

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

Annual Report 2017-18

28 February 2019

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Public Interest Disclosures Act 1994

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The Hon John Ajaka MLC
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The Hon Shelley E Hancock MP
Speaker
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Dear Mr President and Madam Speaker

Pursuant to section 6B(3) of the *Public Interest Disclosures Act 1994* I am required to prepare and furnish to you a report of my work and activities for the 12 months ending 30 June each year.

I draw your attention to the provisions of s 6B(3) of the *Public Interest Disclosures Act 1994* and those of s 31AA of the *Ombudsman Act 1974* in relation to the tabling of the *Public Interest Disclosures Oversight Annual Report 2017-18* and request that you make it public forthwith.

Yours sincerely

A handwritten signature in black ink, appearing to read "Michael Barnes". The signature is fluid and cursive, written on a light-colored background.

Michael Barnes
Ombudsman

28 February 2019

Foreword

This report is made pursuant to s 6B of the *Public Interest Disclosures Act 1994* (PID Act). It describes how public sector agencies are discharging their responsibilities under that Act and the activities of this office to support those agencies and persons who make public interest disclosures.

In October 2017, the Parliamentary Joint Committee on the Ombudsman, Law Enforcement Conduct Commission and the Crime Commission (PJC) tabled its statutory review of the PID Act. While noting that, on the whole, the PID regime works well, the PJC made 38 recommendations to improve elements of the system. I support these recommendations, many of which were based on the evidence my office provided to the inquiry.

As Chair of the Public Interest Disclosures Steering Committee, I look forward to working with the NSW Government in 2018-19 to improve the legislation that encourages public officials to report serious wrongdoing.

In this year's report, we also delve into behavioural economics to inform our understanding of how managers respond to reports of wrongdoing. We have seen cases where it appears managers have had 'blind spots' and simply failed to appreciate that their actions may be perceived as a reprisal. We have identified a range of actions that public authorities, my office and the government can take to help managers ensure they make appropriate decisions.



Michael Barnes
Ombudsman

28 February 2019

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What we do

The *Public Interest Disclosures Act 1994* (PID Act) encourages public officials to report serious wrongdoing by providing them with certain legal protections if they do so. The Act deters detrimental action from being taken in reprisal for a person making a public interest disclosure (PID) – by providing that such action is a criminal offence, grounds for disciplinary action, and grounds for seeking compensation for damages. The term ‘public official’ refers to public sector staff, contractors of public authorities and people performing statutory functions, including volunteers.

The Public Interest Disclosures Unit (PID Unit) within our office coordinates the implementation of the Ombudsman’s functions under the PID Act. These functions include:

- promoting public awareness and understanding of the Act
- providing information, advice, assistance and training to public authorities, investigating authorities and public officials on any matters relevant to the Act
- issuing guidelines and other publications to assist public authorities, investigating authorities and public officials
- auditing and monitoring the exercise of functions under, and compliance with, the Act by public authorities
- preparing reports and recommendations about proposals for legislative and administrative changes to further the objectives of the Act
- handling PIDs made to our office about maladministration.

Our objectives

The PID Unit has four objectives. They are to:

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

Our performance in 2017–18

Public awareness and engagement

<i>What did we want to achieve?</i>	<i>What did we achieve?</i>
<p>Engage with stakeholders.</p> <p>Raise awareness of PIDs across the public sector.</p> <p>Support PID coordinators.</p> <p>Distribute PID guidance material.</p> <p>Provide advice to public authorities and public officials.</p>	<p>Trained 1,506 public officials at 29 PID awareness sessions and 50 PID management sessions across metropolitan and rural NSW – rated positively by 98% of participants.</p> <p>Distributed two issues of the PID e-News to 1,295 subscribers.</p> <p>Facilitated two PID practitioner forums – rated positively by 93% of attendees.</p> <p>Hosted information stands at two conferences and spoke at three events.</p> <p>Released a guideline on responding to allegations of reprisal and a PID risk assessment template.</p> <p>Provided advice in response to 154 PID-related enquiries.</p> <p>Managed an online community, the <i>Whistling Wiki</i>.</p>

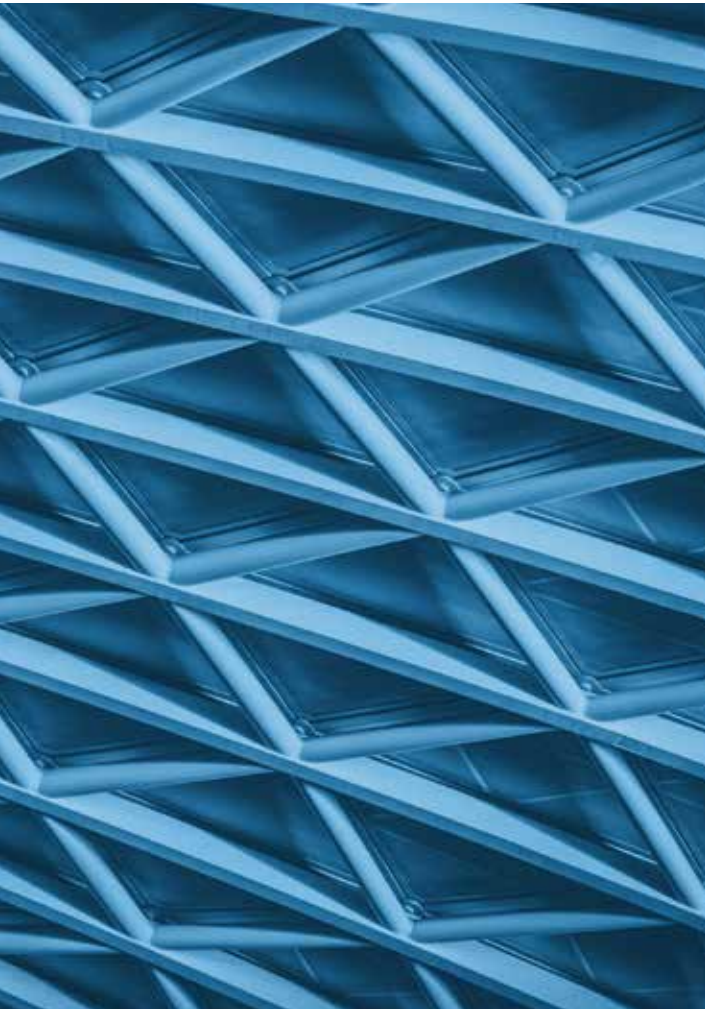
Monitoring and reviewing

<i>What did we want to achieve?</i>	<i>What did we achieve?</i>
<p>Audit compliance with the PID Act.</p> <p>Facilitate the provision of six monthly statistical reports by public authorities.</p> <p>Assist the PID Steering Committee.</p> <p>Make recommendations for reform.</p> <p>Contribute to PID-related research and policy development.</p>	<p>Conducted three face-to-face PID audits, involving reviewing 124 files.</p> <p>Received 656 PID statistical reports from public authorities for two reporting periods.</p> <p>Held two PID Steering Committee meetings.</p> <p>Issued a discussion paper on the application of the PID Act to local Aboriginal land councils.</p> <p>Supported the <i>Whistling While They Work 2</i> research project as a partner organisation.</p> <p>Contributed to the development of an international and Australian standard on whistleblowing.</p> <p>Engaged a behavioural economics consultant to identify the cognitive and motivational biases that can affect how people manage PIDs and reporters.</p>

Complaint handling and investigation

<i>What did we want to achieve?</i>	<i>What did we achieve?</i>
<p>Ensure timely and efficient handling of complaints.</p> <p>Identify problems and deficiencies to improve the handling of PIDs.</p>	<p>Received 20 PIDs, eight purported PIDs and seven complaints about the handling of PIDs.</p> <p>Investigated six PIDs and started a formal investigation into another.</p>





Part 1:

Investigations and PIDs

This part highlights the opportunities PIDs provide to enhance the integrity of the public sector, partly by considering an investigation our office conducted arising from PIDs. The existence of a PID also creates risks and can add to the complexity of an investigation.

