

Oversight of the
***Public Interest
Disclosures Act 1994***
Annual Report 2020–21

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The Hon Matthew Mason-Cox MLC
President
Legislative Council
Parliament House
SYDNEY NSW 2000

The Hon Jonathan O'Dea MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Mr President and Mr Speaker

Public Interest Disclosures Oversight Annual Report

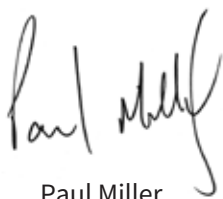
Enclosed is my annual report to Parliament under the *Public Interest Disclosures Act 1994* (NSW).

This report meets the requirements of:

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

In accordance with section 6B of the *Public Interest Disclosures Act 1994* and section 31AA of the *Ombudsman Act 1974*, I ask that you please make this report public now.

Yours sincerely



Paul Miller
NSW Ombudsman

13 December 2021

Contents

Foreword	1
Part 1. Public Interest Disclosures.....	3
Public Interest Disclosures Act	4
Roles and responsibilities in public interest disclosures.....	4
Public authorities	4
Investigating authorities	6
The PID Steering Committee	6
NSW Ombudsman	7
Part 2. Public Authorities:Reporting Public Interest Disclosures	8
Public Authority Reports.....	9
Number of reports provided by public authorities 2020–21	9
Number of reports by public authorities identifying receipt of a PID	10
Number of PIDs received	11
Number of PIDs finalised.....	11
Type of public authority.....	11
Subject matter of PIDs	12
Circumstances under which public officials make PIDs	13
Internal reporting policies.....	14
Staff awareness	14
PIDs handled by investigating authorities.....	15
Data limitations.....	16
Part 3. Training, awareness, advice, and research.....	17
Training and awareness.....	18
Training needs analysis.....	19
Providing advice	19
Whistling While They Work 2 research project.....	20
Part 4. Legislative and administrative advice	21
The PID Steering Committee	22
The Public Interest Disclosures Bill 2021	22
Our Special Report to Parliament on the PID Bill	22
Part 5. PID Audits.....	24
PID Audits	25
Audit of 6 local councils.....	25
Audit purpose and scope.....	25
Audit findings	26
PID Audit framework.....	26

Foreword

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

This year has again been a difficult year as we, like other workplaces, have continued to navigate the challenges posed by the COVID-19 pandemic. This report outlines how we were able to support agencies with online training, and to continue our audit and monitoring activities.

This year has also seen some significant accomplishments. The new Public Interest Disclosures Bill (PID Bill) was tabled in Parliament in October, 4 years after the NSW Government committed to introducing new legislation to address the recommendations of the 2017 Review of the PID Act by the Parliamentary Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission. I welcome the introduction of this Bill. If passed, it will give effect to almost all of the Parliamentary Committee's suggested reforms. We hope it will better support a culture where public officials are encouraged to report serious wrongdoing with confidence that they will be protected.

Once the PID Bill has passed we will, with the PID Steering Committee, develop resources and advice to agencies about preparing for the new PID Act.

While that preparation work will be a focus in the coming year, it is also important for agencies to remember that they must continue to comply with the provisions of the current PID Act until it is repealed and replaced. This report highlights the role of the current PID Act in encouraging public officials to speak up when they see wrongdoing. The report also reiterates the essential role of independent integrity bodies like the ICAC, the LECC and the Ombudsman in receiving and investigating reports of wrongdoing.

This report

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

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

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

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

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

Part 4 covers our responsibilities as chair of the PID Steering Committee, and our provision of advice on the administration of the PID Act. It includes an overview of the work the PID Steering Committee has done to advise the government on the drafting of the PID Bill.

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

A separate [Annual Report of the PID Steering Committee](#) was presented to the Minister and was tabled in Parliament on 4 November 2021.

Paul Miller
NSW Ombudsman

Part 1.

Public Interest Disclosures

Public Interest Disclosures Act

The PID Act encourages public officials to report serious wrongdoing by providing them with certain legal protections if they do so.

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

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

Public interest disclosures (PIDs) may be made to an authority concerned – being the authority the official works for or otherwise belongs to and/or the authority whose conduct is the subject of the disclosure. However, under the current PID Act, a disclosure to such an authority will be recognised as a PID only if it is made to the principal officer of the authority or to a person who has been specified as a ‘disclosure officer’ of the authority under its internal reporting policy (‘PID policy’).

PIDs may also be made to the relevant investigating authority for that particular type of wrongdoing – corrupt conduct to the Independent Commission Against Corruption, maladministration to the Ombudsman, and so on.

