

# Policy

## Public Interest Disclosure Policy

November 2024

[www.ocg.nsw.gov.au](http://www.ocg.nsw.gov.au)

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## Purpose

Under section 42 of the *Public Interest Disclosures Act 2022* (PID Act), all NSW agencies (as defined in the PID Act) must have a Public Interest Disclosure Policy.

The Office of the Children's Guardian (OCG) is an agency as defined in the PID Act.

At the OCG we take reports of serious wrongdoing seriously. We are committed to building a 'speak up' culture where all NSW public officials, including our own staff, are encouraged to report any conduct that they reasonably believe involves wrongdoing.

The integrity of our agency relies upon our staff, contractors and subcontractors speaking up when they become aware of wrongdoing.

This policy sets out:

- how the OCG will support and protect you if you come forward with a report of serious wrongdoing
- how we will deal with the report and our other responsibilities under the PID Act
- who to contact if you want to make a report
- how to make a report
- the protections which are available to you under the PID Act.

This policy also documents our commitment to building a speak up culture. Part of that speak up culture is having in place a framework that facilitates public interest reporting of wrongdoing by:

- protecting those who speak up from detrimental action.
- imposing duties on agencies that receive reports of wrongdoing to take appropriate action and investigate or otherwise deal with them.

In NSW, that framework is the PID Act.

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## Accessibility of this policy

This policy is available on the OCG's website as well as on the OCG intranet.

A copy of the policy is also shared to all staff of OCG on their commencement. A hard copy of the policy can be requested from Corporate Services Directorate. OCG people leaders are also required to undertake the online PID course on myCareer as part of their mandatory training.

# Context

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## Who this policy applies to

This policy applies to and is for the benefit of all OCG officers. OCG officers refers to public officials<sup>1</sup> 'associated with' the OCG. This includes all senior executive and non-executive staff, as well as workers engaged through contingent labour arrangements.

You are an OCG officer if you are:

- a person employed in or by the OCG
- a statutory officer
- a person providing services or exercising functions on behalf of the OCG, including a contractor, subcontractor or volunteer, or
- an employee, partner or officer of the OCG who provides services, under contract, subcontract or other arrangement, on behalf of the OCG or exercises functions of the OCG, and are involved in providing those services or exercising those functions.

The Children's Guardian, other nominated disclosure officers and managers within the OCG have specific responsibilities under the PID Act. This policy also provides information on how people in these roles will fulfil their responsibilities. Other public officials who work in and for the public sector, but do not work for the OCG may use this policy if they want information on who they can report wrongdoing to within the OCG.

If the OCG receives a PID we have obligations including with respect to:

- protecting the maker of the PID, and
- dealing with the PID.

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<sup>1</sup> The term 'public official' is defined in section 14 of the PID Act.

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## Who this policy does not apply to

This policy does not apply to:

- people who have received services from the OCG and want to make a complaint about those services
- people, such as contractors, who provide services to the OCG.

This means that if you are not a public official, this policy does not apply to your complaint (there are some circumstances where a complaint can be deemed to be a voluntary PID, see below for more information).

However, you can still make a complaint to the OCG. This can be done by emailing [ocg@ocg.nsw.gov.au](mailto:ocg@ocg.nsw.gov.au)

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## Compliance with the PID Act

This policy will be reviewed every 2 years.

The Director Corporate Services is responsible for the monitoring and reviewing the Policy and the Children's Guardian is responsible for approval.

If an error or issue is found in the policy, please contact the Director Corporate Services at [PID@ocg.nsw.gov.au](mailto:PID@ocg.nsw.gov.au).

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## What this policy covers

This policy provides information on:

- the ways a public official can make a voluntary PID to the OCG under the PID Act
- the ways an OCG officer can make a voluntary PID to a recipient of PIDs outside of the OCG
- the roles and responsibilities of people who hold particular roles under the PID Act and who are employees of the OCG
- what information you will receive once you have made a voluntary PID to the OCG
- protections available to people who make a report of serious wrongdoing under the PID Act and what the OCG will do to protect them
- the OCG's procedures for dealing with disclosures
- the OCG's procedures for managing the risk of detrimental action and reporting detrimental action
- the OCG's procedure for maintaining confidentiality in relation to voluntary PIDs
- the OCG's record-keeping and reporting requirements
- how the OCG will ensure it complies with the PID Act and this policy.

If you require further information about this policy, how public interest disclosures will be handled and the PID Act you can:

## OFFICIAL

- confidentially contact a nominated disclosure officer within the OCG
- contact the PID Advice Team within the NSW Ombudsman by phone: (02) 9286 1000 or email: [pidadvice@ombo.nsw.gov.au](mailto:pidadvice@ombo.nsw.gov.au), or
- access the NSW Ombudsman's PID guidelines which are available on its website.

If you require legal advice with respect to the PID Act or your obligations under the PID Act, you may need to seek independent legal advice.

# Information for the Public Interest Disclosure maker

## 1. How to make a report of serious wrongdoing

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### (a) Reports, complaints and grievances

When a public official reports suspected or possible wrongdoing in or affecting the public sector, their report will be a PID if<sup>2</sup> it has certain features which are set out in the PID Act.