1.1. The public interest of disclosures

Thirty years ago, internal Queensland police reporters faced physical intimidation when they exposed widespread corruption that triggered the Fitzgerald Inquiry – leading to the first legislation that provided legal protections for whistleblowers in Australia. More recently, the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry was prompted by a series of reports from employees.

A reporter from the New South Wales (NSW) public sector plays a similarly important role in exposing wrong conduct and building public trust in government.

Against stereotypes of whistleblowing as a relatively rare phenomenon, evidence suggests that it is far more frequent – even routine. In NSW, public authorities and investigating authorities receive an average of 788 PIDs every year.¹ This is limited to those disclosures of wrongdoing that authorities identify, assess and report as meeting the criteria of the PID Act.

More broadly, the Public Service Commission's 2018 People Matter Employee Survey of state government employees found that 24% of respondents had witnessed misconduct/wrongdoing at work in the last 12 months. Of these, 66% reported the misconduct/wrongdoing they had witnessed, an improvement on the 63% reporting rate in 2017.² These results show that reporting wrongdoing is a regular feature of organisational life that authorities need to manage effectively.

Staff reporting of wrongdoing plays a pivotal role in ensuring the integrity of the public sector. PIDs bring to light serious wrongdoing and misconduct that may not otherwise have been discovered. They can also, particularly in the long-term:

- improve the public authority's reputation and trustworthiness
- fix systems that are dysfunctional
- improve workplace culture
- lead to service improvements
- safeguard vulnerable people.

Preliminary analyses from the Australian and New Zealand research project *Whistling While They Work 2* highlight the value that is placed on staff reports. Managers, governance professionals and employees all ranked 'reporting by employees' as the single most important trigger of bringing to light wrongdoing in or by their organisation. Significantly, employee reporting was rated as more important than routine controls, internal audits, complaints from the public, management observation or external investigations.³

1. Based on a total of 5,119 PIDs being reported to our office for the period 1 January 2012 to 30 June 2018 as at 31 October 2018.

2. Public Service Commission 2018, *People Matter 2018: NSW public sector employee survey – NSW public sector*.

3. AJ Brown & Sandra Lawrence, 'What have we learned from whistleblowing research? Operationalising the duty to support and protect', *International Whistleblowing Research Network Conference*, Middlesex University, 22 June 2018.

Other research confirms that the unique position of employees gives them a strategic role as quality information sources. Fraud and other wrongdoing is generally unearthed by reports or tip-offs – most commonly by staff. The NSW Audit Office’s 2016 fraud survey found that tip-offs accounted for almost half (47%) of frauds detected.⁴ Further afield, the Association of Certified Fraud Examiners 2018 global report found that tip-offs were by far the most common means of detection at 40% of cases. Fraud losses were 50% smaller at organisations with hotlines than those without.⁵

Do PIDs lead to significant outcomes and organisational change?

The object of the PID Act is not just to identify and rectify specific instances of wrongdoing. It is also to identify systemic organisational issues – and ensure government structures, policies, procedures and practices are both efficient and effective.

One of the limitations of the current PID Act reporting requirements is that our office does not receive information from public authorities about the action they take in response to PIDs, whether the allegations are substantiated, and any organisational changes that were made as a result.

To address this data gap, we examined all PIDs reviewed as part of our audit program over the last three years – a total of 91 individual PIDs from 10 audits of public authorities. Our findings were that:

- Seven reports were made anonymously.
- Of the 87 reports where there was sufficient information to tell what it was about, 75 (86%) primarily made allegations of corrupt conduct, two alleged maladministration, one alleged serious and substantial waste, and nine alleged misconduct or other conduct that we assessed as not falling into one of the categories of the PID Act. Of the 75 corrupt conduct reports, 11 also made allegations of at least one other category of conduct (maladministration, serious and substantial waste, local government pecuniary interest contravention).
- Of the 85 files where we were able to tell if a report was investigated, only a quarter (n=22) were substantiated.
- Of the 22 files where we were able to tell if the PID was substantiated and what happened after investigation, seven (32%) resulted in disciplinary outcomes.
- Twelve subject officers left the authority, which included the termination of three officers.
- Four reporters left the authority during the reporting process.
- Three matters were referred to the NSW Police Force.

4. New South Wales Auditor-General 2016, *Fraud survey*.

5. Association of Certified Fraud Examiners 2018, *Report to the nations: 2018 global study on occupational fraud and abuse*.

Some of the significant outcomes that resulted from these PIDs were:

- An allegation of theft was reported to the NSW Police Force and a number of recommendations were made to improve cash handling processes.
- Alleged misuse of an agency credit card by a senior manager uncovered flawed administrative practices about the use of credit cards, poor tender processes, the application of goods and services tax and poor record keeping.
- An anonymous report uncovered fraudulent invoicing and overcharging by contractors – leading to the commissioning of an independent audit to address the poor invoicing practices that allowed the corrupt behaviour to occur.
- An external consultant investigated allegations about conflicts of interests corrupting an authority's internal investigation. The consultant made a number of recommendations about recruitment guidelines, procedures to better manage conflicts of interests and staff training.
- A consultant was engaged to address poor record keeping practices across an authority. These were identified during an investigation into allegations a senior officer took reprisal action against a reporter, which included breaches of confidentiality.

Although the outcomes for individuals with sustained allegations against them are usually significant, we expected to find more PIDs resulting in systemic changes or improvements. Some possible explanations for this include:

- Most people making reports about wrongdoing allege that the conduct was corrupt – These PIDs are often allegations against individual officers, so PID outcomes are often similarly limited to an individual's conduct. This may reduce the incidence of systemic or other significant outcomes achieved by the authority.
- Poor record keeping practices – This poses challenges when auditing, as we are unable to obtain and assess relevant information. It may also be indicative of poor PID management and investigation practices, which in turn have a negative impact on the authority's ability to recognise or achieve significant outcomes.
- Referral to another agency or department (silo effect) – What happens after issues identified within a PID are referred elsewhere for action? The action taken and PID outcome may not be monitored or reviewed by the section of the authority that maintains the original PID or investigation file.
- The number of PIDs referred by the Independent Commission Against Corruption (ICAC) – In the authorities we audited there were a high number of PIDs referred by the ICAC, in comparison to those made internally. This may be an indication of the adequacy and quality of the authority's PID practices. The fact that staff feel compelled to report externally may be indicative of other issues in the authority – such as workplace culture or awareness of internal reporting mechanisms.