In certain limited circumstances, the PID Act recognises PIDs that are made to third parties – journalists and Members of Parliament.

The PID Act requires public authorities to establish systems to deal with and investigate public interest disclosures.

Roles and responsibilities in public interest disclosures

Public authorities

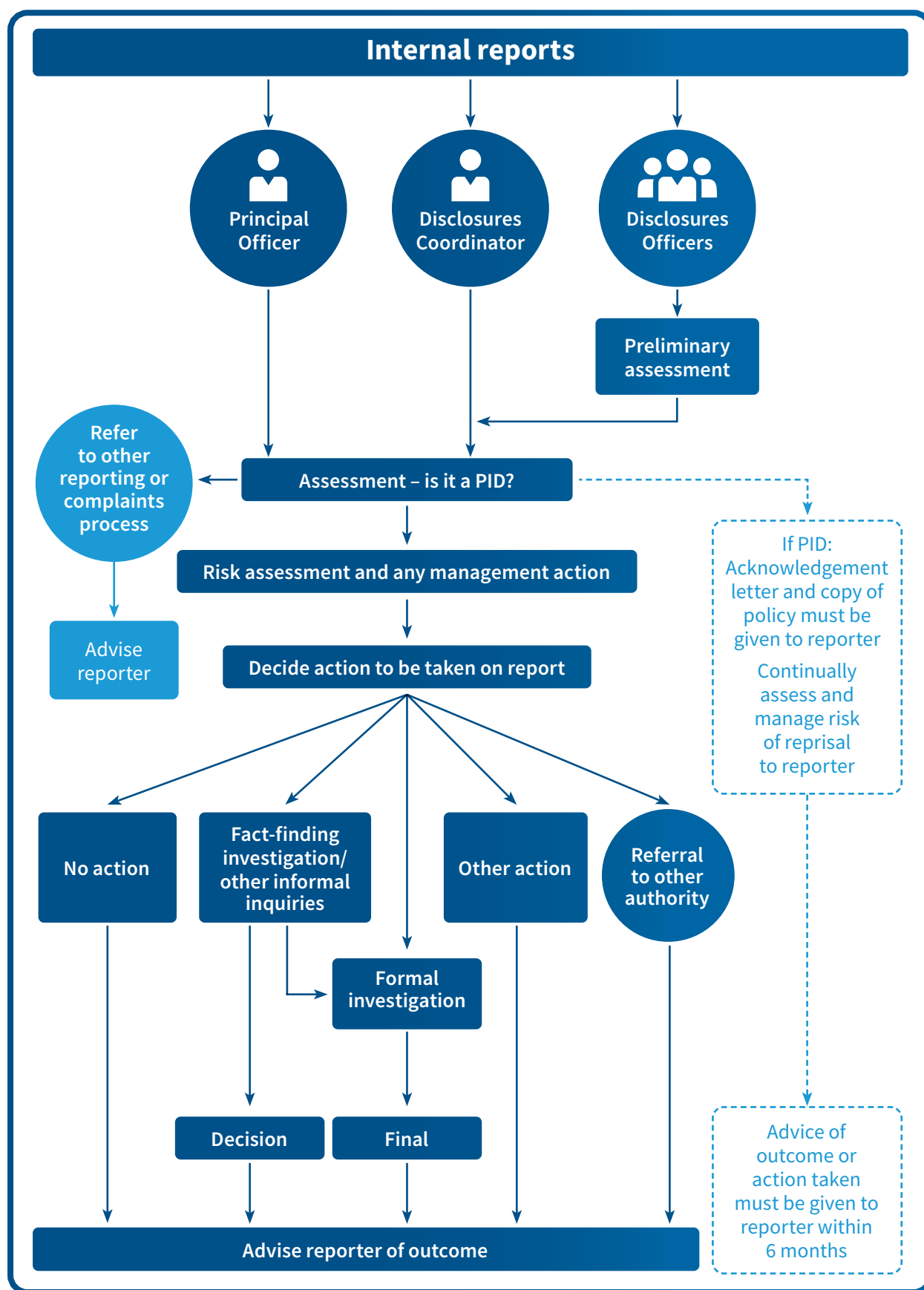
Section 6E of the PID Act states that the principal officer or other head of a public authority is responsible for ensuring that:

- the public authority has a policy that includes procedures for receiving, assessing, and dealing with PIDs. This policy must have regard to guidelines developed by our office
- the staff of the public authority are aware of the policy and the protections under the Act
- the public authority complies with its policy and obligations under the PID Act
- the policy designates officers to receive PIDs, commonly referred to as disclosures officers.

