subject officer.
 - A form setting out the recommendations arising from any investigation to enable tracking of whether the relevant area of the public authority has accepted the recommendation and, if so, an implementation plan and timeframe.
 - A checklist to assist officers to carry out the necessary administrative processes to close files and make sure appropriate documentation is on the file.
 - Briefing notes or submissions to principal officers providing background about the report, the results of action taken to date, an analysis of the issues identified and recommendations about the appropriate course of action to be taken.
 - A risk assessment template setting out a number of areas for assessment including risks to the subject officer, risks to the reporter, risks to other employees, risks to the investigation and risks to the public authority. Each risk is given a rating and some strategies are set out to manage those risks.
 - A template format for investigation reports comprising an executive summary, the investigation process, background, summary of evidence, findings, conclusions and recommendations.
-

Chapter 3. The PID landscape

In 2014–2015, NSW public and investigating authorities reported receiving 752 PIDs. This does not include any PIDs made to MPs or journalists in the limited circumstances provided for in the PID Act.

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. This information will also be used to inform the forthcoming review of the Act.

Statistical reports provided to our office

Table 1 shows the number of statistical reports provided to our office as at 31 January 2016 for each of the seven six-month reporting periods from 1 January 2012 to 30 June 2015. 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. Of the authorities identified, 20% did not provide reports to our office in 2014–2015.

Table 1. Statistical reports provided by public authorities to our office over time

Date	Number of statistical reports provided	Proportion of identified authorities
Jan – Jun 2012	422	93%
Jul – Dec 2012	409	90%
Jan – Jun 2013	418	92%
Jul – Dec 2013	383	84%
Jan – Jun 2014	377	85%
Jul – Dec 2014	367	83%
Jan – Jun 2015	353	80%

Since the release of our 2013–2014 annual report, we have received an additional 291 statistical reports from public authorities for earlier reporting periods. As discussed in Chapter 6, this has followed a concerted effort by our office to increase compliance with the reporting requirements by Local Aboriginal Land Councils (LALCs). Some information contained in last year's report has therefore been updated.

Compliance with the reporting requirements has been decreasing over time. This is despite our office contacting every public authority we are aware of that has not provided a report by the due date to remind them of their statutory obligation. In the next financial year, we will be conducting a sector-wide audit of authorities who have not submitted a statistical report for at least one period. This will involve writing to the principal officer of the authority to reinforce the reporting obligations under the PID Act, as well as requesting information on why they have not complied with the reporting requirements and to provide the reports.

A common recommendation made to public authorities arising out of audits is to amend the statistical reports previously provided to our office (see Chapter 2). 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. We are therefore unsure about the accuracy of data contained in reports from authorities.

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.

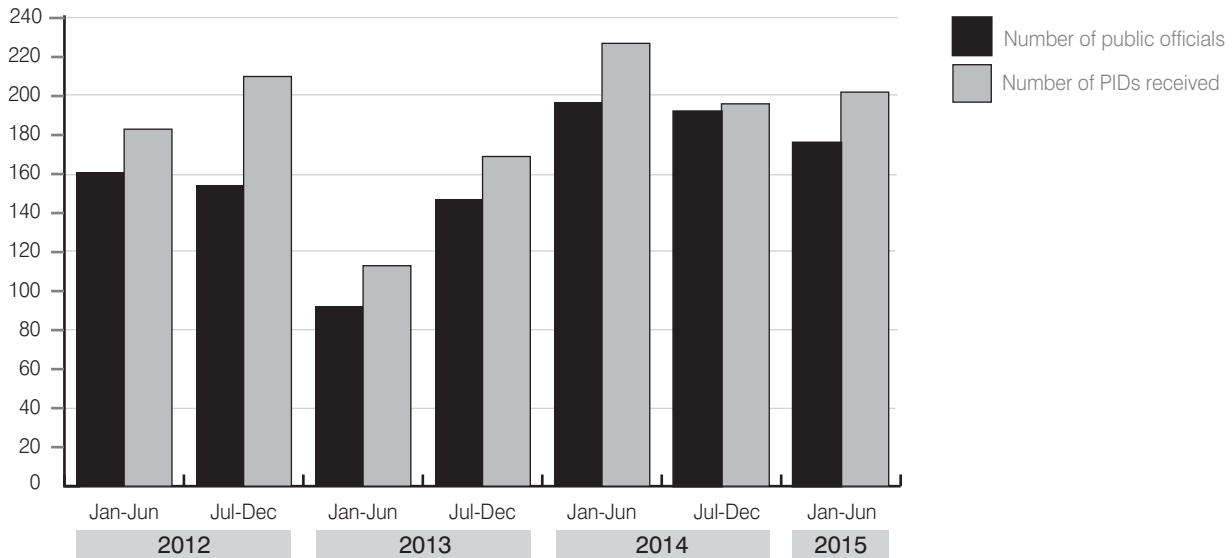
We told public authorities the number reported to our office should refer to PIDs the authority took responsibility for handling, regardless of whether they were made directly to the authority or referred by another public or investigating authority under sections 25 or 26 of the PID Act. It should not 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 s.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 1 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 a great deal of variation over the seven reporting periods to date. In 2014–2015, 80 authorities reported receiving 398 PIDs, more than in any other financial year since the reporting requirements began.

Figure 1. Number of public officials who made PIDs directly to, and number of PIDs received by, public authorities over time