Some internal complaints or internal grievances may also be PIDs, as long as they have the features of a PID. If an internal complaint or grievance is a report of serious wrongdoing, we will consider whether it is a PID. If it is a PID, we will deal with it as set out in this policy, but we will also make sure we follow our internal policies]. Please see the information under the heading 'Other complaint and grievance policies and procedures' below for further information in this regard.

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### (b) When will a report be a PID?

There are three types of PIDs in the PID Act. These are:

1. Voluntary PID: where a report is made by the public official because they decide, of their own accord, to come forward and disclose what they know.
2. Mandatory PID: where the public official makes a report about serious wrongdoing because they have a legal obligation to make that report, or because making that report is an ordinary aspect of their role or function in an agency.
3. Witness PID: where a person discloses information during an investigation of serious wrongdoing following a request or requirement of the investigator.

This policy mostly relates to making a voluntary PID, and how we will deal with voluntary PIDs that

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<sup>2</sup> However, in some circumstances a report that does not have all these features may be 'deemed' to be a voluntary PID by the head of an agency. This is explained below.



are received by the OCG. People who make a mandatory PID or witness a PID are also entitled to protection. More information about these protections is available in the [Protections](#) section of this policy below.

Voluntary PIDs are the kind of PIDs most people have in mind when they think about public interest reporting of wrongdoing and ‘whistleblowing’.

They involve a public official making a report because they have information that they believe shows (or tends to show) serious wrongdoing, and they make that report voluntarily – in the sense that they are not under a legal obligation to make that report and it is not an ordinary part of their role or functions to report such wrongdoing.

A report is a voluntary PID if it has the following five features, which are set out in sections 24 to 27 of the PID Act. If (and only if)<sup>1</sup> the report has all five of these features, it is a voluntary PID.

1. You are a public official.
2. You make the disclosure to a person who can receive voluntary PIDs.
3. You honestly and reasonably believe that the information you are providing shows (or tends to show) serious wrongdoing. In this regard, whilst you will not be expected to prove that what you reported actually happened or is serious wrongdoing, a mere allegation with no supporting information is unlikely to meet this test.
4. Your disclosure is made orally or in writing (it can be anonymous).
5. The disclosure is voluntary (not a mandatory or witness PID).

If we make an error and do not identify that you have made a voluntary PID, you will still be entitled to the protections under the PID Act.

If you make a report and believe we have made an error by not identifying that you have made a voluntary PID, you should raise this with a nominated disclosure officer or your contact officer for the report. If you are still not satisfied with this outcome, you can seek an internal review or we make seek to conciliate the matter. You may also contact the NSW Ombudsman. Further information on rights to internal review and conciliation is found in Section 5 of this policy.

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### (c) Who can make a voluntary PID?

Any public official can make a voluntary PID. Please refer to the section ‘Who this policy applies to’ above.

A public official can make a PID about serious wrongdoing relating to *any* agency, not just the agency they are working for. This means that we may receive PIDs from public officials outside our agency. It also means that you can make a PID to any agency, including an integrity agency like the Independent Commission Against Corruption (ICAC) and the NSW Ombudsman. Appendix 2 of this policy has a list of integrity agencies.

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### (d) What is serious wrongdoing

To be a voluntary PID, a report must be of one or more of the following categories of serious wrongdoing (in addition to having the other features set out in this policy). Serious wrongdoing is defined in the PID Act as:

- corrupt conduct — such as a public official accepting a bribe
- serious maladministration — such as systemically failing to comply with proper recruitment processes when hiring staff

- a government information contravention — such as destroying, concealing or altering records to prevent them from being released under a *Government Information (Public Access) Act* (GIPA Act) application
- a local government pecuniary interest contravention — such as a senior council staff member recommending a family member for a council contract and not declaring the relationship
- a privacy contravention — such as unlawfully accessing a person's personal information on an agency's database, such as Resolve or the WWCC database.
- a serious and substantial waste of public money — such as an agency not following a competitive tendering process when contracting with employees to undertake government work.

These categories of serious wrongdoing overlap, and conduct may fall under more than one category. The maker of a voluntary PID does not need to identify which particular category or categories of wrong conduct apply when they make their report. It is the responsibility of the authorised recipient of the PID to identify the relevant category or categories of serious wrongdoing.

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### e) Who can I make a voluntary PID to?

For a report to be a voluntary PID, it must be made to a public official who is authorised to receive PIDs. These people are required to be trained on how to recognise and deal with PIDs.

#### ***If you are an OCG officer and wish to report serious wrongdoing***

If you are a public official working in the OCG, you can make a voluntary PID to any of the following individuals:

- the Children's Guardian
- any OCG's disclosure officer (these are listed, together with their contact details, in Appendix 1)
- your manager in the OCG. Your manager may be anyone:
  - who directly or indirectly supervises you or
  - who you directly or indirectly report to.

For a public official who is a person *providing services or exercising functions on behalf of the OCG* (including a contractor, subcontractor or volunteer) or an employee, partner or officer of an entity that provides services on behalf of the OCG or exercises functions of the OCG — their manager is taken to be the public official in the OCG who oversees those services or functions, or who manages the relevant contract or volunteering arrangement.