Typically, a disclosures coordinator is appointed to ensure the public authority’s obligations under the PID Act are met. Together with the principal officer, they are responsible for:

- deciding whether to treat a report of wrongdoing as a PID, which they must do if it meets the criteria set out in the PID Act

Figure 1. The internal reporting process



- assessing the risks of reprisal and other detrimental action that a reporter may face and implementing strategies to mitigate any identified risks
- determining how to deal with a report, which may include referring the disclosure, making informal inquiries, formally investigating the allegations, or taking no further action, and
- communicating with, and supporting the reporter through, the process.

Investigating authorities

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

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

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

The PID Steering Committee

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

The PID Steering Committee comprises the heads of investigating authorities in the PID Act, the Department of Premier and Cabinet, the Public Service Commissioner, and the NSW Police Force.

The Ombudsman chairs the PID Steering Committee and Ombudsman staff provide secretariat support.

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

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

NSW Ombudsman

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

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

In performing our statutory functions, we aim to:

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

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

Part 2.

Public Authorities:
Reporting Public
Interest Disclosures

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

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

The information public authorities must report is detailed in clause 4(2) of the Public Interest Disclosures Regulation 2011 (PID Regulation):

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

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

Public Authority Reports

The information reported to us in 2020–21 is summarised below, with some comparison over a 3-year period.

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

Number of reports provided by public authorities 2020–21

Table 1 shows the number of reports provided to our office for 2020–21, as at 29 November 2021.

Table 1. Reports provided by public authorities to our office

Reporting period	Number of identified public authorities	Number of statistical reports provided	Proportion of identified authorities
July–December 2020	399	369	92%
January–June 2021	399	328	82%

As noted in Table 1, some public authorities did not meet their reporting obligation (8% for the first 6-month report and 18% for the second 6-month report). We appreciate that the COVID-19 pandemic has presented significant challenges for public authorities. However, non-compliance with these reporting obligations is an issue that we have consistently highlighted since our first PID Oversight Report in 2011–12. This is despite our office adopting an active escalation process, with direct contact and reminders, to avoid the possibility of inadvertent non-compliance.

We note that all of the NSW Government’s 9 principal departments provided us with reports for both reporting periods.

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

A new PID Bill was tabled in Parliament in October and will, if passed, replace the PID Act. Under the Bill, our office must report on agencies that have failed to provide an annual return.² Agencies must also inform our office of cluster arrangements and provide separate returns for each agency in the cluster.³ In the meantime, we are encouraging agencies to sign up for our [PID eNews](#), to ensure that they receive our updates about the PID Bill.

Number of reports by public authorities identifying receipt of a PID

Most public authorities (82%) reported that they had not received any PIDs in 2020–21.

As shown in Table 2, the proportion of authorities that reported identifying the receipt of at least 1 PID during the year has been consistent over the past 3 reporting periods.

Table 2. Number of public authorities reporting that they had received PIDs (percent reporting)

Total number of PIDs Reported	2018–19 (%)	2019–20(%)	2020–21(%)
0	83	84	82
1	7	8	6
2 to 5	8	6	8
6 to 10	1	1	2
11 to 20	1	1	1
21+	0	1	1

2. PID Bill, Clause 78.

3. PID Bill, draft Regulation, Schedule 3, regulation 6.

Number of PIDs received

In 2020–21, 73 public authorities reported that they had received a total of 345 PIDs.

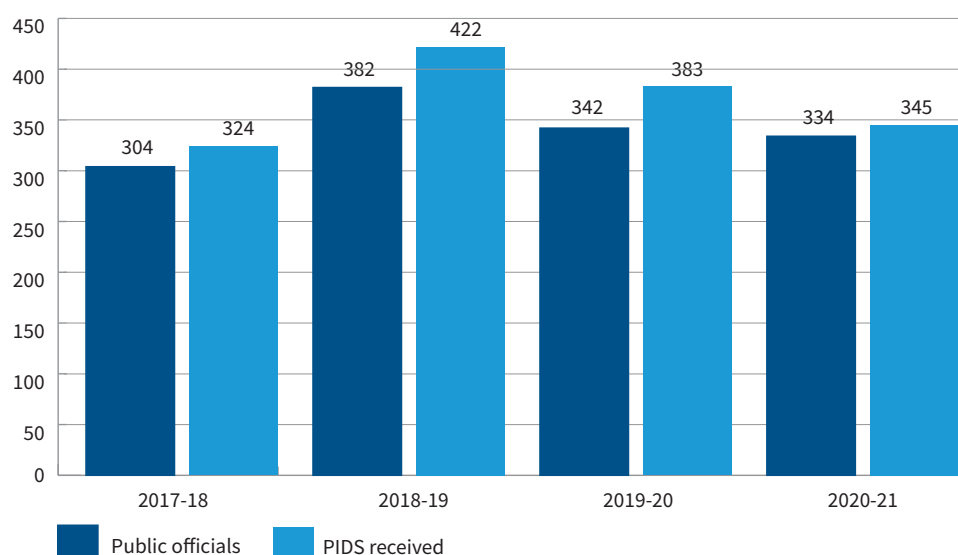
The number of public officials reported as having made a PID directly to a public authority was 334.

