

## Reporting pathways

### 1. Objectives

- To outline the internal and external reporting pathways available under the *Public Interest Disclosures Act 1994* (PID Act).
- To emphasise the importance of organisations providing staff with clear advice about how and to whom certain reports of wrongdoing should be made.

### 2. Why is this important?

The PID Act only applies to reports about wrongdoing by staff if they are made to particular internal people or positions, external investigating authorities or – in limited circumstances – to Members of Parliament (MPs) or journalists.

An effective internal reporting system is an important tool to alert management to serious problems within an organisation. Research shows that providing multiple reporting pathways is a crucial element of any organisation's internal reporting system and encourages staff to make reports.

The *Whistling While They Work* research found that almost all internal reporters bring wrongdoing to the attention of management before looking elsewhere for solutions:

- almost all internal reporters (97%) first report wrongdoing inside their organisation
- less than 12% of internal reporters ever go outside their organisation – and this is typically a last resort
- government watchdog agencies receive less than 4% of wrongdoing reports, while MPs receive about 1%.<sup>1</sup>

### 3. Legal and management obligations

#### 3.1 PID Act

For the PID Act to apply, a report of wrongdoing must be made via one of the three pathways shown in Table 1.

Table 1: PID reporting pathways

Internally to public authorities	Externally to investigating authorities	Other external options (in limited circumstances)
<ul style="list-style-type: none"> <li>• The principal officer (or officer who constitutes a public authority)</li> <li>• Nominated officers in accordance with the organisation's internal reporting policy - for example, disclosures coordinators or disclosures officers</li> <li>• The principal officer or nominated officers of the public authority to which the disclosure relates</li> </ul>	<ul style="list-style-type: none"> <li>• Independent Commission Against Corruption (ICAC) - for corrupt conduct</li> <li>• NSW Ombudsman - for maladministration</li> <li>• Auditor-General - for serious and substantial waste</li> <li>• Division of Local Government, Department of Premier and Cabinet - for disclosures about local government</li> <li>• Information Commissioner - for government information contravention</li> <li>• Police Integrity Commission (PIC) - for police misconduct</li> <li>• PIC Inspector - for disclosures about the PIC or its staff</li> <li>• ICAC Inspector - for disclosures about the ICAC or its staff</li> </ul>	<ul style="list-style-type: none"> <li>• Members of Parliament</li> <li>• Journalists</li> </ul>

## a) Internally to public authorities

The PID Act applies to reports of wrongdoing made to a public authority's principal officer or nominated officers if the report is made by:

- staff of the public authority
- other public officials and relates to wrongdoing within the public authority.

## b) Externally to investigating authorities

The PID Act also applies to reports of wrongdoing made to the investigating authorities listed in Table 1. The appropriate investigating authority for receiving a PID depends on what the information is about.

## c) Other external options

Reports of wrongdoing made to MPs or journalists are public interest disclosures (PIDs) under the PID Act if all the following conditions are met:

- The reporter must have made substantially the same disclosure to an investigating authority, public authority or an officer of a public authority.
- The recipient of the disclosure either:
  - › decided not to investigate the matter
  - › did not complete their investigation within six months of the reporter making the disclosure
  - › did not recommend taking any action after investigating the matter
  - › failed to tell the reporter what they were doing about the disclosure within six months.
- The reporter has reasonable grounds for believing that their disclosure is substantially true.
- The reporter is able to prove that their disclosure is substantially true (s.19).

In practice, this last requirement will generally be very difficult to meet. For more information about reporting to MPs and journalists, see [Guideline B5](#).

# 4. What does this mean for your organisation?

## 4.1 Internal reporting pathways

### a) Receiving reports of wrongdoing

Your organisation's internal reporting policy should make it clear who can receive reports of wrongdoing from staff. The policy should nominate a disclosures coordinator and disclosures officers who can receive PIDs from staff – in addition to your principal officer.

Clearly identify who is your organisation's principal officer under the PID Act:

- For business units within a principal department – this will be the director general of the principal department.
- For related entities within a 'cluster' that are not part of a principal department – this will be the chief executive of the entity.
- For local government – this will be the council's general manager.

The principal officer, disclosures coordinator and nominated disclosures officers should be aware of the procedures they need to follow when they receive a report of wrongdoing – see [Guideline C3: Assessing and streaming internal reports](#).