If you make a disclosure to your manager, it is their responsibility to ensure that what you have disclosed is then communicated to an OCG disclosure officer. They may do this by asking you to accompany them to talk to a disclosure officer.

#### ***If you want to make a report to a recipient outside of the OCG***

You can also make a report to a public official in another agency, including to an integrity agency (such as the ICAC). For such a report to be a voluntary PID, it needs to be made to one of the following individuals:

- the head of any agency or a disclosure officer of any agency<sup>3</sup> or

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<sup>3</sup> Refer to the individual agency's PID policy.

- someone in another integrity agency (such as the ICAC) who is authorised to receive PIDs<sup>4</sup> or
- a Minister or a member of a Minister's staff (but here the disclosure must be written).

If you are an OCG officer and choose to make a disclosure outside of the OCG, it is possible that your disclosure will be referred back to the OCG so that appropriate action can be taken.

***If you are a public official working in another agency and wish to make a report of serious wrongdoing to the OCG***

All public officials (from any agency) can also make a report of serious wrongdoing to the OCG. If you are a public official of another agency and wish to make a voluntary PID to the OCG, the report needs to be made to:

- the Children's Guardian personally or
- any OCG disclosure officer (these are listed, together with their contact details, in Appendix 1<sup>5</sup>).

***If you want to make a report to a Member of Parliament (MP) or journalist***

Disclosures to MPs or journalists are different to other reports. You can only disclose a report of wrongdoing as a voluntary PID to an MP or journalist in the following circumstances:

- you first made substantially the same disclosure (described here as a 'previous disclosure') to someone who can receive disclosures as voluntary PIDs under the PID Act (for example, to a disclosure officer in the agency you work for, or to an authorised recipient in an integrity agency)
- the previous disclosure is substantially true
- you did not make the previous disclosure anonymously
- you did not give a written waiver of your right to receive information relating to your previous disclosure.

In respect of your previous disclosure, you either:

- received notification that the relevant agency you made the disclosure to will not investigate the serious wrongdoing and will also not refer the previous disclosure to another agency, or
- did not receive, by the end of the investigation period, all of the following information:
  - notice of an agency's decision to investigate the serious wrongdoing
  - a description of the results of the investigation into the serious wrongdoing
  - details of proposed or recommended corrective action as a result of the previous disclosure or investigation.

Investigation period means:

- six months from the previous disclosure being made, or
- 12 months from the previous disclosure being made, if you applied for an internal review of the agency's decision within six months of making the disclosure.

If all the above requirements are met, your disclosure to an MP or journalist may be a voluntary PID.

<sup>4</sup> A list of integrity agencies is in [Appendix 2](#). You must check the individual agency's PID policy to find out who can receive a PID in that agency.

<sup>5</sup> You can contact one of the individuals listed in [Appendix 1](#) directly by using the contact details that are listed there. In addition, any written report that is submitted to our general email or postal address will be taken to be received by one of these authorised recipients provided they are clearly marked to the attention of either the Children's Guardian or a disclosure officer. This can be done by simply marking your correspondence as "To the attention of the Children's Guardian" or "To the attention of a disclosure officer"

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## f) What form should a voluntary PID take?

Voluntary PIDs can be made:

- in writing — by email or letter to a person who can receive voluntary PIDs
- orally — have a private discussion with a person who can receive voluntary PIDs. This can be face-to-face, via telephone or virtually. (There is an exception when making a disclosure to a Minister or a member of the Minister's staff: those disclosures must be in writing.)
- anonymously – write an email or letter or call a person who can receive PIDs to make a report without providing your name or anything that might identify you as the maker of the report. A report will only be considered anonymous if there is no reasonable or practical way of communicating with the person making the report. Even if you choose to remain anonymous, you will still be protected under the PID Act. It may be difficult, however, for the OCG to investigate the matter(s) you have disclosed if we cannot contact you for further information.

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## g) What should I include in my report?

Providing as much information as possible when making a report will assist us with dealing with the report effectively. When making a report, you should include:

- any relevant dates, times and location of key events
- any names of person(s) involved in the suspected wrongdoing, their role, title and how they are involved
- your relationship with the person(s) involved, such as whether you work closely with them
- your description of the matter you are disclosing
- how you became aware of what you are disclosing
- possible witnesses to what you are disclosing, and
- other information (including documents) you have that supports your report.

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## h) What if I am not sure if my report is a PID?

You should report all wrongdoing you become aware of regardless of whether you think it is serious wrongdoing. It is important for the OCG to understand what is or may be occurring.

We are then responsible for making sure your report is handled appropriately under the PID Act, or if it is not a PID, in line with our other procedures. Even if your report is not a PID, it may fall within another one of the agency's policies for dealing with reports, allegations or complaints.

If you are an OCG officer, you can speak to your manager or Director Corporate Services. However, you should be mindful that what you discuss with a manager or Director Corporate Services could constitute a disclosure under the PID Act, which we may be required to deal with. Contact details are outlined at Appendix 1.