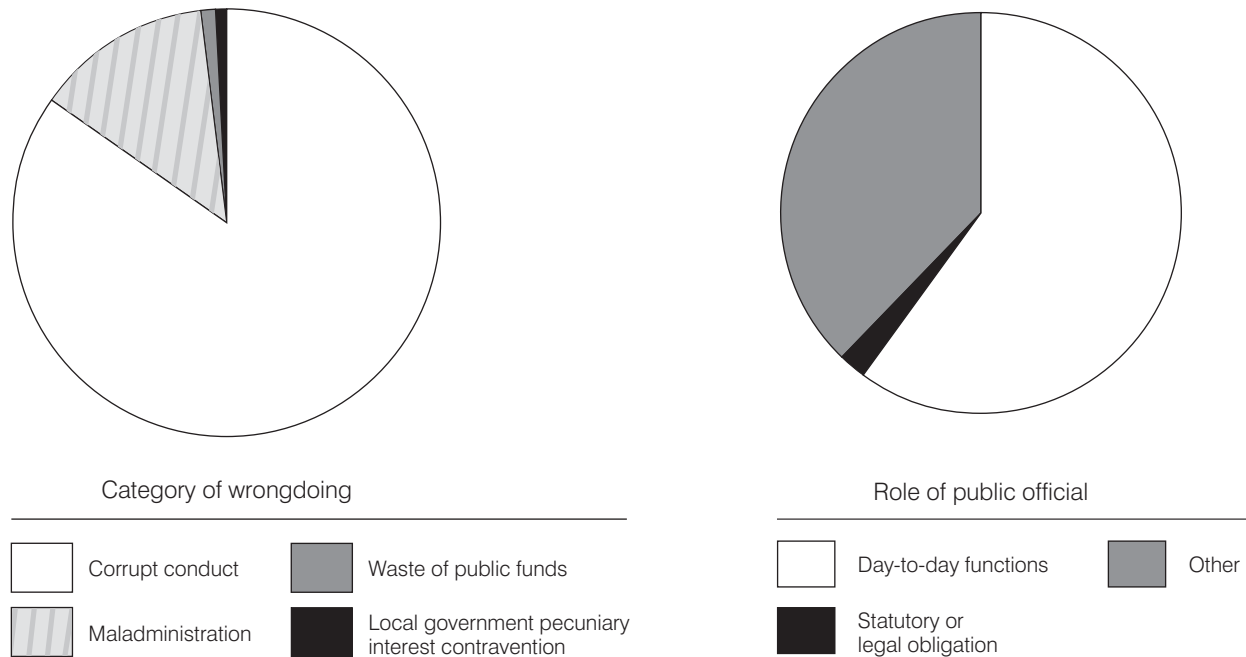
Most public authorities (79%) did not report receiving any PIDs. State government principal departments were the type of authority most likely to receive PIDs (78%), followed by state owned corporations (62%), universities (40%) and other state government agencies (38%).

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 2 shows the vast majority of PIDs received by public authorities in 2014–2015 continue to primarily allege corrupt conduct (85%). Very few PIDs received by authorities allege serious and substantial waste of public funds or a local government pecuniary interest contravention. Public authorities reported receiving no PIDs alleging a breach of the GIPA Act over the year.

Figure 2. Primary category of wrongdoing alleged and role of public officials making PIDs (PIDs received by public authorities in 2014–2015)



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.

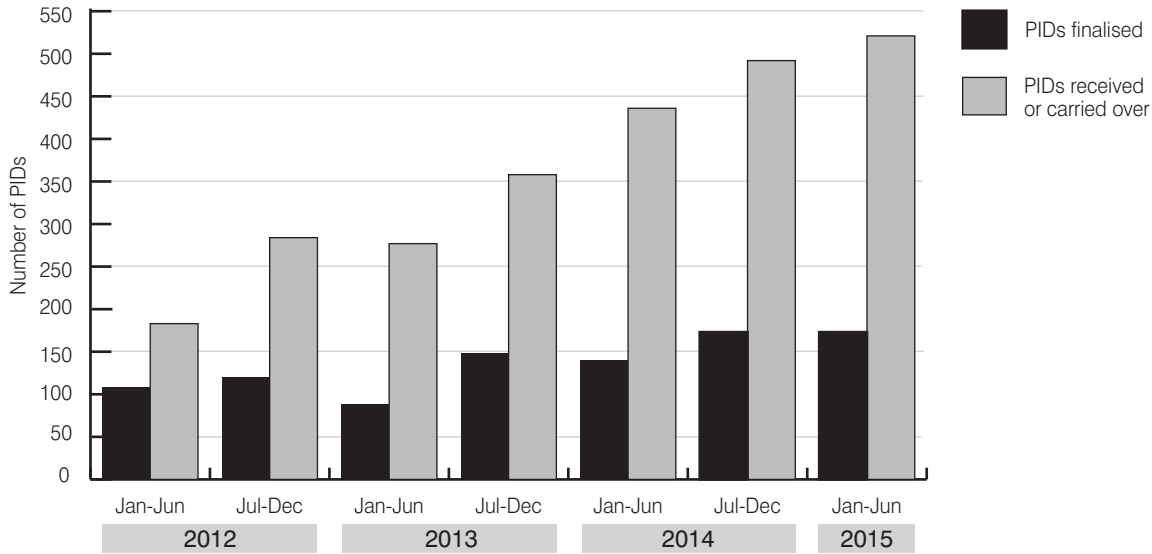
Since 1 January 2014, public authorities have been required to provide our office with information about the role of public officials making PIDs. As seen in Figure 2, more than half (60%) of all PIDs received by authorities over the year were made in the performance of a public official's day-to-day responsibilities.

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 ICAC should be included in the 'statutory or other legal obligation' category. Many authorities also report all PIDs as being made by public officials performing their day-to-day functions. 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 3 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 3. PIDs received by public authorities that have been finalised over time

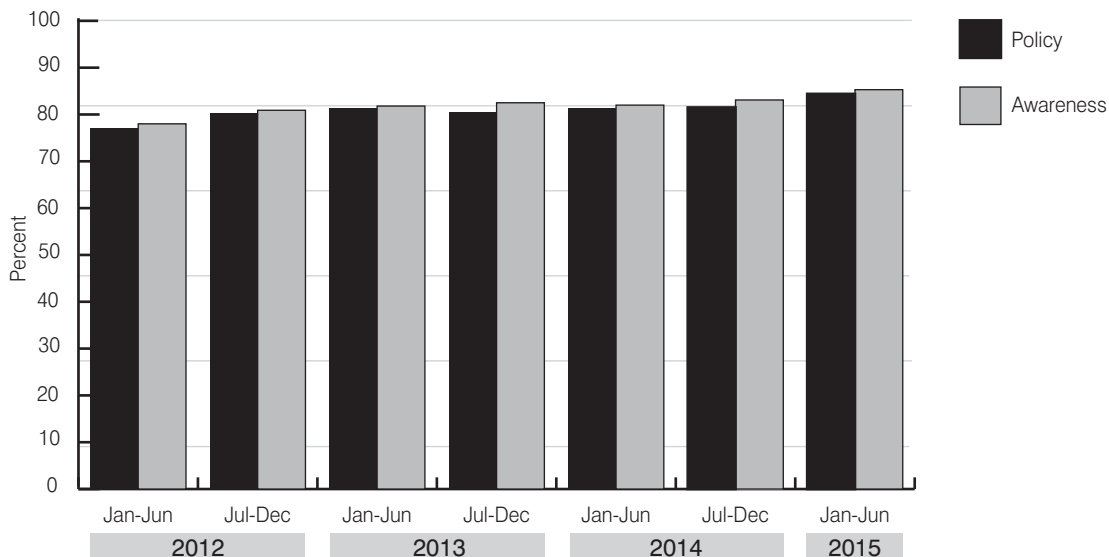


Internal reporting policies

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 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.