- PIDs not seen as opportunities for continuous service improvement – Authorities may be focused on achieving individual outcomes rather than taking a wider, systemic view to identify improvements that may lead to significant outcomes.
- Failure to identify reports as PIDs – It is surprising that there were such low numbers of PIDs about maladministration and waste. These categories are probably not as familiar to public officials as corrupt conduct. It may be that reports of maladministration and serious and substantial waste are being made and resulting in changes, but these issues are not recognised as reports of wrongdoing that may meet the criteria in the PID Act.

In two comparable Australian jurisdictions – where agencies are required to report on the outcomes of PIDs received – many are substantiated. For example:

- In Queensland, of the PIDs reported as finalised in 2016–17, 54% were totally or partially substantiated. However, if only PIDs that resulted in a completed investigation are considered (eg matters are excluded if there was another outcome such as a discontinued investigation), the rate at which PIDs in Queensland are substantiated has been relatively consistent at 63–65% over three years.⁶
- In the Commonwealth, of the 365 investigations into PIDs finalised in 2016–17, 105 investigations found that there was at least one finding that conduct occurred. The Commonwealth Ombudsman reported that the types of conduct found to have occurred included an employee fraudulently claiming to possess certain qualifications and an employee leaking emails containing sensitive information to the media. Commonwealth agencies reported a range of actions taken in response to recommendations in PID investigations – including disciplinary action, termination of employment, internal reviews, and changes to policies and procedures.⁷

We look forward to future amendments to the PID Act and Public Interest Disclosures Regulation 2011 in NSW, implementing the 2017 recommendations of the PJC. One such amendment will require public authorities to provide the following information to our office about every PID they receive:

- whether the PID was made directly to or referred to the authority
- the type of conduct alleged
- what action was taken in response to the PID
- whether the allegations were wholly or partly substantiated
- whether the PID resulted in systemic or organisational changes or improvements
- when the PID was received and finalised.

6. Queensland Ombudsman 2017, *Annual report 2016–17*.

7. Commonwealth Ombudsman 2017, *Annual report 2016–17*.

1.2. Opportunities provided by insider information

Many of the formal investigations undertaken by our office in 2017-18 were triggered because of valuable inside information provided by public officials under the PID Act.

For example, information from a number of employees informed one of our largest investigations in recent years into the water compliance and enforcement functions of the former Department of Primary Industries Water (DPI Water) and the state owned corporation, WaterNSW (the water investigation).

In November 2017, the then Acting Ombudsman tabled a report to Parliament on our *Investigation into water compliance and enforcement 2007-17*. This was a progress report outlining the stage our investigation had reached, as well as noting the work our office and others had done relating to water compliance and enforcement in the past.⁸

Case study 1: Insider voices correcting the public record

Shortly after tabling our first water investigation progress report in Parliament in November 2017, we received complaints and information from a number of current and former public officials indicating that the statistical information on enforcement outcomes provided by WaterNSW was significantly inaccurate. We had been told by WaterNSW that there were 105 penalty infringement notices and 12 referrals for prosecutions issued in the relevant period. However, the reporters advised us there had been none.

This led us to start a related investigation to examine how WaterNSW came to provide our office with statistics that were inaccurate. We considered it important to correct the public record on this issue – as the statistical information was referenced in our November report to Parliament, and had been quoted by the Minister for Primary Industries, Regional Water and Trade and Industry in an answer to a question without notice in the NSW Legislative Council.

WaterNSW recognised it had provided inaccurate information, but indicated this was an oversight. We found that the evidence suggested senior executives had failed to consider the statistical information they were providing as carefully as they should have. Although the Ombudsman found that this conduct constituted wrong conduct under the *Ombudsman Act 1974*, the evidence did not support a conclusion that the conduct was intentional. These actions therefore did not constitute an offence under the *Ombudsman Act*.

8. NSW Ombudsman 2017, *Investigation into water compliance and enforcement 2007-17*.

The influence of professional ethics

We have observed a trend recently of staff reporting because they are affronted when they perceive that their own authority is not supportive of, or held to, the same professional standards that they espouse. In the investigation into water compliance and enforcement, some compliance and enforcement officers who made PIDs were concerned that insufficient allocation of resources and other barriers stopped them from performing their role effectively.

We have also received PIDs from regulatory officers who are concerned that their own authority is not compliant in their particular field of expertise or who have genuine concerns for public safety. In some circumstances, and depending on the credibility of the reporter, we are able to draw on this professional knowledge by seeking the reporter's views on the technical issues in question.

In the eye of the public

As the *Ombudsman Act 1974* requires hearings using our royal commission power to be conducted in the absence of the public, the fact they are occurring seldom becomes public knowledge. The airing of a Four Corners program⁹ and our own progress report meant this was not the case for the water investigation. As a direct result, other staff approached our office and provided additional evidence of relevance to our investigation.

Investigations of PIDs provide an opportunity to demonstrate to the broader public sector that allegations are taken seriously and can lead to demonstrable outcomes and significant reform. When studies have asked staff why they didn't report wrongdoing, most answered that this was because they didn't think appropriate action would be taken in response.¹⁰ Demonstrating the action taken by our office through special reports to Parliament may therefore encourage other reporters to come forward. This can help instil confidence in public sector staff that the Ombudsman carefully considers allegations of serious wrongdoing and will take appropriate and robust action in response.

Case study 2: *Turning the tide on water regulation*

In August 2018, the Ombudsman made a report to Parliament outlining his findings and recommendations in relation to the water investigation. The central systemic issues addressed in the report include:

- The difficulties created by repeated agency restructures and transferring important responsibilities and staff.
- The challenges associated with applying customer service principles to an enforcement environment.

9. Australian Broadcasting Corporation, 'Pumped', *Four Corners*, 24 July 2017.

10. Richard Wortley, Peter Cassematis & Marika Donkin 2008, 'How do officials report? Internal and external whistleblowing'. In AJ Brown (ed), *Whistleblowing in the Australian public sector* (pp 83-108), Canberra, ANU Press.

- The importance of enforcement agency independence, adequate resourcing, and developing and supporting the right culture.

The report closely examines three case studies that clearly demonstrate how these organisational issues had a substantial impact on the proper administration of enforcement and compliance functions under the *Water Management Act 2000*.

The National Resources Access Regulator (NRAR) has now been established to increase public confidence in water regulation by improving consistency, accountability and transparency of water compliance and enforcement. Many of the Ombudsman's recommendations were aimed at the NRAR to ensure the lessons learnt are incorporated into new policies, procedures and culture. This will help to ensure the NRAR has a strong foundation of independence and that some of the investigative and management practices outlined in the report are not repeated.

The Ombudsman recommended that DPI Water and WaterNSW review their communication, record keeping and delegation policies and practices – and that DPI Water assess whether the aims of its 'no meter no pump' policy could be achieved sooner than planned.