This number is less than the number of PIDs received, and there are likely 2 main reasons for this:

- public officials may make more than 1 PID
- the number of public officials making a PID is only recorded if they made the PID directly to the public authority that received it. In some cases, a public official may make a PID directly to 1 public authority (which duly records 1 PID received and 1 public official having made a PID in its report), and then that public authority refers the PID to a second public authority. The second public authority will record 1 PID having been received by it, but no public official having made it (as it was not made directly to that authority).

Figure 2 shows PIDs received in 2020–21.

Figure 2. Number of public officials who made PIDs directly to, and number of PIDs received by, public authorities, since 2017–18



Number of PIDs finalised

Public authorities reported finalising 254 PIDs in 2020–21. That figure may include PIDs received in previous years.

Type of public authority

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

Table 3. PIDs by Type of public authority

Type of public authority	Number of PIDs/% of all PIDs received for 2020–21
State Government agencies	175 (51%)
Local Government authorities	51 (15%)
State owned corporations	37 (11%)
Local Health Districts	57 (17%)
Universities	23 (7%)
Local Aboriginal Land Councils	2 (1%)
Total	345

Subject matter of PIDs

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

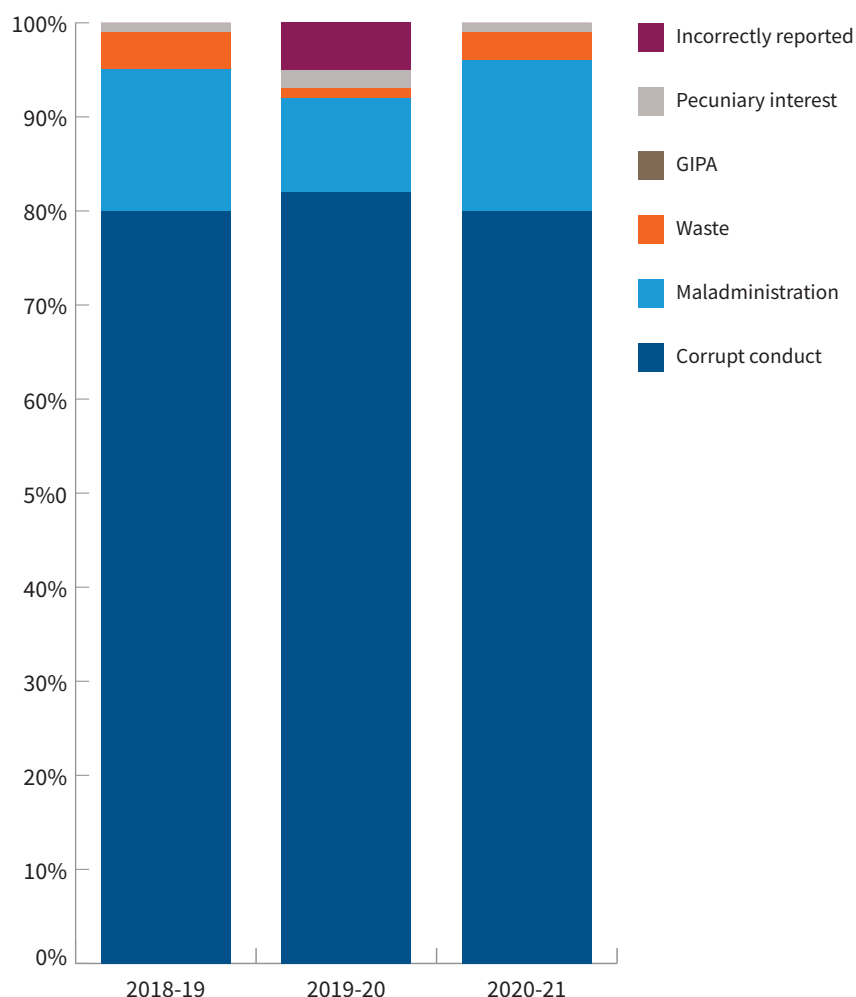
- corrupt conduct
- maladministration
- serious and substantial waste of public or local government money
- government information contravention, and
- local government pecuniary interest contraventions.