The six-monthly reports provided to our office by public authorities show there has been an increase in the proportion indicating they have an internal reporting policy, from 77% in the first reporting period (January to June 2012) to almost 85% in the January to June 2015 period.

Figure 4. Proportion of public authorities that reported having an internal reporting policy and raising staff awareness over time



The improved reporting compliance of LALCs has, however, lowered the overall proportion of public authorities who 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 – 50% and 61% respectively in the January to June 2015 period. To assist these authorities, we developed a model internal reporting policy specifically for LALCs that they can easily adapt and adopt (see Chapter 5).

Staff awareness

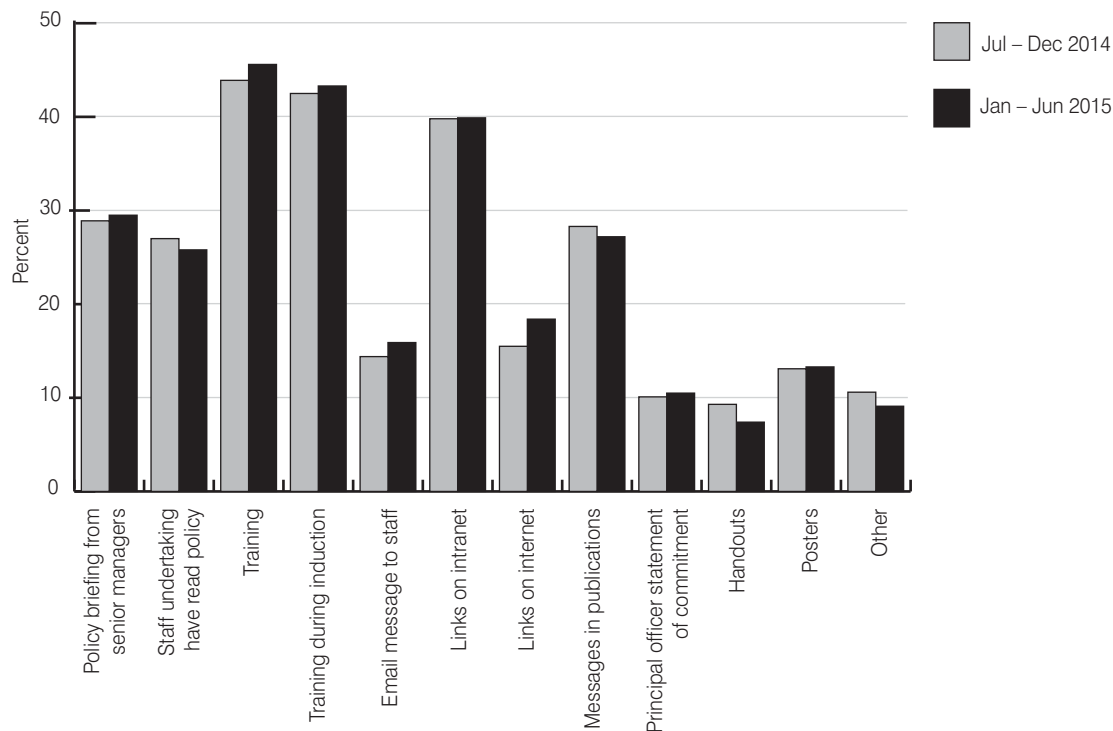
The heads of public authorities are responsible under section 6E(1)(b) of the PID Act for ensuring their staff are aware of the contents of the authority's internal reporting policy and the protections provided under the Act. There has been an improvement over time in the proportion of authorities who report the head of the authority had taken action to meet their staff awareness obligations, up from 78% in the January to June 2012 period to 85% most recently (see Figure 4).

We are particularly pleased to note a trend of public authorities surveying staff or disclosures officers about their awareness of the Act. For example:

- The then **Safety, Return to Work and Support Division** issued a 'Fraud Healthcheck' survey to all staff. The Healthcheck included a specific question on internal reporting which received a 92% positive response. The results were reported to staff, including via presentations to business units, which provided further opportunities to raise awareness.
- **Mosman Municipal Council** included PID awareness questions in its Employee Engagement Survey.
- The **Office of Environment and Heritage** conducted a survey of nominated disclosures officers about their awareness of their role in relation to PIDs.

Figure 5 shows the range of actions taken by public authorities to raise staff awareness. The majority reported adopting a number of strategies, including training staff, providing information during staff induction programs, linking to their internal reporting policy on the intranet and policy briefings. These have been the most common strategies over all reporting periods to date.

Figure 5. Proportion of public authorities that reported adopting each awareness strategy in 2014–2015



Good practice examples: Raising staff awareness

NSW Treasury developed a brochure to summarise the key features of its internal reporting policy. The brochure includes a strong statement of commitment to the policy by the Secretary.

The **City of Newcastle** developed a flyer *Public Interest Disclosure – Know Your Responsibilities* to raise awareness of the responsibilities of disclosures officers, business unit managers, coordinators and supervisors in the internal reporting system. It includes the contact details for the disclosures coordinator and governance officer who may be contacted to discuss the best course of action for PIDs and other reports.

The **Justice Health & Forensic Mental Health Network** requested we write a 'guest column' for Inside News, their staff newsletter, to raise awareness of the PID Act.

Hunter New England Local Health District developed a fact sheet *Thinking About Reporting a Public Interest Disclosure?* and distributed it to all staff via their CE News.

Transport for NSW regularly publishes news articles on the intranet encouraging staff to report any concerns of wrongdoing and reminding them of the process to do so and avenues to report.

Suppliers working with **Endeavour Energy** were issued with a Christmas message referring to their Statement of Business Ethics which promoted the process for reporting alleged wrongdoing. Video presentations (E-Talk) were also delivered to its employees outlining the key protections available in the PID Act.

Nominated disclosures officers at **Fire and Rescue NSW** have received training on their responsibilities and signed undertakings about their understanding of their obligations.

Harden Shire Council's General Manager and directors reinforce PID requirements in staff meetings on a six-monthly basis.

We remain concerned very few public authorities reported having their internal reporting policy available on their website. As policy documents, the GIPA Act requires they be publicly available. Public officials of other authorities are also able to make a PID to the authority where the wrongdoing occurs – and therefore may need to access information about who they should report to.

PIDs handled by investigating authorities

There are nine investigating authorities under the PID Act:

- Audit Office
- ICAC
- Inspector of the ICAC
- IC
- NSW Ombudsman
- Office of Local Government (OLG)
- Police Integrity Commission (PIC)
- Inspector of the PIC
- Inspector of the NSW Crime Commission.