Your organisation must accept and assess any PIDs that:

- are made by your staff – about your organisation or any of its officers or another public authority or any of its officers
- relate to your organisation or any of its officers whether or not the public officer making the PID is a staff member – however, it must be made in accordance with your internal reporting procedures.

### b) Nominating disclosures officers

Your organisation should decide what the most practical reporting pathways are that will give staff confidence that reports of wrongdoing can be made discreetly and will be handled by experienced officers. Disclosures officers should:

- be easily accessible to staff
- be capable of handling inquiries from staff discreetly
- be able to provide avenues for staff who may wish to make a report about their supervisor or manager
- have adequate authority and expertise to properly deal with reports
- have relevant experience and skills for the position.

Your internal reporting arrangements should provide a number of safe and accessible reporting options, allowing staff to report wrongdoing to a person other than their line manager or someone they work with regularly.

The optimal number of disclosures officers nominated in your organisation will depend on factors such as:

- the size and structure of your organisation
- the geographic distribution of work locations
- the volume and type of PIDs received.

Decentralised or dispersed organisations may find it useful to have disclosures officers in the regions or divisions, while smaller organisations may need to nominate only a few officers. Your organisation should aim to provide staff with reporting options both within and removed from their workplace, since research shows that the majority of staff report wrongdoing within their immediate workplace.

In their internal reporting policy, councils should nominate the Mayor as a disclosures officer for reports about the conduct of a councillor or the general manager (see [local government model internal reporting policy](#)).

## c) Nominating supervisors as disclosures officers

Organisations may consider nominating all supervisors as disclosures officers. Given that the overwhelming majority of reporters currently choose to go to a line manager as their first point of contact, nominating as many relevant and appropriate supervisors as possible recipients of PIDs helps ensure that the PID Act applies when staff raise their concerns. Nominating supervisors as disclosures officers may also encourage them to create a positive reporting environment and take responsibility for the reports they receive.

Research found that 73% of staff who report wrongdoing do so to their direct supervisor:

The pattern appears so strong that procedures stipulating that only certain officers in the organisation can receive disclosures, perhaps removed from the immediate workplace of many employees, are unlikely to shake the frequency of this behaviour.<sup>2</sup>

However, you may need to consider the following factors when deciding whether to nominate every supervisor as a disclosures officer:

- the number of supervisors and levels of supervision, as well as their retention rate
- the need for confidentiality in dealing with reports
- the need to ensure consistency and compliance with your organisation's internal reporting policy and procedures

- the need for adequate training for disclosures officers about their obligations under the PID Act and their organisation's internal reporting arrangements
- the skills and experience necessary to receive reports
- the need for alternative reporting pathways if a report concerns the internal reporter's supervisor.