Some PIDs may relate to a number of the above categories – for example, corrupt conduct may also be a form of maladministration. In practice, an authority will report only the ‘primary’ category of wrongdoing. For example, if a PID were to allege both corrupt conduct and a serious and substantial waste of public money, if corrupt conduct was the primary issue, it would be recorded by the authority against that category only.

Figure 3 below shows the primary allegation of wrongdoing in PIDs received by public authorities in the last 3 years. Consistent with previous years, the primary issue in the large majority of PIDs made to public authorities in 2020–21 is alleged corrupt conduct (80%, n= 275).

The second most common primary issue recorded (for matters that did not also involve an allegation of corrupt conduct) was alleged serious maladministration (16%, 55 PIDs).

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

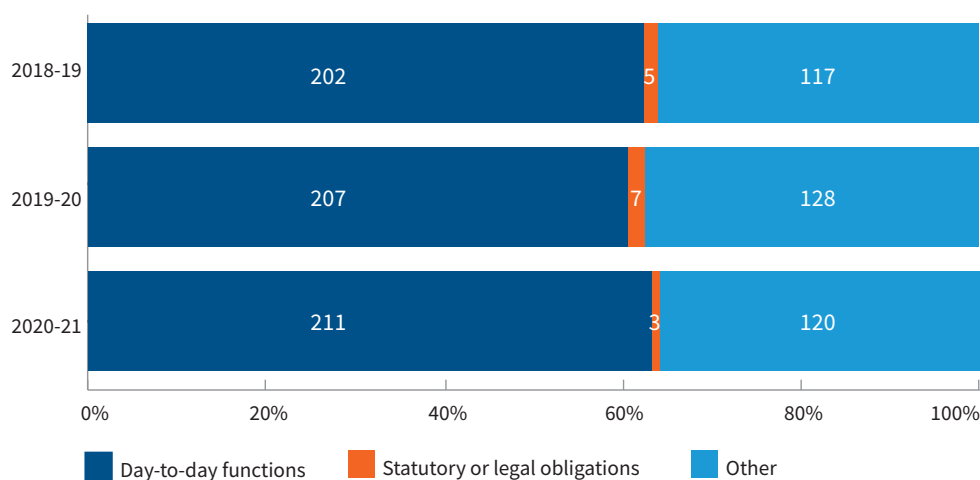


Circumstances under which public officials make PIDs

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

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

Figure 4 shows that more than half (64%, n=211) of all PIDs received by authorities over the year were reportedly made in the performance of a public official's day-to-day functions. Three were made by public officials as a result of a statutory or legal obligation, and 120 were made by public officials through other circumstances.

Figure 4. Role of public officials making PIDs since 2018–19

Internal reporting policies

Under section 6D of the PID Act, all public authorities must have a policy that sets out procedures for receiving, assessing, and dealing with PIDs.

Table 4 shows the proportion of public authorities that reported having an internal reporting policy, broken down by type.

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

Type of public authority	% reported having internal reporting policy in 2020–21
State Government agencies	93
Local Government authorities	91
State owned corporations	100
Local Health Districts	100
Universities	100
Local Aboriginal Land Councils	81