While not required under the PID Act, 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. This year, we also wrote to the key investigating authorities, seeking information about trends in PIDs received to them, their views on the legislation and areas of reform, and case studies of PIDs they have dealt with.

In focus: The Audit Office

The Audit Office received fewer PIDs in 2014–2015 compared to previous years – eight compared to 23 in 2013–2014 and 27 in 2012–2013. Because of the low number it is difficult to identify any strong trends, however they did note the following:

- In some cases, there seems to be strong links between the PID/complaint and an individual workplace grievance.
- There is a certain level of misunderstanding about the Audit Office's roles and responsibilities, and the definition of 'serious and substantial waste'.
- Reporters are increasingly highlighting potential issues of waste – that is, the waste has not yet occurred but the reporter feels a policy or decision will lead to a waste of money.

Areas of focus for the Audit Office in 2015–2016 will be to provide more information to reporters on the office's role and responsibilities to help manage expectations, as well as to provide greater clarity around the definition of 'serious and substantial waste' and how the office responds to such allegations.

In focus: The Office of Local Government

The number of disclosures made to the OLG about local government has increased since the introduction of changes to the PID Act in 2011. These changes expanded the OLG's role to receive disclosures about a broader range of conduct.

Since the broadening of the OLG's role they have seen an increasing trend for general managers to lodge PIDs with the Chief Executive of the OLG. This is usually where the general manager's position is under pressure. The OLG observe this is often due to:

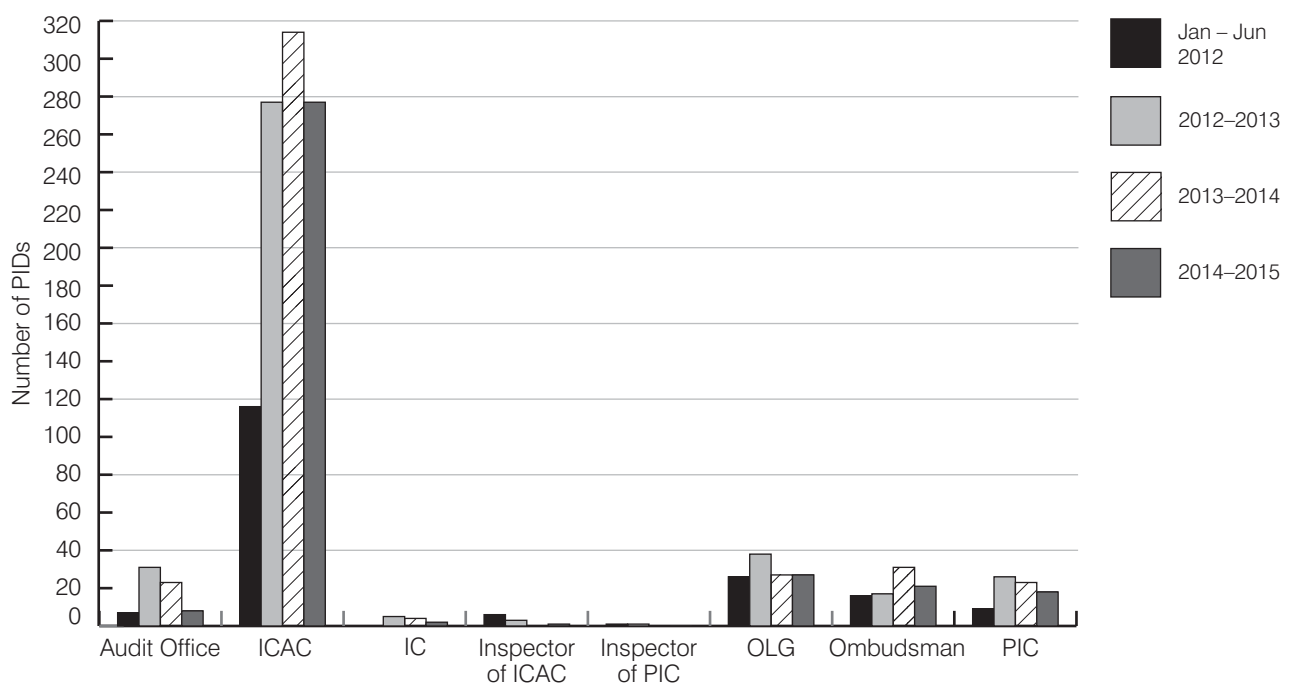
- the general manager raising concerns about the conduct of all or some of the members of the elected body
- a breakdown in the relationship between the general manager and the mayor
- a disconnect between the policy direction of the elected body and the administration
- the majority of councillors losing confidence in the general manager.

The mandating of a model code of conduct for local councils in NSW has, in most cases, enabled councils to deal more effectively with conduct issues relating to elected members that may previously have been the subject of disclosures. This is because there is a robust framework that provides standards to guide the conduct of council officials and clear procedures to follow when complaints are made.

The broadening of the OLG's role enabled them to be informed of matters by council staff which may previously not have come to light. This has resulted in the investigation of two councils under section 430 of the *Local Government Act 1993*. These investigations are generally only undertaken when there are serious and systemic issues facing a council. The opportunity for council staff to make such reports in a confidential context has been a key part of enabling the OLG to investigate maladministration.

Investigating authorities received 354 PIDs in 2014–2015. Figure 6 shows the number of PIDs received by investigating authorities over time. The Inspector of the NSW Crime Commission is not included as he has not reported receiving any PIDs. Although the number of PIDs received by the ICAC declined in 2014–2015, they received the majority of PIDs made to investigating authorities (78%). It is not surprising, therefore, that the majority of PIDs received by investigating authorities concerned alleged corrupt conduct (85%). Case study 12 is an example of one such PID received by the ICAC.

Figure 6. Number of PIDs received by investigating authorities over time



Case Study 12

Falling short

The ICAC received a PID concerning allegations of corrupt conduct against senior management of a public authority. The same allegations had been raised internally with the authority which also treated it as a PID.

The reporter alleged the public authority's own guidelines for managing and supporting reporters were not adhered to in their entirety. The ICAC made enquiries with the authority about the allegations and the authority openly admitted its disclosures coordinator and other officers had failed to provide the requisite support for the reporter.

This matter highlights the fact some public authorities are not supporting reporters as intended by the PID Act.

Over the year, the information provided in 13 PIDs received by investigating authorities prompted formal investigations: nine by the ICAC and four by the OLG. Case study 13 outlines an investigation into two PIDs conducted by the OLG during the year. The OLG notes the PIDs and the manner in which they were dealt with raise a number of important points:

- Disclosures made to an investigating authority may be more appropriately dealt with by another investigating authority and/or the subject public authority to which they relate. The referral mechanism in ss.25–26 of the PID Act provide for this while maintaining the protected status of the disclosure.
- Timely assessment and communication can help manage reporter expectations.
- Not all matters complained about will warrant investigation.
- The option of being able to make a PID has resulted in important matters being brought to the attention of an investigating authority, which in turn has been able to investigate those matters.