You can also contact the PID Advice Team within the NSW Ombudsman by phone: (02) 9286 1000 or email: [pidadvice@ombo.nsw.gov.au](mailto:pidadvice@ombo.nsw.gov.au).

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## 2. Protections

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### a) Protections for makers of a voluntary PID

When you make a voluntary PID you receive special protections under the PID Act.

We are committed to taking all reasonable steps to protect voluntary PID makers from detriment as a result of having made a PID. We are also committed to maintaining your confidentiality as much as possible while the PID is being dealt with.

We will not tolerate any type of detrimental action being taken against someone because they have made a report, might make a report or are believed to have made a report.

The maker of a voluntary PID is protected in the following ways:

#### Protection from detrimental action

- A person must not take detrimental action against another person because they have made a voluntary PID or are considering making a PID. Detrimental action includes bullying, harassment, intimidation or dismissal.
- Once we become aware that a voluntary PID by a person employed or otherwise associated with the OCG has been made, or if a PID that concerns serious wrongdoing relating to the OCG has been made, we will undertake a risk assessment and take steps to mitigate the risk of detrimental action occurring against the person who made the voluntary PID.
- It is a criminal offence for someone to take detrimental action against a person because they have made or may make a voluntary PID. It is punishable by a maximum penalty of 200 penalty units or imprisonment for five years or both.
- A person may seek compensation where detrimental action has been taken against them.
- A person can apply for a court order (injunction) where detrimental action is threatened or has occurred (for example, an order to prevent dismissal or to require reinstatement).

Note that a person who makes a PID can still be subject to reasonable management action (such as ordinary performance reviews and performance management). Provided such action is not taken because of the PID, it is not detrimental action under the PID Act.

#### Immunity from civil and criminal liability

Some public officials are subject to a duty of confidentiality that prevents them disclosing certain information that they obtain or become aware of at work. Sometimes, in order to make a PID, public officials will need to breach or disregard such confidentiality duties. If that happens, a public official cannot be disciplined, sued or criminally charged for breaching confidentiality.

#### Confidentiality

Public officials and agencies must not disclose information tending to identify a person as the maker of a voluntary PID unless doing so is permitted by the PID Act.

#### Protection from liability for own past conduct

The Attorney General can give the maker an undertaking that a disclosure of their own past conduct will not be used against them if a person discloses their own wrongdoing or misconduct while making a report. This undertaking can only be given on application by an integrity agency to the Attorney General.

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## b) Protections for people who make mandatory and witness PIDs

As mentioned previously, there are two other types of disclosures that are recognised as PIDs under the PID Act:

- A mandatory PID: where the public official has made the report about serious wrongdoing because they have a legal obligation to make that report, or because making that report is an ordinary aspect of their role or function in an agency.
- A witness PID. where a person discloses information during an investigation of serious wrongdoing following a request or requirement of the investigator.

Protections for makers of mandatory and witness PIDs include:

**Detrimental action** — It is an offence to take detrimental action against a person based on the suspicion, belief or awareness that a person has made, may have made or may make a PID.

**Right to compensation** — A person can initiate proceedings and seek compensation for injury, damage or loss suffered as a result of detrimental action being taken against them.

**Ability to seek injunction** — An injunction can be sought to prevent the commission or possible commission of a detrimental action offence against a person. For example, an order to prevent dismissal or to require reinstatement.

**Immunity from civil and criminal liability** — a person will not incur civil or criminal liability if the person breaches a duty of confidentiality while making a disclosure.

This means that legal action cannot be taken against a person for:

- breaching a duty of secrecy or confidentiality, or
- breaching another restriction on disclosure.

You can find more information about mandatory and witness PIDs in the Ombudsman's guidelines 'Dealing with mandatory PIDs' and 'Dealing with witness PIDs'.

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## 3. Reporting detrimental action

If you experience adverse treatment or detrimental action, such as bullying or harassment, you should report this immediately. You can report any experience of adverse treatment or detrimental action directly to a disclosure officer (listed at Appendix 1) at the OCG or to an integrity agency. A list of integrity agencies is located at Appendix 2 of this policy.

# Responding to a Public Interest Disclosure

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## 4. How we will deal with voluntary PIDs

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### a) Communicating with a PID maker

When a disclosure officer in the OCG receives a report which is a voluntary PID, or may be a voluntary PID, the person who made the report will receive the following information:

- An acknowledgment that the report has been received. This acknowledgement will:
  - state that the report will be assessed to identify whether it is a PID
  - state that the PID Act applies to how we deal with the report
  - provide clear information on how to access this PID policy
  - provide details of a contact person and available supports.
- If the report is a voluntary PID, we will inform the PID maker how we intend to deal with the report. We will do this as soon as possible after we have identified the report is a voluntary PID. Ways we may deal with a PID include:
  - investigating the serious wrongdoing
  - referring the report to a different agency (if appropriate) to deal with the voluntary PID. If we do this, we will provide the PID maker with details of this referral
  - deciding to take no action on the report (that is, to not investigate the report and to not refer it to another agency for it to be investigated). If this is the case, we will tell the PID maker the reasons for this decision. We will also notify the NSW Ombudsman of this decision.
- If we decide to investigate the serious wrongdoing, we will provide the PID maker with updates on the investigation at least every three months. During this time, if the PID maker would like more frequent updates, they should contact the contact person who was nominated when the report was made.