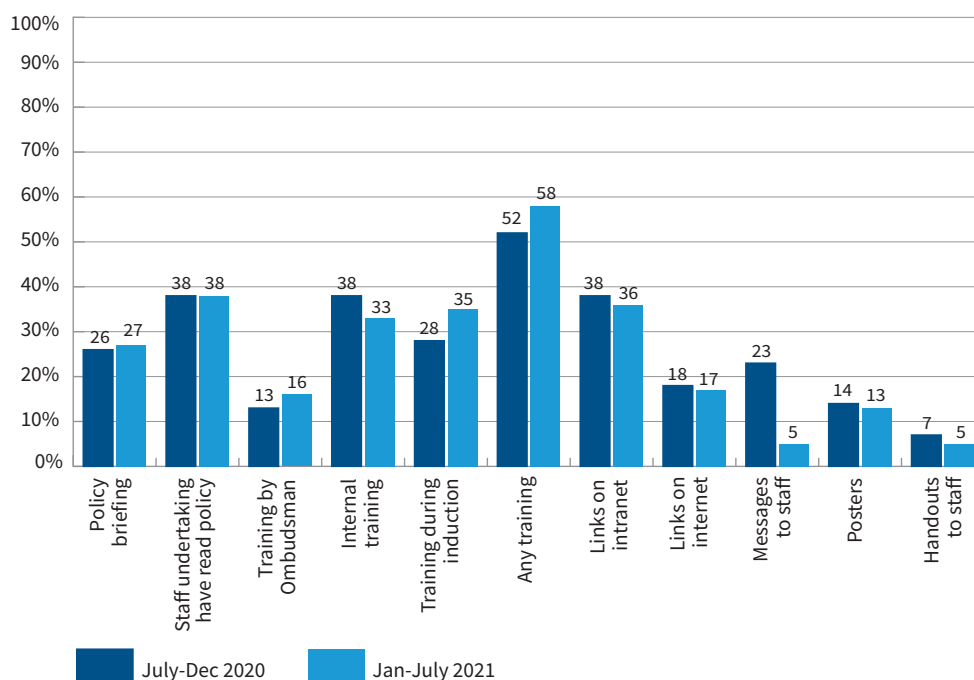
We continue to promote our model internal reporting policy designed specifically for Local Aboriginal Land Councils (LALCS).

Staff awareness

The heads of public authorities are responsible under 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. Public authorities are required to report the different types of awareness raising activities that have occurred within the relevant reporting period.

The majority of public authorities (89%) reported that the head of the authority had taken action to meet their staff awareness obligations. As shown in Figure 5, the most common types of training and awareness activities reported during 2020–21 were training and having staff read their policy.

Figure 5. PID awareness raising activities



PIDs handled by investigating authorities

The PID Act establishes the following authorities as investigating authorities with functions under the PID Act:⁴

- Ombudsman
- Audit Office of NSW
- Independent Commission Against Corruption (ICAC)
- Law Enforcement Conduct Commission (LECC)
- The Office of Local Government
- The Information and Privacy Commission
- The Office of Inspector ICAC
- The Office of Inspector LECC

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

Table 5 shows the number of PIDs received by investigating authorities over the past 4 years. In total, investigating authorities received 964 PIDs in 2020–21 in their capacity as investigating authorities, slightly more than the number received in the previous year (n=949).

4. See footnote 1 above.

Table 5. Number of PIDs received by investigating authorities, since 2017–18

	2017–18	2018–19	2019–20	2020–21
Audit Office	17	11	5	6
ICAC*	232 (512)	241 (763)	144 (697)	155 (679)
Information Commissioner	0	2	0	1
Inspector of ICAC	0	0	0	0
Inspector of LECC	0	3	3	0
OLG	21	30	21	35
Ombudsman ⁵	20	22	5	14
LECC	40	44	74	56

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

Under section 11 of the *Independent Commission Against Corruption Act 1988*, the principal authority of any public authority is under a duty to report to the ICAC any matter that they suspect concerns or may concern corrupt conduct. Of the 834 PIDs received by the ICAC, 679 (81%) comprised notifications from principal officers of authorities under this section.

Data limitations

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

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

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

The PID Bill will introduce more comprehensive and clearer data reporting obligations that will provide us with a more accurate picture of the volume and type of whistleblowing that is occurring across different agencies, and across time and reporting categories. The changes will also enable us to more closely assess whether PIDs are being handled appropriately by authorities. This information will enhance our oversight functions, by allowing us to better target our audit and training programs, proactively engage with different agencies and sectors and provide more detailed advice to Government and Parliament about the operation of the PID legislation.

5. We are continuing to refine and improve our PID Assessment processes to ensure we identify and properly assess all potential PIDs.

Part 3.

Training,
awareness, advice,
and research

Training and awareness

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

During 2020–21, as a result of the COVID-19 pandemic and associated restrictions, our focus shifted to developing the technology and delivery capability to provide training in a virtual environment. Following an initial deferral of training, in November 2020 we resumed PID training services through online delivery.

We provided 2 online PID training programs for public authorities:

- **PID Awareness.** This training focused on raising awareness among public officials about the PID Act and how to report wrongdoing. In 2020–21 we delivered 23 PID Awareness sessions that were attended by a total of 912 public officials.
- **PID Management.** This workshop-based training, aimed at disclosures coordinators, disclosures officers and managers, focused on effective PID management. We delivered 25 management sessions that were attended by a total of 607 public officials.