Case Study 13

OLG investigates PIDs and shines a light

In May and June 2013, two public officials independently made PIDs about the same local council. Both disclosures detailed a number of allegations, some of which were related to the same issues. One of the disclosures was made to the ICAC and the other was made to the Chief Executive of the OLG.

The ICAC assessed the disclosure it received and determined it would be more appropriately considered by the OLG. The ICAC consulted with the OLG and the matter was subsequently referred under section 53 of the ICAC Act and s.25 of the PID Act.

The ICAC assessed the disclosure made to it as a PID. Both disclosures were subject to an initial assessment by the OLG which identified they may be PIDs. The OLG wrote to the two officials to acknowledge receipt of their complaints and to provide information about the OLG's process for dealing with PIDs.

Some of the allegations did not go to maladministration or serious and substantial waste of local government money. As such, no action was taken in relation to those matters. Similarly there was insufficient prima facie evidence for some of the allegations to warrant action being taken. This decision and the reasons for not pursuing the allegations were communicated to the reporters.

The OLG then undertook preliminary enquiries into the remaining allegations.

The nature of the matters alleged were such that the disclosures could have been made by a number of public officials other than those who did make the disclosures. When inquiries were made of the council, the OLG decided to inform the council's general manager the information was being sought in response to reports that were being treated as PIDs. The general manager was reminded of his obligations to maintain confidentiality and to take all reasonable steps to prevent reprisal action being taken against a person who had or was assumed to have made the disclosure.

The council responded to the enquiries by providing an extensive amount of information and supporting documents. After the information was analysed, a number of the allegations were assessed as not warranting any further action. Four allegations were identified as warranting formal investigation.

The OLG communicated with the reporters a number of times during the preliminary inquiries phase to keep them informed as to what was occurring. They also received advice as to what matters would not be pursued and those matters which would be the subject of an investigation. Both reporters indicated they were satisfied with the manner in which their concerns had been addressed.

The OLG has recently completed the investigation that arose from the making of the PIDs. The findings of the investigation are that the council had:

- failed to comply with certain provisions of the Local Government Act
- failed to adopt and comply with appropriate processes in relation to some tenders
- deficiencies in its management of a public resource.

The council has since taken numerous actions to address the systemic issues which contributed to this occurring. There is evidence the council's procurement processes are more robust than they were at the time when the investigation commenced.

The results of the investigation have been reported to the Minister and the council. The report has been tabled in the Parliament and is publically available. Such reports provide the opportunity for other public authorities to learn from what has occurred and take action to prevent maladministration and waste from occurring.

PIDs around Australia

All Australian jurisdictions have legislation to protect public officials who report public interest wrongdoing. It is difficult to compare legislation because each state and territory varies in regards to the type of oversight authority, who can make a disclosure, how a disclosure can be made, how disclosures are responded to, and how those who make disclosures should be managed and protected.

The following review of commonwealth, state and territory oversight agencies' annual reports reveals these differences, including differences in the PIDs reported.

In focus: Disclosures in other Australian jurisdictions, 2013–2014

Australian Capital Territory: The Ombudsman did not receive any disclosures during the reporting period. One complaint about the handling of a disclosure was received and investigated under the *Ombudsman Act 1989* (ACT).

Northern Territory: The Commissioner for Public Interest Disclosures handled 65 disclosure files under the *Public Interest Disclosure Act 2009* (NT) during the reporting period, which is consistent with previous years. Of these, 34 were new disclosures and the remaining 31 were partly investigated matters carried over from the previous year.

Queensland: The Queensland Ombudsman advised 725 PIDs under the *Public Interest Disclosure Act 2010* (Qld) were reported to the Ombudsman by agencies, which is a 39% decrease in PIDs on the previous year.

South Australia: The South Australian Ombudsman provides whistleblower protection advice about the *Whistleblower Protection Act 1993* (SA). In this reporting period the Office provided advice on three matters.

Tasmania: The Tasmanian Ombudsman did not receive any matters which might potentially be seen as disclosures under the *Public Interest Disclosures Act 2002* (Tas).

Victoria: The Independent Broad-based Anti-corruption Commission assessed 4,860 allegations, involving both police and public sector personnel. Three hundred and fourteen of these allegations were determined to be protected disclosure complaints.

Western Australia: The Public Sector Commission received 14 PID matters which were dealt with pursuant to the *Public Interest Disclosures Act 2003* (WA). This represented a small increase on the 11 PID matters received in 2012–2013.

Commonwealth: The Commonwealth Ombudsman reported that 48 of 191 agencies received 378 disclosures that met threshold requirements for their information to be considered an internal disclosure under the *Public Interest Disclosure Act 2013* (Cth).

Chapter 4. Working together

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

Whistling Wiki

In this reporting period we launched an online community named 'Whistling Wiki' with the Commonwealth and Queensland Ombudsman's offices. The Whistling Wiki provides a workspace to facilitate communication and sharing of information about PID frameworks, legislation, research, resources, policy and practice. We invited all of the PID practitioners in NSW as well as state oversight authorities to join the Whistling Wiki.

Beyond creating a space for organisations and PID practitioners to discuss the challenges and best practice in PID schemes, we see this online community as a very positive way to share PID resources and research. We are aiming to build an online cumulative evidence base for all Australian and international organisations with responsibility for or an interest in whistleblowing.

A Steering Committee made up of the NSW, Commonwealth and Queensland Ombudsman provides oversight. During this reporting period we met quarterly by teleconference to establish the terms of reference for the committee and a moderation policy for our members.

Along with the Commonwealth and Queensland Ombudsman we posted hyperlinks to all of our PID-related resources in the Whistling Wiki. Articles from the media about the management of reports of wrongdoing and other relevant research reports are posted. We also hosted a discussion blog about reprisals in the workplace and welcomed comment on research findings.

PID oversight forum

Staff from our office took part in the annual PID oversight forum on 29 April 2015 at the Commonwealth Ombudsman's office in Canberra. The forum is aimed at allowing PID oversight bodies to:

- exchange and share resources and information about practices, current issues and challenges
- engage in strategic and coordinated policy development to promote common areas of interest and ensure consistency in approaches
- support research, evaluation and monitoring of the implementation of PID type legislation nationally
- explore opportunities for inter-jurisdictional collaboration between agencies.