Finally, the Ombudsman recommended that:

- A 1992 Premier's memorandum dealing with providing information to members of Parliament (MPs) be updated to provide additional guidance to public servants about what to do when an MP approaches them as an advocate for a constituent.
 - The Public Service Commissioner develop more comprehensive guidelines for agency restructures to emphasise the importance of good communication, employee support and the need for clearly articulating the rationale and vision for the restructure.
-

1.3. Added complexities: conflicts and competing priorities

Investigating allegations made by staff also poses a number of challenges for the agency concerned. These challenges may include reducing the risk of reprisals, assessing motivations, managing expectations, supporting reporters, and separating investigation and support roles.

Reducing the risk of reprisals

The greatest risk of any PID investigation is that detrimental action will be taken against a person in reprisal for the making of a PID. By the time a PID is made to our office, the reporter has usually already

raised their concerns internally in their authority. In these cases, we ask the reporter for their consent to reveal their identity to the relevant authority. This is because:

- It gives us an opportunity, often during a meeting with the principal officer of the authority, to put the public authority on notice that a PID has been made and they are responsible for ensuring the reporter is protected against reprisals.
- The authority cannot later claim that they did not know the person made a PID in order to defend a claim of reprisal.
- It helps us to manage the risk that the public authority will mistakenly suspect other staff of making the PID.

Research suggests that the odds of being treated badly by management are four and a half times greater if the investigation of wrongdoing is handled by an external body. Although it is possible that some reporters experience mistreatment only after they disclose externally, the more likely explanation is that external reporting follows the onset of conflict between the reporter and management – including concerns about how earlier internal reports have been dealt with.¹¹ This is consistent with our observation that PIDs are often made in the context of a pre-existing workplace conflict.

Mixed motivations

To help us to assess the likely completeness and credibility of information disclosed to us by staff of authorities, we find it convenient to distinguish between three primary reporter motivations:

- Public interest – they are affronted by certain conduct and want to see the problem addressed.
- A mixture of public interest and personal grievance – which is probably the most common scenario.
- A personal grievance only – which is often a strategy in an ongoing workplace conflict or performance management situation, generally focused on either avoiding management action, vindication or bringing disrepute to their authority.

In our experience – if reporters are motivated purely by public interest considerations – they are likely to come forward immediately after the wrongdoing occurred and give the investigator more complete and balanced information.

Often, however, we find that we need to make inquiries with the reporter to elicit further information that they may not have otherwise volunteered.

11. AJ Brown & Jane Olsen 2008, 'Whistleblower mistreatment: Identifying the risks'. In AJ Brown (ed), *Whistleblowing in the Australian public sector* (pp 137–161), Canberra, ANU Press.

The perception that some reporters are misusing the PID Act to advance their own agenda can have a devastating effect on how the PID Act and future reporters are perceived. It is also important to recognise the difference between:

- Reports that might be ‘vexatious’ – that is, the motive of the person is to cause harm and there is no substance to the report or it is false.
- Reports that might be ‘malicious’ – where the motive of the person is to cause harm, but there is substance to the report.

From the perspective of the public authorities and the investigating authorities that receive reports, malicious reports can still provide valuable information about wrongdoing. That said, malice does diminish the credibility of the reporter’s evidence and means that other more reliable evidence needs to be found to substantiate the allegations. It can also create workplace conflict or exacerbate an existing conflict.

We have also seen a tendency for reporters to warehouse considerable material – for example, by taking copies of documents home or emailing them to a personal account. Although we have concerns about this way of gathering information, some documents staff have provided to us have proved to be pertinent and had not been identified by the authorities under investigation as being relevant to the inquiry or covered by our broad notices to produce.

Managing expectations, communications and dissatisfaction with outcomes

It is important early in any investigation for the case officer to manage the expectations of the reporter. Often by the time reporters approach an investigating authority – or even after multiple approaches internally in a public authority – they are seeking a predetermined outcome.

Some key messages about the investigation process and likely outcomes that we try to convey to reporters are that:

- The information they provided to us will be assessed and we will gather information from other sources to support their allegations – we will not take it at face value.
- We decide the scope of our investigation and the allegations we pursue.
- The function of our office is to investigate issues objectively and base our decisions on whether there is sufficient evidence to substantiate the allegations.

We also explain the outcomes that are possible in the circumstances, including any legal or jurisdictional limitations.

When we acknowledge complaints made to our office, we set out what we do and do not do – as well as the responsibilities of our office and the person who made the complaint. We have identified an opportunity

to tailor these statements when we have decided to treat the complaint as a PID. These messages can be reinforced once personal rapport has developed between the case officer and the reporter.

It can be difficult to balance the need to communicate with reporters on an ongoing basis with keeping sensitive information confidential to avoid hindering an investigation. We are aware of reporters who have approached the media with their concerns because they believe an investigation is taking too long to finalise.

If allegations cannot be substantiated, reporters can perceive this outcome as indicating that they have not been believed or even as an attack on their integrity. In these cases, it may be helpful to explicitly acknowledge the reporter's integrity in making the PID and thank them for coming forward, unless there is evidence that contradicts this.

Good practice 1: _____ **Macquarie University**

Macquarie University developed a range of resources to support their revised policy and procedure on 'Reporting wrongdoing'. This included:

- An internal reporting form and reporter checklist and confirmation.
- A checklist for the recipient of the report, a preliminary assessment form, a PID assessment form and a PID risk assessment.
- Investigation terms of reference.
- Template letters for acknowledging a PID, notifying about the appointment of an investigator, and communicating the outcome of an investigation to the reporter and subject/s of the allegations.

If a PID is unable to be substantiated, their template letter suggests including the following:

'I am firmly of the view that you honestly believed the allegations you made. There is certainly no evidence to the contrary... I thank you for expressing your concerns openly and for your co-operation with the investigator. I appreciate that investigations are stressful for staff members concerned and remind you that the University takes seriously its commitment to staff well-being. If you feel you need support you may wish to avail yourself of the services offered by Human Resources, including the Employee Assistance Program.'

If a reporter feels that their PID has not been properly dealt with or did not lead to what they see as an appropriate outcome (such as disciplinary action), their trust in management declines and they may lose faith in the reporting process. This, in turn, can have an impact on the morale within a workplace or an authority – leading to high staff turnover and less likelihood of staff reporting wrongdoing concerns in future. Managing expectations from the outset is essential in preventing these outcomes.

High support needs of reporters

Research suggests that the most common adverse effects that reporters of wrongdoing face do not come from direct and intentional reprisal action, but from stress and reduced work performance.¹² During an investigation, reporters may understandably be anxious, more sensitive (even hypersensitive) to events in their workplace (eg restructures, recruitment decisions, role changes), and perceive routine management decisions as targeted acts of reprisal. There have been situations where we have been concerned about a reporter's wellbeing.

Case study 3: *When providing support may include lending an ear*

We received an enquiry from a public official outlining a possible PID about his employer, a university, and seeking our advice.