- If we investigate the serious wrongdoing, we will provide the PID maker with the following information once the investigation is complete:
  - A description of the results of the investigation — that is, we will tell the PID maker whether we found that serious wrongdoing took place.
  - Information about any corrective action as a result of the investigations — for matters involving the conduct of the OCG or an OCG office, we will tell the PID maker what action we have taken or propose to take if an investigation finds that serious wrongdoing or other misconduct occurred. For matters where we find that serious wrongdoing by another public official or agency occurred, we will only be able to provide information about the recommendations we may make to that agency.
- Corrective action could include taking disciplinary action against someone or changing the practices, policies and procedures that we have in place which led to the serious wrongdoing.
- There may be some details about both the findings made as a result of the investigation and the corrective action taken that cannot be revealed to the PID maker. We will always balance the right of a person who makes a report to know the outcome of that report, with other legal obligations we have.
- If a person has made an anonymous report, in many cases we may not be able to provide them with this information.

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## b) Assessing reports received

Once a report is received, we will look at the information contained in the report to see if it has the features of a voluntary PID set out above. This assessment is undertaken to identify whether the report is a voluntary PID or another type of disclosure, and to make sure that the right steps are followed. If it is a voluntary PID, we will ensure that we comply with the requirements in the PID Act.

### Report not a voluntary PID

If a report is not a voluntary PID, it will still need to be dealt with in a manner consistent with our complaints handling or other relevant policies and procedures.

If the report is not a voluntary PID, we will let the report maker know that the PID Act does not apply to the report and how we will deal with the concerns raised in the report.

If we assess the report is a voluntary PID, but later realise that it is not actually a voluntary PID (meaning it does not have all the features of a PID) then we will cease dealing with the disclosure as a voluntary PID. If this occurs, we will inform the person who made the report that we have ceased dealing with the report as a voluntary PID. We will provide the person with reasons for this decision.

If you are not happy with this assessment or otherwise disagree with it, you can raise it with the person who has communicated the outcome with you or the disclosure officer, request an internal review or request that the matter be conciliated. The OCG can, but is not required to, request the NSW Ombudsman to conciliate the matter.

### Report is a voluntary PID

If the report is a voluntary PID:



- We may conduct an investigation to make findings about whether the serious wrongdoing disclosed in the report occurred, who was involved, who was responsible, and whether the people involved, or the agency engaged, in serious wrongdoing. There may be circumstances where we believe an investigation is not warranted – for example, if the conduct has previously been investigated.
- We may decide that the report should be referred to another agency, such as an integrity agency. Before referring a matter, we will discuss the referral with the other agency, and we will provide the PID maker with details of the referral and a contact person within the other agency. (For example, reports concerning possible corrupt conduct may also be required to be reported to the ICAC under section 11 of the *Independent Commission Against Corruption Act 1988*.)
- If we decide not to investigate a report and to not refer the matter to another agency, we must let you know the reasons for this decision and notify the NSW Ombudsman's Office by emailing [pidadvice@ombo.nsw.gov.au](mailto:pidadvice@ombo.nsw.gov.au).

## Deeming that a report is a voluntary PID

If a report is made to the OCG, the Children's Guardian can, in certain circumstances, determine that a report is a voluntary PID even if the report does not otherwise have all the features of a voluntary PID. This is known as the 'deeming power'. Deeming a disclosure to be a voluntary PID ensures the protections provided under the PID Act are available to the person who made the disclosure.

Before the Children's Guardian can deem a disclosure to be a voluntary PID, they must honestly believe, and on reasonable grounds, that the disclosure shows or tends to show serious wrongdoing.

If a person makes a disclosure that does not have all the features of a voluntary PID, they may ask the Children's Guardian to consider deeming the disclosure to be a voluntary PID. However, even if the Children's Guardian holds the belief described above, they have discretion whether to deem the disclosure a voluntary PID.

For more information about the deeming power, see the NSW Ombudsman's guideline deeming that a [disclosure is a voluntary PID](#).

## Other complaint and grievance policies and procedures

Not all reports alleging wrongdoing in the public sector will be disclosures under the PID Act. If we receive a report that does not have the features of a PID set out above, we will consider whether it might instead trigger the application of another process or pathway for dealing with reports of suspected or alleged wrongdoing.

In some cases, a report about serious wrongdoing that is made to the OCG might also be a complaint or grievance that is subject to other relevant OCG policies and processes. If that is the case, we will deal with the report as set out in this policy, as well as making sure that we follow any other relevant NSW Ombudsman policies and the OCG's internal policies.