Representatives from the following oversight agencies across Australia also attended the forum:

- Northern Territory Commissioner for Public Interest Disclosures
- Commonwealth Ombudsman
- Victorian Independent Broad-based Anti-Corruption Commission
- Commonwealth Inspector-General of Intelligence and Security
- Queensland Ombudsman
- Australian Capital Territory Commissioner for Public Administration
- Western Australia Public Sector Commission.

At the forum, we agreed to further collaborate with oversight bodies to:

- progress the Whistling Wiki
- share information in preparation for the upcoming reviews of PID legislation in NSW, Queensland and the Commonwealth
- work towards more consistent reporting requirements for public authorities to enable comparisons across jurisdictions
- contribute to further research into staff reporting of wrongdoing.

PID investigating authorities

Most investigating authorities under the PID Act not only receive, assess and investigate PIDs themselves, but have the ability to monitor their handling by public authorities. In July, September and June we met with staff from the Audit Office, the ICAC, the Information and Privacy Commission (IPC), the OLG and the PIC to share information and assist with a consistent and coordinated approach in handling PIDs across the public sector.

Some of the issues we discussed were:

- updating the schedule for PID information sharing by investigating authorities after amendments to the PID Regulation
- whether there is a need to amend the PID Act to include a broader provision enabling investigating authorities to share information to fulfil their responsibilities
- difficulties encountered with the PID legislative framework and suggestions for possible changes
- the importance of public authorities communicating with reporters to manage their expectations, appropriately assessing reports of wrongdoing and keeping adequate records
- the value of investigating authorities representatives being guest speakers at a series of PID practitioner forums.

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
- advise the Premier on reports from our office about our functions under the PID Act
- provide advice to a Parliamentary Joint Committee in its review of the PID Act.

During the reporting year, the Steering Committee met three times. The Steering Committee was able to share views about issues their respective agencies had identified with the system for reporting wrongdoing in NSW. The focus of the Steering Committee was on legislative amendments required to the PID Act and other relevant legislation to address these issues in the future.

As required under the PID Act, a separate *PID Steering Committee Annual Report 2014–2015* specifically outlines the activities of the Steering Committee during the reporting period.

Whistleblowing research project

During the year, we confirmed our support for a research project on effective public interest whistleblowing laws, policies and systems for the public and private sectors. Led by Professor AJ Brown of Griffith University, the three-year Australian Research Council (ARC) Linkage Project was successful in being awarded a grant of \$457,800. This is in addition to funding and in-kind contributions from a number of partner organisations including Ombudsman's offices and public sector integrity agencies from Australia and New Zealand, as well as private sector organisations such as CPA Australia and the Australian Securities and Investment Commission.

The research will follow the *Whistling While They Work* ARC Linkage Project (2005–2009) by extending systematic research to the next crucial issue, adequacy of organisational responses to whistleblowing. The project's scope has been broadened to include both the public and private sector across a number of Australian jurisdictions, as well as New Zealand.

We believe the proposed research will provide important conceptual and practical advances in the ability of public authorities to fulfil their responsibilities for dealing with PIDs and other internal reports, and improve their systems for supporting, protecting and managing staff who bring serious wrongdoing to light.

Chapter 5. Reaching out

By providing training, advice and guidance to public officials and public authorities, we aim to improve the implementation of the PID Act by PID practitioners.

Raising awareness

PID training

We have a statutory obligation to provide PID training to public authorities in NSW. The aim of this training is to increase awareness of the procedures for making disclosures, improve the management and handling of disclosures, and better protect and support people who make disclosures.

We provide in-house and open workshops to public authorities at no cost. These sessions take the form of a half-day workshop for staff involved in the management of PIDs and a short information session for all staff to raise awareness of systems and processes available for reporting wrongdoing.

During 2014–2015 we delivered 39 three-hour management sessions (which included 4 open workshops) and 26 one-hour awareness sessions to 1,391 staff of 102 public authorities.

Our PID training in 2014–2015

- 102 public authorities trained
- 1,391 public officials trained
 - 503 attended the three hour PID management sessions
 - 888 attended the one hour PID awareness training sessions
- 2 open workshops in Sydney
- 2 open workshops in regional locations – Batemans Bay and Tamworth
- 35 PID management training sessions
- 26 PID awareness training sessions



PID training in NSW communities 2014–2015

Regional		Metropolitan	
1. Ballina	7. Oberon	1. Ashfield	6. Merrylands
2. Batemans Bay	8. Orange	2. Beverly Hills	7. Parramatta
3. Broken Hill	9. Picton	3. Hornsby	8. Ryde
4. Cobar	10. Tamworth	4. Hurstville	9. St Leonards
5. Nambucca Heads	11. Tumut	5. Malabar	10. Sydney CBD (numerous)
6. Newcastle	12. Wagga Wagga		11. The Rocks
	13. Wollongong		

Evaluating our training

Everyone who attends our PID training is given the opportunity to provide us with feedback by completing an evaluation form. We take all comments seriously and use this information to improve the service we provide to public authorities.

During this year 844 public officials provided us with written feedback compared to 305 last year. Participants are asked to comment on the session, the presenter, the content, and their confidence in implementing what they have learned in their workplace. This feedback has reinforced that our training is useful and relevant. Feedback has also helped us to identify areas of concern for PID practitioners which we use to inform our work.

In focus: Participant feedback about training

PID practitioners

I found this training useful and relevant and I want to extend awareness sessions to my team leaders and managers.

The case scenarios were beneficial and working through them made the theory much clearer.

More staff, below management level, would benefit greatly from this knowledge.

Enjoyable session; provided me with a good level of information to meet my responsibilities. Good use of relevant cases. Good refresher.

A very comprehensive and detailed session, which provided the necessary information I needed to understand PIDs, their use, etc.

General staff

Really clear. I have come out with a much better understanding of PIDs.

It's good to know these systems are in place and to be made aware of them.

Speaking engagements

Representatives from our office spoke about PIDs at a number of events throughout the year, including at:

- The Health Professional Councils Authority in July 2014 on the topic '*Don't ignore public interest disclosures*'.
- The National Investigations Symposium in November 2014 about managing risk when a PID is received.
- Two Anti-Fraud and Corruption seminars held by Sydney Trains for staff in February 2015.
- Two communities of practice hosted by the Commonwealth Ombudsman in November 2014 and April 2015 about managing reporters and their workplaces.
- The Local Government Professionals Conference in May 2015 about PIDs in local government.

Conferences

Engaging with public authorities and individuals is an important part of our work. Attending government conferences and events is one way we publically make ourselves available to connect with others. Developing and maintaining professional relationships enables us to promote awareness of the PID Act, provide support and guidance, and identify problems.