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

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

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

Our training continues to receive very positive feedback, with 95% of attendees at PID management sessions, and 96% of attendees at PID Awareness sessions rating the training favourably.

Participant comments:

*Great explanations, very clear information and well presented.
Encourages me to think about the practical steps involved.*

This is a good program that has made me think about staff in a different way.

A great course with engaging content and well suited to online collaboration.

Training needs analysis

In March 2021, we commissioned Deloitte to conduct a training needs analysis of our PID training. The future state model for our training program is based on a clear refreshed vision:

Vision

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

The analysis recommends our future PID training program include:

- simulating real and relatable scenarios
- learning that meets a spectrum of needs and has relevance to each learner's role
- aligning training with best practice, suited for the modern learner, and delivered through fit-for-purpose learning technology
- grounding all training in the importance of a positive reporting culture.

These findings will form the basis of our training review as we prepare for the new PID Act.

Providing advice

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

During 2020–21 we responded to 52 requests for such advice. Public authorities commonly sought advice from us about:

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

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

During 2020–21 we distributed 4 PID newsletters to 1,401 subscribers:

- [Issue 40](#) – July 2020
- [Issue 41](#) – October 2020
- [Issue 42](#) – December 2020
- [Issue 43](#) – February 2021

We also publish guidance on our website for public officials who are considering making a report.

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

Whistling While They Work 2 research project

Led by Griffith University's Professor AJ Brown, the 'Whistling While They Work 2' research project is one of the world's largest studies into the management of whistleblowing across business and government. This project seeks to identify factors that enable positive managerial responses to whistleblowing and inform better procedures and systems to improve whistleblower experiences.

We are pleased to have partnered with researchers and integrity and governance organisations in this project.

The latest findings from the project were released at the 3rd Whistleblowing Symposium in November 2021. Based on analysis of over 1,300 whistleblowing cases, the Symposium drew attention to a range of issues including:

- many public interest whistleblowers who experienced serious repercussions as a result of their disclosure received no remedy at all
- while the most common form of adverse repercussions for whistleblowers is collateral damage (such as stress and isolation) most laws and policies are framed towards addressing direct damage (including harassment, negative performance appraisals and disciplinary action), often in the form of a criminal offence
- only 6% of whistleblowers ever received any compensation, including 8% of those who lost their job because of reporting, and only 4% of those assessed as having experienced serious harassment, intimidation or harm from managers or colleagues.

The analysis suggests that current legal frameworks have not been sufficient to protect whistleblowers from repercussions and to compensate them when repercussions have occurred. Further details of the most recent findings can be found [here](#).

Part 4.

Legislative and
administrative
advice

As part of our oversight role, we consider and advise the Minister about proposals for legislative and administrative change.⁶ This policy role is generally performed through our work chairing and supporting the PID Steering Committee.

The PID Steering Committee

The major activity of the PID Steering Committee this year was advising government in response to its proposed reform of the PID Act. The activities of the Steering Committee are summarised in its [Annual Report to Parliament](#), which was tabled on 4 November 2021.

The Public Interest Disclosures Bill 2021

In October 2017, the review of the PID Act by the Joint Parliamentary Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission made a series of recommendations about changes to the Act ([the PID Act Review](#)). Proposed changes included:

- simplifying the disclosure process
- improving remedies for detrimental action
- refining reporting requirements, and
- providing clarification to the PID Act.

In 2018, in response to the Joint Parliamentary Committee's report, the NSW Government announced that it would *'prepare a Bill to reform the public interest disclosures system in accordance with ... the Committee's recommendations'*. The response also noted that the PID Steering Committee would be *'asked to examine, in detail, the implementation issues arising from the Committee's recommendations and to consider the draft Bill prepared in response to the Committee's report'*.

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

Our Special Report to Parliament on the PID Bill

In November 2021, we tabled a [Special Report](#) on the PID Bill. The report details how the Bill addresses many of the weaknesses in the existing PID Act:

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

6. Public Interest Disclosures Act, s 6B(1)(g).

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

The PID Bill also implements numerous substantive amendments and clarifications, as well adopting a clearer and more logical structure.

We assessed that the Bill substantially implements the recommendations in the PID Act Review and the ICAC Protections Report, with one significant exception in relation to the treatment of external disclosures to members of Parliament and journalists.⁷

Overall, in our view the PID Bill represents a significant enhancement to ‘whistleblower’ protections in NSW. We did however, identify issues for further consideration by the Steering Committee, including

- whether the categories of ‘serious wrongdoing’ that can be the subject of a PID should be expanded or simplified
- whether the definition of ‘maladministration’ should be clarified and/or expanded
- whether greater clarity is required in respect of the definition of ‘public official’ when applied in the context of contracted-out services.