## Related OCG policies

OCG officers should report any wrongdoing they become aware of regardless of whether they think it is serious wrongdoing. We are then responsible for making sure any reports are handled appropriately under the PID Act, or if a report is not a PID, in line with our other policies and procedures including:

- Grievance policy and procedures
- Code of Ethics and Conduct
- Fraud and Corruption Control Policy
- Positive and Productive Workplaces: Preventing and Managing Unreasonable Behaviour and Bullying Policy

- Privacy Management Plan

#### Relevant information for making a complaint to other agencies:

- [Making a complaint to the Ombudsman](#)
- [Making a complaint about the Ombudsman's service](#)
- [Requesting a review of an Ombudsman decision](#)
- [Making a complaint to the Office of Local Government](#)
- [Making a complaint to the Law Enforcement Conduct Commission](#)
- [Making a complaint to the Information and Privacy Commission](#)
- [Making a report to the Independent Commission Against Corruption](#)
- [Making a complaint to the Health Care Complaints Commission](#)

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### c) Protecting the confidentiality of the maker of a voluntary PID

We understand that people who make voluntary PIDs may want their identity and the fact that they have made a report to be confidential.

Under the PID Act, information tending to identify a person as the maker of a voluntary PID (known as identifying information) is not to be disclosed by a public official or an agency, except where expressly permitted by the Act.

There are certain circumstances under the PID Act that allow for the disclosure of identifying information. These include:

- where the person consents in writing to the disclosure
- where it is generally known that the person is the maker of the voluntary PID because of their voluntary self-identification as the maker
- when the public official or the OCG reasonably considers it necessary to disclose the information to protect a person from detriment
- where it is necessary the information be disclosed to a person whose interests are affected by the disclosure
- where the information has previously been lawfully published
- when the information is disclosed to a medical practitioner or psychologist for the purposes of providing medical or psychiatric care, treatment or counselling to the individual disclosing the information
- when the information is disclosed for the purposes of proceedings before a court or tribunal
- when the disclosure of the information is necessary to deal with the disclosure effectively
- if it is otherwise in the public interest to disclose the identifying information.

We will not disclose identifying information unless it is authorised under the PID Act.

It may not be possible for us to maintain complete confidentiality while we progress the investigation, but we will do all that we practically can to not unnecessarily disclose information from which the PID maker can be identified. Ways we may do this include:

- Limiting the number of people who are aware of the PID maker's identity or information that could identify them.

- Ensuring that any person who does know the identity of the PID maker is reminded that they have a legal obligation to keep their identity confidential.
- Ensuring that only authorised persons have access to emails, files or other documentation that contain information about the identity of the PID maker.
- Undertaking an assessment to determine if anyone is aware of the PID maker's identity and if those persons may have a motive to cause detrimental action to be taken against the maker or impede the progress of the investigation.
- Ensuring we advise the PID maker about the importance of maintaining confidentiality and advising them how best to protect their identity, for example, by telling them not to discuss their report with other staff.

If confidentiality cannot be maintained or is unlikely to be maintained, the OCG will:

- discuss with the PID maker the fact that their identity may become known
- implement strategies to minimise the risk of detrimental action occurring including regularly updating any risk assessment and risk management plan
- provide additional supports to the PID maker
- remind persons who become aware of identifying information of the consequences for failing to maintain confidentiality and that engaging in detrimental action is a criminal offence and may also be a disciplinary matter.

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#### **d) How we will assess and minimise the risk of detrimental action**

Once we become aware of a voluntary PID that:

- has been made by an OCG employee, or public official associated with the OCG
- is about serious wrongdoing by the OCG, or by an OCG employee, or public official associated with the OCG, or
- otherwise affects, or might affect, the exercise of functions by the OCG.

the OCG must assess and minimise the risk of detrimental action, other than reasonable management action, being taken against someone as a result of the disclosure being made. This includes detrimental action being taken against the maker of the voluntary PID, the person whose conduct is the subject of a PID, investigators and witnesses.

Where appropriate, we will discuss with those individuals any concerns they have, suggest ways in which they might mitigate any risk of detrimental action, and ensure that they have a secure and confidential means of communicating with the OCG, including offering the contact details of a support person.

Where we are dealing with a voluntary PID made by an OCG officer about the conduct of another OCG officer, risk management strategies may include relocating officers within the OCG, changing reporting lines, or providing for an officer to take leave.

Detrimental action against a person is an act or omission that causes, comprises, involves or encourages detriment to a person or a threat of detriment to a person (whether express or implied). Detriment to a person includes:

- injury, damage or loss
- property damage
- reputational damage
- intimidation, bullying or harassment

- unfavourable treatment in relation to another person's job
- discrimination, prejudice or adverse treatment
- disciplinary proceedings or disciplinary action, or
- any other type of disadvantage.

Detrimental action does not include:

- lawful action taken by a person or body to investigate serious wrongdoing or other misconduct
- the lawful reporting or publication of a finding of serious wrongdoing or other misconduct
- the lawful making of adverse comment, resulting from investigative action
- the prosecution of a person for a criminal offence
- reasonable management action taken by someone in relation to a person who made or may make a PID. For example, a reasonable appraisal of a PID maker's work performance.

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### **e) Dealing with allegations of detrimental action**

If the OCG becomes aware of an allegation that a detrimental action offence has occurred or may occur, we will:

- take all steps possible to stop the action and protect the person(s)
- take appropriate disciplinary action against anyone that has taken detrimental action
- refer any evidence of a detrimental action offence to the Commissioner of Police and to the ICAC or the Law Enforcement Conduct Commission (whichever is applicable)
- notify the NSW Ombudsman, about the allegation of a detrimental action offence being committed.