During the year we hosted information stalls at the IPAA State Conference, the Corruption Prevention Network Annual Forum and the National Investigations Symposium. The professional relationships we are building across the NSW public sector continues to grow as we promote effective and efficient handling of internal reports of serious wrongdoing.

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 and the protection and support for the people who make them.

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

- the protections available under the Act
- the information they should provide to the recipient of their report
- how to minimise risks arising out of making reports
- the appropriate investigating authority to which a report should be made
- the normal procedures followed by our office on receipt of such a report.

During 2014–2015, we received 238 enquiries relating to PIDs which is a 34% increase compared to the previous financial year (178). Of these:

- 117 were from public authorities with a policy query
- 73 were from public authorities about the management of a PID
- 48 were from public officials who had reported wrongdoing or were thinking about doing so.

We also responded to approximately 160 enquiries from public authorities about the administrative processes around submitting a PID report to our office.

Contact the PID Unit at pid@ombo.nsw.gov.au or on 02 9286 1000 for advice on managing or making a PID.

Snapshot of our advice

- A manager from a public authority enquired about how the authority can protect a subcontractor who has made a PID from reprisal. We confirmed the subcontractor is a public official under the PID Act and provided guidance on strategies to protect reporters.
- A manager told us an audit identified that an ex-employee was using the public authority's cab charges and asked whether this could be a PID. We confirmed that audit findings could be PIDs, but as the individual concerned is not a public official, the report is not a PID. The wrongdoing would still need to be addressed.
- A reporter enquired whether our office could review an investigation report into a PID to make sure it had been conducted appropriately. We advised we may do this following a complaint to our office providing as much information as possible about why the investigation was not appropriate and the investigator's conflict of interest. We would assess this information to decide what action we would take, which may be that the public authority provides us with all documents relating to the matter for review.
- A reporter who was to be relocated to protect him from reprisals for making a PID was concerned he would not receive significant travel allowance, employment prospects would not be as good and he would have a longer distance to travel to work. We encouraged the reporter to discuss the concerns with head office, indicating that he was supportive of a transfer but for a number of reasons was concerned the one being proposed may be to his disadvantage in the ways outlined. The public official was also referred guidance on our website about changing employment arrangements and ensuring any relocation has the same pay and conditions, seniority and responsibilities, and accessibility between home and work.
- A reporter asked if he would be provided with the investigation report. We noted the full report may not be provided due to privacy reasons. We advised that under the PID Act the only obligation was to advise about what action was taken and the outcome.

- A public official enquired whether or not to count PIDs referred to the public authority by ICAC. We confirmed PIDs referred by ICAC under s.25 of the PID Act are to be counted as PIDs received but PIDs referred under s.53 of the ICAC Act but not under the PID Act are not to be included.
- An investigator called for some practical advice on the PID Act. During the course of an investigation a witness had disclosed serious wrongdoing and she wanted to know whether this is a PID. We confirmed it may be as long it was made to a nominated officer and satisfies the other PID Act criteria.
- An investigator wanted to know if a manager passing a report on from one of his staff could be making a PID. We confirmed it came down to whether the manager was merely notifying or sending the information on – that is, whether he had formed an honest belief on reasonable grounds about the conduct.

Providing guidance

PID publications

Our office has a statutory function in section 6B(1)(c) of the PID Act to issue guidelines and other publications for the assistance of public officials and public authorities in connection with their functions under the Act.

In 2014–2015 we developed a template letter for when concerns are raised that do not meet the criteria of a PID. Public officials may at times raise concerns they believe are PIDs, but the public authority assesses the report as not meeting at least one of the requirements of the PID Act. This new template thanks the public official for raising their concerns and explains why it is not a PID. The template outlines the authority's options on what action will be taken to respond to the concern raised.

Good practice example: University of Wollongong

The University of Wollongong developed a staff toolkit to support their PID system based on our templates but adapted to their own processes. Their policy, procedure, forms and templates are available on their intranet, while their public website contains information for public officials about making a report.

The *Fraud and Corruption Internal Reporting Form* states that reports of wrongdoing can be made to any manager or supervisor – however, to be entitled to the protections available under the PID Act the form must be submitted to a nominated disclosure officer. It also notes reports of wrongdoing may be submitted anonymously, but that this may inhibit the university's ability to deal with the report if further information is required. The university has commenced development of an online reporting form.

The university also developed a simple five step process diagram for managing reports of wrongdoing to support disclosure officers throughout the process.

We also continue to improve and update our PID publications based on information gathered from our engagement with PID practitioners, training of public officials, handling of complaints and auditing of public authorities. Over the year, we updated the following guidelines:

- *A1: Management commitment to internal reporting*
- *A2: Internal reporting policy and procedures*
- *A3: Awareness and training*
- *A4: Evaluation of policy, processes and practices*
- *B1: Who can report wrongdoing?*
- *B2: What should be reported?*
- *B3: What's not a public interest disclosure?*
- *B4: Reporting pathways*
- *B5: Reporting to members of Parliament and journalists*
- *B6: Anonymous reporting*
- *C3: Assessing and streaming internal reports.*

Our two publications providing guidance on the reporting requirements of public authorities (*Guideline C2: Reporting to the NSW Ombudsman* and *PID annual reporting requirements*) were updated to include information about the categories of reporters: PIDs made in the performance of day-to-day functions; PIDs made under a statutory or other legal obligation; and 'all other' PIDs.

In focus: How complaints inform our guidance material

During the reporting period, a couple of matters highlighted the need to amend the guidance we provide to public authorities about interpreting the threshold test in the PID Act – that is, whether the reporter has an honest belief on reasonable grounds their information shows or tends to show certain conduct occurred. When we developed the material, we believed it would assist authorities' understanding of terms which have a specific legal meaning.

For example, our office received a complaint from a public official about how an authority had dealt with their matter. In response to our enquiries, the authority indicated that one of the reasons they had not assessed a matter as a PID was because there was an alternative valid explanation for the conduct. This was based on advice contained in our *Guideline B2: What should be reported?*: 'There should be no alternative explanations for the conduct observed that can be easily thought of'.

We noted whether or not there is an alternative explanation is one consideration in an authority's assessment, but it is not determinative. The more important consideration is weighing up the likelihood of the alleged conduct and alternative explanations. It would only be in circumstances where the alternative explanation was clearly the more likely that the test in the PID Act would not be satisfied on this ground.

In a separate matter, the ICAC received a PID from an employee of a large public authority alleging that staff had acted corruptly. It became apparent the reporter had also raised his concerns with the public authority; however his disclosure was not treated by it as a PID because the disclosure in part relied on hearsay. The authority appeared to have been relying on information contained in the template we developed to assist authorities assess internal reports against the criteria in the PID Act where it states: 'The reporter must be able to show or tend to show evidence of the alleged wrongdoing, i.e. they witnessed it or they have documentary or other evidence. It cannot be hearsay.'