The following day, the reporter visited our office in person. The reporter made allegations that their supervisor had engaged in research misconduct and inappropriately released confidential information that belonged to a Commonwealth public sector agency. The reporter had already raised their concerns with the university, but wanted to provide information to our office so that an independent body would be, in the reporter's words, monitoring the situation.

In the weeks after submitting a formal written complaint, the reporter sent us 24 emails providing ongoing updates and documentation from the university. The reporter also called the relevant case officer multiple times and attended the office in person twice with a large amount of hard copy documents to discuss.

During this period, the reporter had been suspended from duty pending a full disciplinary investigation into their conduct. It was alleged that the reporter had contacted the relevant Commonwealth agency in contravention of a direction from management. The reporter now considered that this communication with the Commonwealth agency was a PID in itself. We gave advice about the difference in PID legislative schemes in NSW and the Commonwealth. The reporter expressed gratitude to the case officer, stating that it had been a big help to have contact with our office – as a friendly ear and a sounding board throughout the process.

After two months of monitoring the situation, we wrote to the reporter advising that we would not be taking any further action on their complaint. The university had conducted a preliminary investigation into the allegations and found that there was no evidence to support taking further action. We considered that this was a reasonable decision in the circumstances. There was also no evidence that the action taken to suspend the reporter was in reprisal.

12. Brown & Lawrence.

Key to building trust with reporters is proactively communicating with them about the progress of any investigation – while being mindful of releasing sensitive information. Within professional boundaries, it is possible to build rapport with a reporter so that they feel comfortable raising concerns about what is happening to them in the workplace. The case officer can then explore these issues further with the reporter – at times, resolving them by suggesting alternative explanations for events to the reporter or in other cases making inquiries to establish what has happened.

In some cases, once the substantive issues have been dealt with, we can suggest a mediation between the reporter and the relevant authority – as provided for under s 26B of the PID Act. The aim of mediation is to resolve a conflict in an ongoing relationship that needs to continue. It gives both sides an opportunity to be heard so that they can understand the other person's point of view and reach a mutually agreed outcome. It can work well in situations where there are power differences, such as between a reporter and senior management.

Separating investigation and support roles

There may be a conflict of roles if the people responsible for investigating PIDs and any allegations of reprisal are also responsible for supporting reporters. Our advice is that – regardless of the size of the authority – investigative and support functions should be clearly separated to ensure the perception of independence.¹³ We have also faced the challenge of striking the balance between supporting a reporter and remaining impartial while we are examining the conduct of an authority – either in relation to the substantive or initial allegations, or the management decisions made during the course of any investigation.

The first *Whistling While They Work* research project, for example, found that while research shows that internal investigation units rank as a significant source of support for reporters, their value tended to decrease when the reporter experienced poor treatment from either managers or colleagues. This highlights the reality that – although investigators may be sympathetic to and a crucial source of advice for reporters – the investigation may not arrive at a conclusion that the reporter expects. The investigator's responsibility is then to move on to the next investigation or duty, rather than to provide ongoing support.¹⁴

The high frequency of communication that is sometimes needed with reporters can be resource intensive. The support needs of reporters also seem to be intensifying. We have responded in the past by monitoring the situation in real time, while events continue to

13. NSW Ombudsman 2011, *PID guideline E1: Model for internal reporter support*.

14. Peter Roberts, AJ Brown & Jane Olsen 2011, *Whistling while they work: A good-practice guide for managing internal reporting of wrongdoing in public sector organisations*, ANU E Press, Canberra, p 107.

unfold in the workplace. Supporting reporters, however, may require a different operating model to our traditional complaint handling functions – which often involve considering issues retrospectively.

Supporting a reporter can also be hard for a case officer whose role and experience is not in providing ongoing psychological support. A recent international study of the institutional whistleblowing protection arrangements in a range of countries identified only a few countries where the government funds psychosocial care for reporters. In Norway, 200 whistleblowers who have suffered retaliation have attended a psychosocial care clinic in the past six years. The Dutch Whistleblowing Authority provides free psychological care (by one psychologist) and the Israeli Ombudsman is also starting up this sort of scheme as part of developing a more holistic approach to whistleblower protection. This may be one way of ensuring that the high support needs of reporters are met.

Beyond providing counselling, we see a need for an advocacy role to act on behalf of reporters. In the Netherlands, continuous support is provided to reporters throughout the reporting process – for example, in the form of assistance (including practical help like writing letters to employers) and legal advice.¹⁵ Advocacy could include intervening with authorities to ensure that they have assessed the risks of reprisal and taken action to prevent any identified risks. Reporters could be provided with legal representation or even just a support officer to be present at court or during interviews or meetings.

We see this as going beyond our current functions ‘to provide information, advice, assistance and training to public authorities, investigating authorities and public officials on any matters relevant to the Act’ (s 6B(1)(b)). Part 4 of this report outlines how we perform these functions – including by having information available on our website, responding to enquiries from reporters or those who are thinking about doing so, delivering face-to-face training to public officials, and having an e-learning module for reporters. We also have a dispute resolution role in relation to disputes arising as a result of a public official making a PID.

After its inquiry into whistleblower protections across the public, private and not-for-profit sectors, the Commonwealth Parliamentary Joint Committee on Corporations and Financial Services recommended establishing a Whistleblower Protection Authority (WPA) in ‘an appropriate existing body’.¹⁶ The functions of the WPA were to be to:

- Provide a clearinghouse for whistleblowers bringing forward PIDs, by referring the substantive allegations to a relevant investigating authority.
- Provide advice and assistance to whistleblowers.

15. Kim Loyens & Wim Vandekerckhove 2018, ‘Whistleblowing from an international perspective: A comparative analysis of institutional arrangements’, *Administrative Science*, v 8, p 30.