## d) Reporting channels within principal departments

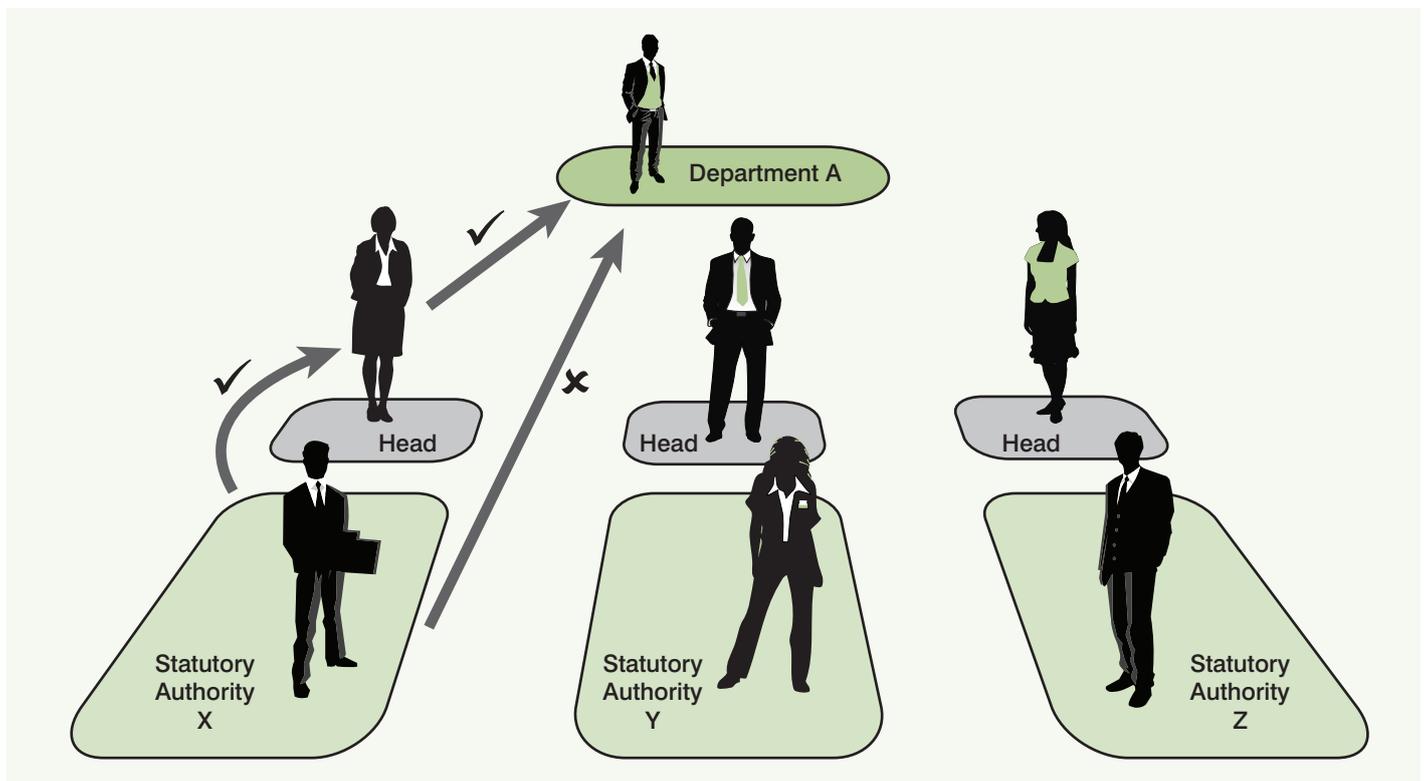
Within each cluster, administrative arrangements may be made to centralise the handling of PIDs from members of staff. However, there may be entities within each cluster that constitute separate public authorities under the PID Act.

For example, statutory authorities (entities established under a separate statute) and divisions of government service listed in Schedule 1 of the *Public Sector Employment and Management Act 2002* are separate public authorities. In Figure 1, department A and statutory authorities X, Y and Z are all separate public authorities sitting within a principal department cluster.

The provisions of the PID Act mean that staff should have reporting channels that are internal to the public authority that they belong to. For example, the protections of the PID Act apply if a staff member of public authority X reports to a nominated officer in that public authority (including the head), but not if the report is made to a nominated officer within principal department A.

However, once the report is made, the recipient in public authority X may refer it to someone within principal department A to deal with.

Figure 1: Principal department cluster - administrative structure



If staff wish to report wrongdoing external to your public authority and receive the statutory protections of the PID Act, your organisation's internal reporting policy should make clear that they must make their report to an investigating authority or, in certain limited circumstances, to an MP or journalist (s.19). The internal reporting policies of principal departments should also advise staff of related entities within their cluster that are separate public authorities to make a report in accordance with the internal reporting policies of those entities.

## 4.2 External reporting pathways

Staff should be encouraged to report wrongdoing internally, but they should also be given clear advice about how to report wrongdoing (or seek review) externally.

Your internal reporting policy should detail all external reporting pathways available to staff. It should include an organisational commitment to support staff if they report wrongdoing to an appropriate investigating authority and to help the investigating authority deal with the matter.

Research has found that:

- many reporters were not aware of their rights to seek review by an external authority
- some reporters are reluctant to refer matters to an external authority for fear of being penalised
- there is frequent misunderstanding about the jurisdictions and functions of external authorities
- some reporters do not seek to report externally because of preconceptions about external authorities, including that they are legalistic and bureaucratic.<sup>3</sup>

Some internal reporters may have information that relates to more than one of the categories of wrongdoing outlined in the PID Act. For example, a decision may constitute both maladministration and a serious and substantial waste of public funds. In such cases, internal reporters have multiple external reporting avenues available to them and reports can be made to more than one authority. In this case, the PID Act will apply to each of the reports. The authorities involved will need to work together to decide on the best course of action.