The ICAC noted that the fact an allegation relies in part or wholly on hearsay is not a valid reason for determining that it is not a PID. Depending on the circumstances, hearsay information may be sufficiently detailed and cogent to give rise to a reasonable belief that certain conduct has occurred.

Our view is that a PID assessment needs to look at a report holistically. As stated in our guideline, taken together, an 'honest belief on reasonable grounds that information shows or tends to show' means a PID cannot be based on a mere allegation or suspicion unsupported by any facts, circumstances or evidence. It is not how the information was obtained that is of importance – what public authorities need to consider is whether there is sufficient detail to induce a belief in a reasonable person that wrongdoing occurred.

We will be reviewing our guidance material on the threshold test contained in the PID Act in light of the above matters.

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 10,202 visits to our PID guidelines, fact sheets and templates on our website in 2014–2015, which is a 14% decrease in online traffic compared to 2013–2014. There was also a 14% decrease in unique visitors to the PID web pages with 6,439 visitors in 2014–2015. Refer to Table 2.

Table 2. Online access of PID resources – guidelines and fact sheets

	2012–2013	2013–2014	2014–2015
Page views of PID publications	5,658	11,865	10,202
Unique visits to PID publications	2,858	7,527	6,439

In focus: What is serious?

PID practitioners sometimes face the dilemma of determining what is serious when assessing whether reports are PIDs and sought our advice on this matter. We conducted research into the factors that might indicate seriousness, including by looking at case law.

In the context of the PID Act, serious often refers to what is in the public interest as distinct from individual interests. Something may be extremely serious to an individual but it will not be in the public interest unless there is also a significant impact on the public authority, the general public or the government.

We recommended PID practitioners consider situational factors that may be unique to their public authority. Any assessment of seriousness may take into account:

- the size of the authority
- accepted practice within the authority and the industry
- the culture of the authority
- the authority's policies and procedures
- resourcing levels.

We included our advice in *Guideline B2: What should be reported?* This guideline now includes an extensive list of factors and indicators to consider when deciding if a matter is of a serious nature. We presented at a PID practitioner forum on this topic.

Supporting public authorities

Local Aboriginal Land Councils

LALCs are deemed to be public authorities for the purposes of legislation relating to accountability, such as the Ombudsman Act, the ICAC Act and the GIPA Act. This means LALCs are also required to comply with the PID Act. The staff, elected board members and voting members of LALCs are all public officials. They can make a PID or have a PID made about their conduct.

Our engagement strategies with LALCs over the year included liaising with the NSW Aboriginal Land Council (NSWALC), training at LALC regional forums across the state, writing to the chief executive officer (CEOs) of every LALC, reaching out to NSWALC Zone Directors for their assistance in supporting the LALCs and directly contacting individual LALCs to speak with them about the requirements under the PID Act. We also introduced more flexible ways for LALCs to provide their PID statistical reports, such as by facsimile, e-mail, using our PID online reporting tool or mail.

To assist LALCs comply with the PID Act requirement to have a policy and procedures for receiving, assessing and dealing with PIDs, we developed a *Model internal reporting policy for LALCs* and recommended their management boards adopt it. This policy belongs to a suite of model internal reporting policies for state and local government. It is specific to the structure of LALCs and outlines the role of the CEO and chairperson in particular.

To further raise awareness we developed *Fact sheet 9: Reports of serious wrongdoing – A quick guide to public interest disclosures for Local Aboriginal Land Councils*. It is a practical resource that outlines the LALC CEO's responsibilities when a report of serious wrongdoing is received and includes a step by step guide on how to handle reports of serious wrongdoing.

Following strategic efforts to raise awareness of the PID Act among the LALCs, we received a significant increase in PID statistical reports required to be provided to our office under the PID Act from LALCs. We encouraged the LALCs to provide reports for previous periods if they had not done so. We are pleased that 84% of LALCs have provided at least one PID statistical report since January 2012 when the reporting requirements commenced.

PID practitioner forums

Forums allow us to build on the professional relationships we have been developing with practitioners of public authorities since 2011. Forums are increasing in popularity and demand, and practitioners indicate they find the sessions useful, practical and worthwhile. Practitioners from the private sector have also attended our forums to increase their knowledge and understanding of the PID Act.

Forums provide an opportunity for us to raise problems identified through our audit and monitoring work. They also allow participants to raise issues with us and ask questions about better managing PIDs.

During this year we held three forums for PID practitioners. Each forum focused on a theme and guest speakers were invited to share their expertise and participate in an interactive Q&A panel.

July 2014 – The topic ‘Challenges managing people and workplaces’ resonated with 33 practitioners, many struggling to manage staff exhibiting difficult behaviours including escalating workplace conflict, payback reports, lack of cooperation, absenteeism and sick leave. A representative from the ICAC clarified misunderstandings many practitioners held about corrupt conduct and how they assess complaints.

November 2014 – Practitioners were addressed by our office, the Audit Office and the ICAC on the topic ‘What is serious?’ This topic drew a record crowd of 67 people interested in definitions from experts on the issue of seriousness. Feedback indicated the cross agency presentation was very useful and relevant.

May 2015 – Representatives of the IPC and the Commonwealth Ombudsman addressed 62 people and explained the role of their office. We also discussed unreasonable behaviours: increasingly challenging and often emotional conduct exhibited by some people who raise concerns. Practitioners welcomed suggestions from our Deputy Ombudsman on how they can better manage people displaying unreasonable behaviours.

PID e-News

We continue to inform people about our work through an electronic newsletter. This is an effective and efficient way for us to disseminate information through the community of PID practitioners and others interested in PIDs. We receive regular feedback which indicates subscribers are keen to read the latest edition and gain the latest information on PID issues. To subscribe to receive the PID e-News email pid@ombo.nsw.gov.au.

During the year we distributed three PID e-Newsletters to 968 subscribers.

Issue 26 – October 2014 – Articles included ‘*Challenges managing people and workplaces*’, ‘*PID survey results*’ and release of updated fact sheets, guidelines and model policies.

Issue 27 – December 2014 – Articles included ‘*Areas of focus for the PID Unit in 2015*’, ‘*What is serious?*’, and ‘*Using external investigators*’.

Issue 28 – June 2015 – Articles included ‘*Oversight of the PID Act – Annual Report 2013–2014*’, ‘*PID reporting*’, ‘*PID audit program*’ and ‘*PID publications*’.

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