16. Parliamentary Joint Committee on Corporations and Financial Services 2017, *Whistleblower protections*, p 158.

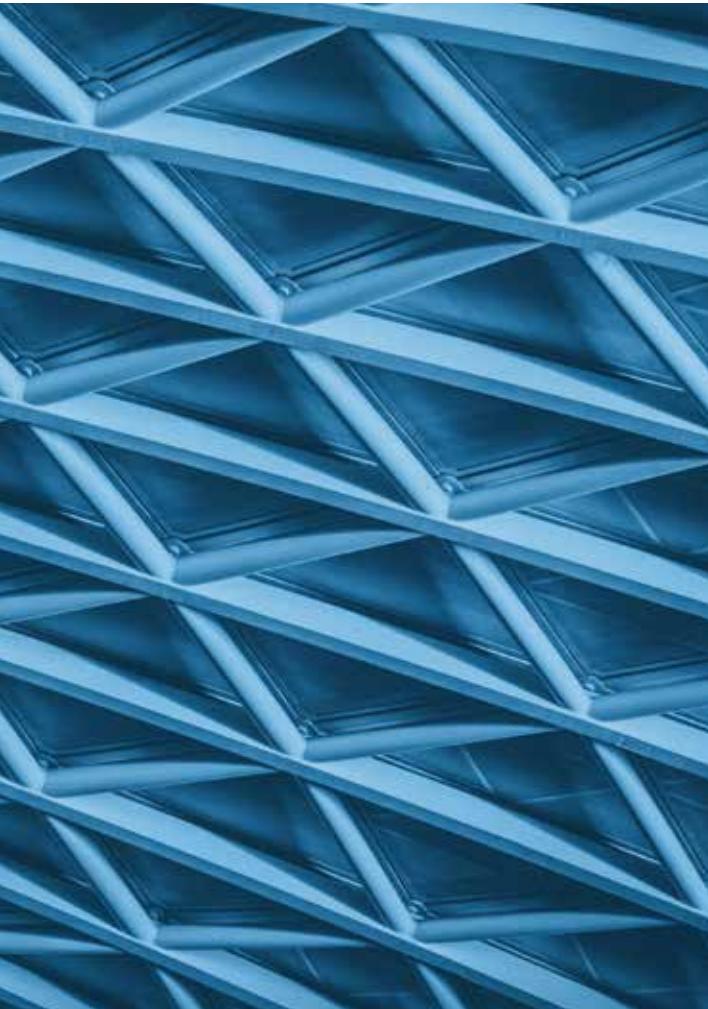
- Support and protect whistleblowers, including by:
 - investigating non-criminal reprisals in the public and private sectors
 - taking non-criminal matters to the workplace tribunal or courts on behalf of whistleblowers or on the authority's own motion to remedy reprisals or detrimental outcomes in appropriate cases.¹⁷

We would suggest that such a whistleblower protection role needs to be separate from any investigative role to avoid any tension between investigating impartially and providing supportive advocacy.

Without a mandatory reporting regime – where public authorities would be required to notify an oversight body when a PID is made – the oversight system remains reactionary. Unfortunately, by the time a reporter approaches our office, the damage is often already done. In NSW, any regime would need to consider the s 11 notification arrangements in the *Independent Commission Against Corruption Act 1998* (ICAC Act) to minimise duplication of resources – given that approximately 80% of PIDs made by NSW public officials primarily allege corrupt conduct (see Part 3).

17. Parliamentary Joint Committee on Corporations and Financial Services, p 157.





Part 2:

Nudging management reactions with behavioural economics

This part examines the impact of cognitive and motivational biases on how managers respond to reports of wrongdoing from staff. It then considers the implications for authorities, our office and broader legislative reform.

2.1. Management ‘blind spots’

In recent years, we have seen cases where experienced and senior managers have taken overt actions, or have been complicit in overt actions, that an objective assessment would see as detrimental to the reporter. Even in circumstances where the managers had recognised that a report is a PID and it appears they were likely to have been aware of their obligations to protect reporters, they took action that was detrimental to the reporter that could not be justified by the evidence.

One explanation for this behaviour, of course, is that they were intentionally trying to damage the reporter and did not believe that their actions would be questioned. An alternative explanation is a phenomenon that can be described as ‘blind spots’. This is where – despite understanding the threshold, process and their obligations – managers do not identify or action issues appropriately due to a disconnect between their awareness of certain facts or circumstances and how they intuitively think, feel and respond to those events.

Case study 4, a complaint that we dealt with in 2016–17, is one example. Case studies 5 to 7 are of PIDs that we have reviewed as part of our audit program. In each situation, management appears to have been blind to relevant considerations or failed to appreciate that certain decisions may be perceived as reprisal – although any objective assessment would have shown that this was clearly the case.

Case study 4: *Is a restructure a reprisal if no reasons are given?*

A senior executive made a PID internally and to the ICAC about corruption by another senior executive, including a failure to declare a conflict of interests when engaging a company to do certain work. The allegations were investigated internally and – although the public authority found there was no evidence of corruption – it was clear that a conflict of interests had not been declared when it should have been.

The reporter said that detrimental action was taken in reprisal for the report – in that decisions were made to downgrade the reporter’s role from the Senior Executive Service level and to make structural changes so that the reporter would have no direct reports. The reporter would also no longer report directly to the Secretary, but to the Deputy Secretary who had been implicated in the allegations.

The external investigator appointed to investigate the reporter’s allegations did not find any evidence of reprisal as defined in the PID Act. However, it was not surprising that the reporter had perceived that the PID was related to the decision to change the reporter’s role – given the timing of the restructure and the involvement of people implicated in circumstances leading to the allegations.

In such circumstances, it was very surprising that no reasons were documented to justify the downgrading of the reporter’s role. This was despite the fact that the senior officer responsible for

the restructure proposal was the authority's PID coordinator and therefore aware of the reprisal offence and disciplinary provisions in the PID Act.

After receiving some external advice, the public authority decided not to proceed with the downgrading of the role and the reporter continued to have a reporting line to the Secretary.

Case study 5: *Perception overshadows reality when dealing with a conflict of interests*

An anonymous report alleging corrupt conduct in relation to recruitment practices, performance management and inappropriate workplace behaviour was made against an executive officer within an authority's professional standards unit. The allegations were investigated by a senior manager, who reported directly to the officer who was the subject of the PID. The investigator was also the subject officer in a related PID.

The head of the authority considered there was a perceived conflict of interests and managed this issue by directing the investigator to not involve the subject officer in the investigation.

In our view, it is not appropriate for officers to review allegations against their line managers. In this case the matter should have been investigated either by an officer more senior than the subject officer, preferably from elsewhere within the authority, or alternatively referred for external investigation – either by a suitable external investigator or an investigating authority.

It is also unclear why the authority did not consider that the senior manager had an actual conflict of interests in relation to the investigation as:

- the manager reported directly to the subject officer
- the outcome of the investigation could affect the manager's position – because of the potential effect on the manager's ongoing relationship with the subject officer
- the manager was the subject of and had benefited in relation to one aspect of the allegations made about the subject officer
- there was potential for the subject officer, by virtue of their position, to influence the outcome of the investigation if that officer was made aware of it.

Case study 6: Reprisal alarm triggered by poor timing

A senior executive made allegations of bullying and harassment and serious maladministration against the CEO of an authority to its board. Despite the reporter's identity being known to the subject of the allegations, an assessment of the risk of reprisal was not conducted and no steps were taken to mitigate risks to the reporter. The reporter engaged a lawyer who communicated with the board on their behalf.

An external investigation found the allegations against the CEO were not sustained.

Around this time, the authority wrote to the reporter's lawyer to advise of changes to the reporter's role – which included a reduction in the number of direct staff reports and a diminution in the reporter's responsibilities. The CEO and the board did not appear to consider that this action could be perceived by the reporter as reprisal action for making the PID.

After legal action by the reporter, the authority offered the reporter a voluntary redundancy – which the reporter accepted.

Case study 7: Failure to protect was a case of too little, too late

A public official made a PID alleging misconduct by managers within the workplace, including allegations of bullying and harassment. The reporter's need for support escalated, leading the reporter to request a period of leave that was rejected by the authority. A support person from human resources was offered to the reporter when it became obvious the reporter was no longer coping. However, the reporter resigned due to the length of time the investigation was taking, health concerns and unresolved ongoing work issues.

It is unclear whether the issues raised by the reporter were fully investigated by the authority, as the need for an investigation was questioned once the reporter had resigned.