If your organisation is advised by an external investigating authority that a member of your staff has made a PID to that authority and they identify the member of staff involved, your organisation will be expected to:

- respect and support the person's decision to make the PID externally
- cooperate with any processes proposed by the external investigating authority
- maintain the confidentiality of the person who made the PID and any person who is the subject of a PID, where this is practical and appropriate
- after consulting with the investigating authority, offer to appoint a support person and give them adequate resources to perform this role
- assess the likelihood of the person being exposed to reprisal action, and ensure that systems and strategies are established to minimise any such risk of reprisal

- ensure the workplace situation is effectively managed if reprisal action is threatened or does take place
- after consulting with the investigating authority, take appropriate action against any person who threatens or takes reprisal action
- take appropriate remedial action in response to any investigation findings or recommendations by the investigating authority
- be responsible for implementing any organisational reform that is necessary to address any systemic issues identified by the investigating authority in their investigation or by your organisation.

## 5. Your questions answered

### Does the PID Act apply if a report is made to a supervisor who passes it on to a nominated disclosures officer?

No. In these circumstances, the PID Act will not apply to the person who reported to their supervisor – unless the supervisor is nominated in the organisation's internal reporting policy as a recipient of PIDs.

However, if the supervisor is aware of the contents of the report and has an honest belief on reasonable grounds that the information shows or tends to show one of the categories of wrongdoing identified in the PID Act, then the supervisor may have made a PID.

Supervisors should be responsible for advising the internal reporter to make the report directly to a nominated disclosures officer.

### Does the PID Act apply to a report made to the wrong investigating authority?

The PID Act applies to PIDs even if a reporter mistakenly directs their report to an investigating authority that doesn't have the power to investigate the matter (s.15).

The internal reporter will also receive the statutory protections of the PID Act no matter what action is then taken about their PID.

### Does the PID Act apply to a report made to a confidential hotline?

Some organisations have established confidential hotlines to provide staff with an alternative safe and accessible reporting option.

However, the PID Act will only apply to reports of wrongdoing made to these hotlines if the person receiving the report is an officer of the internal reporter's public authority or an officer of the public authority that the report is about. This means that reports of wrongdoing made to hotline operators employed by an external company that is contracted by a public authority are not PIDs under the PID Act.

Any hotlines established for staff to report wrongdoing should therefore be staffed by officers of your public authority. These staff should be trained in identifying when a staff member reports wrongdoing that may be a PID under the PID Act and the procedures for notifying your disclosures coordinator. Your internal reporting policy should also nominate these staff as disclosures officers.

### Does the PID Act apply to a report made to the Minister responsible for an organisation?

In some circumstances, staff may feel that reporting concerns to the responsible Minister may be an effective way to have the problem they have observed fixed. However, staff should be aware that under the PID Act there is no specific reporting channel directly to the responsible Minister and they are not the principal officer of the organisation under the PID Act.

Instead, a report to the responsible Minister is considered to be identical to a report to any other Member of Parliament. Importantly, this means that a number of significant conditions must be met for the report to be considered a PID.

Organisations should advise the Minister's office to encourage staff to make their reports directly to the organisation itself or to an external investigating authority.

### Which pathway is most appropriate for a report about the conduct of a Minister?

A report made in accordance with an organisation's internal reporting policy will not be considered to be a PID if it is about the conduct of the responsible Minister. This is because the Minister is not an employee of the organisation.

If staff have concerns about the conduct of the responsible Minister, they should make their report to an investigating authority that has jurisdiction to investigate their allegations – either the ICAC or the Auditor-General, as appropriate. The NSW Ombudsman cannot investigate the conduct of Ministers, but can investigate advice given to Ministers.

## 6. Additional resources

- *Model internal reporting policy (local government)*
- *Guideline B5: Reporting to Members of Parliament and journalists*
- *Guideline C3: Assessing and streaming internal reports*
- *Public Interest Disclosures Act 1994*
- *Public Sector Employment and Management Act 2002*
- *Whistleblowing in the Australian public sector: Enhancing the theory and practice of internal witness management in public sector organisations*

## 7. Last updated

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## 8. Endnotes

- 1 Brown, AJ (ed.) 2008, *Whistleblowing in the Australian public sector: Enhancing the theory and practice of internal witness management in public sector organisations*, ANU E Press, Canberra, pp. 88, 92.
- 2 Brown, pp. 70–72.
- 3 Roberts, P, Brown, AJ & Olsen, J 2011, *Whistling while they work: A good practice guide for managing internal reporting of wrongdoing in public sector organisations*, ANU E Press, Canberra, pp. 45-46.

## Contact us for more information

Our business hours are: Monday to Friday, 9am–5pm (*Inquiries section closes at 4pm*)

If you wish to visit us, we prefer you make an appointment. Please call us first to ensure your complaint is within our jurisdiction and our staff are available to see you.

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