The disclosures coordinator is responsible for receiving referrals about alleged detrimental action offences. Any victim of detrimental action who makes a referral will be supported to make their allegation and be provided updates on progress in relation to action taken. The OCG will aim to commence action in relation to these referrals within 7 days of the referral being received. All OCG employees have access to the Employee Assistance Program should they choose to access the counselling or other supports available during this time.

Should the allegation relate to the disclosures coordinator, the victim may also make a referral to the NSW Children's Guardian as head of agency, or make a report directly to the NSW Ombudsman of the Independent Commission Against Corruption.

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### **f) Dealing with serious wrongdoing**

If, after an investigation, it is found that serious wrongdoing or other misconduct has occurred, the OCG will take the most appropriate action to address that wrongdoing or misconduct. This is also known as corrective action.

Corrective action can include:

- a formal apology
- improving internal policies to adequately prevent and respond to similar instances of wrongdoing
- providing additional education and training to staff where required

- taking employment action against persons involved in the wrongdoing (such as termination of employment, relocation, a caution or reprimand)
- payment of compensation to people who have been affected by serious wrongdoing or other misconduct.

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## 5. Internal review and dispute resolution

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### a) Internal Review

People who make voluntary PIDs can seek internal review of the following decisions made by the OCG:

- that the OCG is not required to deal with the report as a voluntary PID
- that the OCG will not take any further action in relation to the report because the OCG decided it was not a voluntary PID
- to not investigate the serious wrongdoing and not refer the report to another agency
- to cease investigating the serious wrongdoing without either completing the investigation or referring the report to another agency for investigation.

The OCG will ensure internal reviews are conducted in compliance with the PID Act.

If you would like to make an application for an internal review, you must apply in writing within 28 days of being informed of the OCG's decision. The application should state the reasons why you consider our decision should not have been made. You may also submit any other relevant material with your application.

Internal review applications should be sent to the disclosures coordinator at [PID@ocg.nsw.gov.au](mailto:PID@ocg.nsw.gov.au) who will conduct the review and these will aimed to be dealt with within 60 days.

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### b) Voluntary dispute resolution

If a dispute arises between the OCG and the person who has made the report which is, or may be, a voluntary PID, we may request the NSW Ombudsman to conciliate the dispute. Conciliation is a voluntary process and will only be suitable for disputes where both parties are willing to attempt to resolve the dispute in this way.

# Children's Guardian and Officer Responsibilities

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## 6. Roles and Responsibilities

Certain people within the OCG have responsibilities under the PID Act.

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### a) Children's Guardian

The Children's Guardian is responsible for:

- fostering a workplace culture where reporting is encouraged
- receiving disclosures from public officials
- ensuring there is a system in place for assessing disclosures
- ensuring the OCG complies with this policy and the PID Act
- ensuring that the OCG has appropriate systems for:
  - overseeing internal compliance with the PID Act
  - supporting public officials who make voluntary PIDs, including by minimising the risk of detrimental action
  - implementing corrective action if serious wrongdoing is found to have occurred
  - complying with reporting obligations regarding allegations or findings of detrimental action
  - complying with yearly reporting obligations.

## **b) Disclosures coordinator**

The Director Corporate Services is the disclosures coordinator for the OCG. They are responsible for the following:

- receiving disclosures from public officials or that are passed on to them by managers
- ensuring disclosures are dealt with appropriately, including by appropriately referring disclosures (if relevant)
- ensuring that any oral disclosures that have been received are recorded in writing
- preparing the annual return for the OCG
- reviewing and updating internal systems in place to ensure compliance with the PID Act
- providing information under section 59 of the PID Act to OCG officers who make PIDs
- ensuring adequate supports are provided to OCG officers who make PIDs
- assessing the risk of detrimental action occurring against OCG officers who make a PID
- assessing the risk of detrimental action occurring against the subject(s) of a disclosure, witnesses, investigators and others when a PID has been made by an OCG officer
- assessing the likelihood of maintaining confidentiality and implementing strategies to maintain confidentiality (for OCG officers who make a PID), and
- arranging for PIDs made by OCG officers to be dealt with in accordance with the PID Act.

The contact details for the OCG disclosures coordinator is listed in Appendix 1.

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## **c) OCG disclosure officers**

Disclosure officers are responsible for:

- receiving disclosures from public officials or that are passed on to them by managers
- ensuring disclosures are dealt with appropriately, including by appropriately referring disclosures (if relevant), and
- ensuring that any oral disclosures that have been received are recorded in writing.

The contact details for OCG disclosure officers are listed in Appendix 1.

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## **d) OCG managers**

Managers are responsible for:

- receiving disclosures from OCG officers that report to them or that they supervise, and
- passing on those disclosures to an OCG disclosure officer.

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### e) OCG officers

OCG officers are expected to disclose suspected serious wrongdoing or other misconduct in accordance with this policy. They are also required to use their best endeavours to assist in an investigation of serious wrongdoing if asked to do so by other OCG officers dealing with voluntary PIDs.