However, given the significant benefits of the PID Bill, we have advised Parliament that we would not like to see the passage or commencement of the Bill held up as these matters are considered by the Steering Committee.

Referral to a Legislative Council Parliamentary Committee

The Bill was referred to a Legislative Council Parliamentary Committee. We made submissions to the Committee - our special report and the PID Steering Committee Annual Report, which details the members’ unanimous support for the Bill.⁸

The [Committee reported](#) back on 23 November. The Inquiry did not recommend any specific amendments to the Bill, but recommended that the Legislative Council address the stakeholder concerns identified in the Report in debate.

Current status of the Bill and next steps

At the date of writing this Report, the PID Bill has not yet been debated and the NSW Parliament is not sitting again until 2022. If the Bill is passed by Parliament, agencies and our office will need to do a considerable amount of preparation before the Bill commences. For this reason, the Bill provides for a commencement date up to 18 months after assent. We will be seeking advice and input from the Steering Committee throughout this preparation period.

If the Bill is passed, we will develop a package of resources to assist agencies to prepare. This will include new guidelines, fact sheets, e-learning modules and a training program for the new legislation.

We will provide regular updates on the new legislation and our resources through the PID e-Newsletter, and publish information as it becomes available on the Ombudsman’s webpage.

7. This issue was discussed at length in the [2019–20 Oversight Report](#). The Ombudsman’s [Special Report](#) to Parliament on the PID Bill, in particular Annexure A (in relation to recommendation 11) and Annexure D examine the position in the Bill and concludes that the thresholds in the Bill remain too onerous. An alternative solution is suggested in Annexure D.

8. At the time of writing, the transcript of our evidence was not publicly available.

Part 5.

PID Audits

PID Audits

Section 6B(1)(f) of the PID Act provides that the Ombudsman may audit and provide audit reports to Parliament on the exercise of functions under the Act and compliance with the Act by public authorities. Under s6B(2), an audit report is to be provided to Parliament at least once every 12 months.

Audit of 6 local councils

As detailed above, every public authority in NSW has a statutory requirement to provide the NSW Ombudsman with a 6-monthly report on the number of PIDs they receive, the type of wrongdoing reported and the awareness activities they have undertaken in the period.

Our analysis of the reporting data from 2018–2020 highlighted that 85 (66%) councils reported not receiving a PID at any time during that 3 year period. Local councils as a sector are less likely to report receiving a PID than departments and authorities, universities, and local health districts of the same size. We decided to audit local councils with the aim of identifying any underlying reasons for this.

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

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

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

The final 6 councils were selected because they were the 2 largest metropolitan, regional, and metro-fringe councils by staff number. We used the Office of Local Government geographical classification of NSW councils.⁹

After selecting the 6 councils, we completed the fieldwork for the audit between April and June 2021.

Audit purpose and scope

The audit's purpose was to identify any issues in the councils' culture, systems or practices that could result in PIDs not being made or identified. The focus of this audit was the period between January 2018–December 2020. We did not consider any information or activities outside this time frame.

We sought to answer the following questions:

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

9. See OLG's classification [here](#)

Audit findings

Audit findings have been analysed and a report will be provided to each individual council outlining our findings and any recommendations. A report of our consolidated findings will be presented to Parliament in 2022.

PID Audit framework

The NSW Ombudsman's office's broader 2020–2025 strategic plan prioritises a review of our PID audit function.

Given our very limited resources, we are currently unable to undertake a comprehensive audit program, and recognise the importance of a targeted focus in where and how we conduct our audits.

We noted in last year's oversight report that in addition to refreshing our audit approach, our aim is to seek further input from stakeholders about audit priorities, and how our audit program can add most value to the PID system in NSW.

As part of this work, in this reporting period we engaged Deloitte to work with us to develop a revised PID Audit Framework. The aim was to create a structure of prioritisation and to develop:

- a consistent approach to the planning, execution and reporting of audits
- a scalable tiered approach to audits that is responsive to the complexity and resource requirements of each engagement
- clearly defined monitoring and reporting protocols
- increased transparency regarding the selection of engagement type or agency
- foster the sharing of skills, resources and lessons learned across the Ombudsman.

The PID Audit framework provides for a clear approach to strategic audit program planning, and will enable us to proactively engage with public authorities through regular environmental scanning.

In the next reporting period, we will consider how to operationalise this framework as we work towards the implementation of the new PID Bill.