Despite the nature of the allegations made by the reporter and awareness of the reporter's need for support, the authority failed to take action to ensure the reporter felt safe in the workplace and put in place appropriate supports for the reporter's wellbeing.

Why do people make the decisions they do?

We wanted to explore the complex question of what is going on below the surface of managerial behaviours. We thought that some of the answers may lie in understanding the psychological factors lying outside conscious awareness that can negatively affect decision-making about the handling of PIDs. As Professor Hall notes:

It is probable that people unconsciously react first to situations, and then consciously reason through their decisions and behaviour in relation to those situations. This process can

happen so fast that it is all perceived as being part of an authentic and conscious act of evaluation. Yet because the reactive part of the process happens almost exclusively at the unconscious level, the reasoning that follows is based on those aspects of the process that reach conscious awareness.¹⁸

In our experience, the reactions of managers of public authorities (other than the internal investigative or audit staff whose roles involve responding to PIDs) to reports of wrongdoing from staff can include:

- Annoyance or resentment – if the allegations are perceived as an inconvenient intrusion affecting operational effectiveness (particularly if they think the allegations are unfounded, about a relatively minor matter or motivated by a personal grievance or the reporter being performance managed).
- Affront or offence – if the allegations are about them or close colleagues (again, particularly if they think the allegations are unfounded, about a relatively minor matter or poorly motivated).
- Embarrassment – if the allegations concern them personally or actions/inactions for which they are responsible.
- Humiliation – if the allegations that caused embarrassment turn out to have substance and become known to superiors, Ministers or the media.

The PID Act and related policies and procedures are based on an assumption that senior staff of public authorities will be ready, willing and able to comply with obligations to take adequate steps to effectively manage PIDs and the people who make them. These expectations may not be realistic if senior staff have a strong emotional reaction to disclosures.

Behavioural economics involves identifying the emotional, cognitive and social biases that influence behaviour.¹⁹ Cognitive biases are mental shortcuts that can distort reality.²⁰ Because of the human need to process information quickly, we unconsciously make decisions – often based on irrational considerations. Other biases arise because we are consciously or unconsciously motivated to seek or avoid a particular outcome.²¹ This may be because of self-interest, social pressures or even seemingly irrelevant situational factors.

In section 2.2 we analyse how and why these negative responses occur and in section 2.3 we suggest actions that public authorities, our office and governments can take to minimise their impact.

18. Katherine Hall 2009, *Why good intentions are often not enough: The potential for ethical blindness in legal decision-making*, Australian National University College of Law research paper no. 09-32, p 6.

19. Bri Williams 2018, *Nudging management of whistleblowing complaints: Behavioural analysis and recommendations*.

20. Samuel Bond, Kurt Carlson, Margaret Meloy, J Edward Russo & Robin Tanner 2007, 'Information distortion in the evaluation of a single option', *Organizational Behavior and Human Decision Processes*, v 102, pp 240-254; J Edward Russo, Victoria Medvac & Margaret Meloy 1996, 'The distortion of information during decisions', *Organizational Behavior and Human Decision Processes*, v 66, pp 102-110.

21. Ziva Kunda 1990, 'The case for motivated reasoning', *Psychological Bulletin*, v 108 (3), pp 480-498.

2.2. Core barriers underpinning avoidance and resistance

With a behavioural expert, we conducted a behavioural analysis to examine how cognitive and motivational biases might affect how managers of an authority respond to internal reports.

For example, do such biases increase the chances that managers might inadvertently or unintentionally:

- take action that is detrimental to a reporter
- fail to realistically consider the risks to a reporter
- fail to take adequate steps to protect a reporter?

The behavioural analysis involved:

- Considering over 150 behavioural economics principles to determine which are most relevant.
- Using the Williams behaviour change framework to distil behavioural reasons for resistance/inaction into three categories – apathy, paralysis and anxiety.²²
- Determining what behavioural enablers to use to move people from point A (current behaviour) to point B (desired behaviour).

We defined the current behaviour that we were seeking to change as managers not supporting and protecting reporters, or not recognising that certain actions affecting the reporter are effectively detrimental action in reprisal. The desired behaviour is managers supporting or protecting the reporter even though they may feel slighted, embarrassed or humiliated about the report of wrongdoing.

The framework identifies three key factors that may affect how managers respond to PIDs:

- Apathy – results from a lack of engagement. This is when people are simply not interested in doing what they know they should.
- Paralysis – results when people feel overwhelmed by the options to manage reports. There is a paradox when it comes to choice: people desire the freedom to choose, but get overwhelmed when presented with lots of options.
- Anxiety – results from a fear about regulatory processes and reputational damage.²³

Apathy

The behavioural analysis identified a range of mental shortcuts related to apathy that may result in managers failing to act on a report of wrongdoing – see Table 1.

22. Williams.

23. Williams.

There is a natural human tendency to ‘shoot the messenger’ – that is, to dislike a person who brings us unpleasant information, even when that person did not cause the bad news.²⁴ This can be intensified depending on the manager’s existing relationship with the reporter or subject officer/s.

Confirmation bias suggests that people have a tendency not to see what they don’t want to see. For example, managers may look for evidence that a reporter is a troublemaker if that is how they view them.

Reputation threats can bias managers. Managers may be more likely to rigorously question reports that pose a threat to their view, expertise or area of responsibility (known as disconfirmation bias).²⁵ This is referred to in the literature as motivated scepticism – which is the mistake of applying more scepticism to claims a person doesn’t like than to claims they do.²⁶

Managers who are motivated to avoid the investigation of an allegation might assess an allegation as less credible – that is, distort the information – as a way to justify their decision not to take appropriate action.²⁷ Managers can also develop illusions of objectivity, where they believe that their decision-making processes are objective – even while they are pursuing self-interests and ‘are more likely to arrive at conclusions that they want to arrive at’.²⁸ Things that can increase the risk of investigative confirmation bias include time pressure (exacerbated by heavy workloads)²⁹ and the need for cognitive closure – the desire to be able to reach a clear-cut opinion on a topic.³⁰

Some strategies to address apathy include:

- Minimise effort and maximise the reward – If we want behaviour to occur, the reward must be greater than the effort. We must therefore make managing PIDs seem straightforward and a standard practice. While compliance by its nature can focus on the negative, it is also important that we continue to recognise good management of PIDs.

24. Robert Cialdini 2006, *Influence: The psychology of persuasion*, Harper Business.

25. Daniel Kahneman 2012, *Thinking, fast and slow*, Penguin Books, pp 45 & 81; Cordelia Fine 2007, *A mind of its own: How your brain distorts and deceives*, Icon Books, London, pp 13–16; Kunda, pp 412–422.

26. Charles Taber & Milton Lodge 2006, ‘Motivated skepticism in the evaluation of political beliefs’, *American Journal of Political Science*, v 50 (3), pp 755–769.