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## 7. Record keeping, reporting and internal oversight

The OCG must keep full and accurate records with respect to all information received in connection with the PID Act. This ensures that the OCG complies with its obligations under the *State Records Act 1998*.

Like all other agencies, the OCG is required to provide an annual report to the NSW Ombudsman which provides information about:

- voluntary PIDs received by the OCG during each return period (1 July to 30 June)
- action taken by the OCG to deal with voluntary PIDs during the return period
- how the OCG promoted a culture in the workplace where PIDs are encouraged.

Corporate Services will collect this information and the responsibility for completing this return lies with the Director Corporate Services.

We also provide reports about our compliance with this policy to our Audit and Risk Committee on an annual basis.

A copy of this policy, and information about the PID Act, is provided to all new OCG officers and contractors when they start working at the OCG. Regular training is also provided within the OCG to ensure officers and contractors know what steps to take to report wrongdoing, and officers are aware of any obligations they have to receive and handle disclosures.



## Policy metadata (Table 1)

Category	Description
Status	Final
Date of approval	November 2024
Approver	NSW Children's Guardian
Directorate	Corporate Services
Policy owner	Director, Corporate Services
Document location	qA403244
Next review date	November 2026
Superseded document	A3741847
Document Reference	A8750383

## Appendices

Appendix 1 – OCG Disclosure contact information  
Appendix 2 – Integrity agencies

### Office of the Children's Guardian

[www.ocg.nsw.gov.au](http://www.ocg.nsw.gov.au)

Switchboard: (02) 8219 3600

Locked Bag 5100  
Strawberry Hills NSW 2012

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## Appendix 1: OCG disclosure officer contact information

The postal address for all OCG disclosure officers is:

Locked Bag 5100, Strawberry Hills NSW 2012.

Emails can be sent to our dedicated email address [PID@ocg.nsw.gov.au](mailto:PID@ocg.nsw.gov.au) and marked to the attention of the Children's Guardian or PID disclosure officer.

### Disclosure officers contact information (Table 2)

The head of agency, Steve Kinmond, NSW Children's Guardian and the Director of Corporate Services are our identified disclosure officers. Our disclosure officers can be contacted via our dedicated email address [PID@ocg.nsw.gov.au](mailto:PID@ocg.nsw.gov.au).

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## Appendix 2: Integrity agencies

Each integrity agency will have functions focussed on particular kinds of serious wrongdoing, however, any of them can receive a PID about any type of serious wrongdoing defined in the PID Act. An integrity agency that receives a PID about serious wrongdoing that it does not have a function of investigating may, under the PID Act, refer that PID to the integrity agency that is more appropriately able to investigate it.

### List of Integrity Agencies (Table 3)

Integrity agency	What they investigate	Contact details
NSW Ombudsman	Most kinds of <b>serious maladministration</b> by most agencies and public officials (but not NSW Police, judicial officers or MPs)	Telephone: 1800 451 524 between 9am to 3pm Monday to Friday Writing: Level 24, 580 George Street, Sydney NSW 2000 Email: info@ombo.nsw.gov.au
Auditor-General	<b>Serious and substantial waste of public money</b> by auditable agencies	Telephone: 02 9275 7100 Writing: GPO Box 12, Sydney NSW 2001 Email: governance@audit.nsw.gov.au
Independent Commission Against Corruption	<b>Corrupt conduct</b>	Telephone: 02 8281 5999 or toll free on 1800 463 909 (callers outside Sydney) between 9am and 3pm, Monday to Friday Writing: GPO Box 500, Sydney NSW 2001 or faxing 02 9264 5364 Email: icac@icac.nsw.gov.au
The Inspector of the Independent Commission Against Corruption	<b>Serious maladministration</b> by the ICAC or the ICAC officers	Telephone: 02 9228 3023 Writing: PO Box 5341, Sydney NSW 2001 Email: oiicac_executive@oiicac.nsw.gov.au
The Law Enforcement Conduct Commission	<b>Serious maladministration</b> by the NSW Police Force or the NSW Crime Commission	Telephone: 02 9321 6700 or 1800 657 079 Writing: GPO Box 3880, Sydney NSW 2001 Email: contactus@lecc.nsw.gov.au
Inspector of the Law Enforcement Conduct Commission	<b>Serious maladministration</b> by the LECC and LECC officers	Telephone: 02 9228 3023 Writing: GPO Box 5341, Sydney NSW 2001 Email: oilecc_executive@oilecc.nsw.gov.au
Office of the Local Government	<b>Local government pecuniary interest contraventions</b>	Email: olg@olg.nsw.gov.au
Privacy Commissioner	<b>Privacy contraventions</b>	Telephone: 1800 472 679 Writing: GPO Box 7011, Sydney NSW 2001 Email: ipcinfo@ipc.nsw.gov.au
Information Commissioner	<b>Government information contraventions</b>	Telephone: 1800 472 679 Writing: GPO Box 7011, Sydney NSW 2001 Email: ipcinfo@ipc.nsw.gov.au