27. Aaron Brownstein 2003, ‘Biased predecision processing’, *Psychological Bulletin*, v 129, pp 545–568.

28. Kunda p 27.

29. Karl Ask & Pär Anders Granhag 2005, ‘Motivational sources of confirmation bias in criminal investigations: The need for cognitive closure’, *Journal of Investigative Psychology and Offender Profiling*, v 2, pp 43–63; Raymond Nickerson 1998, ‘Confirmation bias: A ubiquitous phenomenon in many guises’, *Review of General Psychology*, v 2 (2), pp 175–220.

30. Karl Ask & Pär Anders Granhag 2007, ‘Motivational bias in criminal investigator’s judgments of witness reliability’, *Journal of Applied Social Psychology*, v 37 (3), pp 561–591; Arie Kruglanski & Donna Webster 1996, ‘Motivated closing of the mind: “Seizing” and “freezing”’, *Psychology Review*, v 103, pp 263–283.

- Consistency in intentions and behaviour – Managers should be encouraged to publicly communicate to staff their support of reports of wrongdoing. People have a drive to be consistent with their own values and public declarations.
- Prime the environment – By shaping the physical environment to include markers of ethical behaviour, this can help prime managers to make decisions based on ethical considerations. This could include, for example, statements or posters supporting respectful workplaces, openness and transparency, or promoting the authority's values. Presenting awards and displaying certificates for ethics and appropriate management can help prime behaviour.
- Create psychological distance – Studies show that we are better at solving other people's problems than our own. Managers can be encouraged to distance themselves from a report by considering what advice they would provide others who had received it. Taking this a step forward, systems can be designed to create distance between the decision-maker and the work area the report concerns.

Table 1. How apathy can affect managerial responsiveness

Key behavioural principles	Definition	Example/s	Implication
Dual processing theory	System 1 (fast, intuitive, emotional thinking that relies on habits and associations) often overrides system 2 (slow, deliberative, rational thinking that relies on facts and logic).	Manager reacts to how they feel about a reporter rather than putting feelings aside to consider the substance of their disclosure.	Most decisions are made quickly on the basis of intuition or experience and rationalised later. Materials, processes and training need to consider system 1 thinking.
Short-term bias	People prioritise short-term goals and seek to defer pain to a future time.	Manager who is already busy ignores the disclosure and thinks they'll get around to it later.	People overestimate the time and capacity they'll have at a future time.
Empathy gap	People under the influence of visceral factors (eg hunger, emotion) underestimate how much their decisions are being driven by their current 'hot state'.	A manager's reaction in a 'hot state' will be different to what they imagined they would have made in a 'cold state'.	May result in 'ethical fading' where stated 'should do's' get replaced in the heat of the moment by 'want to's'. Materials and training need to emphasise 'hot state' realities and try to have the manager pre-commit themselves to a 'cold state' decision path.
Overconfidence or attitude certainty	People overestimate their abilities, which can cause risk taking.	Manager believes they can handle it without having to formalise anything. Manager dismisses report as being ridiculous. Managers won't change their mind in light of new evidence.	Managers may stray from appropriate course and fail to seek expert advice.
Confirmation bias	People tend to seek information that confirms rather than disaffirms their pre-existing perspective.	Managers may look for evidence a reporter is a troublemaker if that is how they view them. Managers may be attracted to one-sided information when investigating allegations.	Manager's perspective cannot be entirely objective.

Key behavioural principles	Definition	Example/s	Implication
Motivated scepticism (or disconfirmation bias)	People apply more scepticism to claims they don't like than to claims they do.	Managers may be more likely to rigorously question reports that pose a threat to their view, expertise or area of responsibility.	Managers should not be responsible for investigating matters within their area.
Reference dependence	People do not have absolute judgements – they evaluate outcomes relative to a reference point.	A manager's response to allegations will be made in reference to other experiences.	If a report seems minor compared with others, it may be dismissed. Providing case studies with a low bar may encourage managers to take reports more seriously.
Fundamental attribution error	People have a tendency to attribute their own failures to circumstances outside their control, but attribute success to themselves. For others, they have a tendency to assume failures are due to their character or ability – not to outside circumstances.	Managers may take frustration about a report out on the reporter and make it personal – rather than looking for situational causes.	Tendency to blame reporter rather than the situation. Not admitting any personal failure to manage appropriately – blaming circumstances outside their control.
Moral licensing	People may give themselves license to do the wrong thing if they have done the right thing.	Manager champions moral cause (eg diversity) while failing to take appropriate action on a report of wrongdoing. Manager fails to take action on a report because the subject/s of the allegation is otherwise a strong performer.	A manager who thinks they are a 'good' person may still not do the right thing in some circumstances, including when responding to reporters.
Social norms	Tendency to defer to what others do – that is, what's 'normal'.	Manager sees nothing wrong in behaviour described in report – 'it is how we do things around here'. Manager sees other managers handling issues in same way.	Need to normalise action of dealing with reports appropriately.

Key behavioural principles	Definition	Example/s	Implication
Liking (psychological closeness)	People are more likely to justify the actions of those similar to them/ with whom they are close.	Manager prefers the story of the subject/s of the allegation to reporter because they like them.	Managerial reaction is likely to be based on personal association.
Affect influenced bias	People make decisions that are heavily influenced by their current emotions.	Manager has a strong emotional preference for a particular outcome or staff member.	How a manager feels will affect what action they decide is appropriate.
Priming	Behaviour can be influenced by subconscious cues in the environment.	Messages in workplace about honesty help remind staff about ethical behaviour.	The workplace environment will shape behaviour.
Processing fluency	Things that are easy to read or comprehend tend to be seen as easier to act on.	Manager ignores policy or process because it looks difficult.	Materials need to make managing a report look easy – including typeface colour and size, form design and structure, webpages.
Effort vs. reward	For behaviour to happen, reward needs to be (1.5–2.5 times) greater than effort.	Effort to protect reporter and manage issue is clear, but rewards for doing so are not.	Managers may not be bothered because the effort seems greater than the payoff.

Source: Adapted from Bri Williams 2018, *Nudging management of whistleblowing complaints: Behavioural analysis and recommendations*. Also see Kahneman; Taber & Lodge; Fine; Kunda.

Paralysis

Paralysis can occur when managers are confused about what they need to do to deal with a report or protect the reporter – see Table 2. We see this particularly in large authorities where there are multiple avenues and policies for both making and dealing with staff reports – including grievances, misconduct matters, PIDs, clinical incidents, work health and safety. This can result in similar matters being dealt with in very different ways.

Because of choice supportive bias – where people will continue to defend a decision even if it has flaws – paralysis can also mean a continuation of poor behaviour.

Some strategies to address paralysis include:

- Draw on social norms – When in doubt, people follow the lead of others. Guidance to managers can therefore be framed in terms of ‘the most common way...’ or ‘the most popular approach’ when describing what action to take in particular scenarios.

- Consider relativity – People compare options in relative rather than absolute terms. This can create tension about not doing the appropriate thing and make it easier to justify the action to themselves and others. This will also help create psychological distance and overcome choice supportive bias. For example, in a whistleblowing workshop, we used a case study that guided participants through the implications of choosing to do nothing compared with taking other action. This highlighted to participants that failing to manage a situation initially can lead to it escalating and needing more intensive management in the long-term.
- What’s the default? – When in doubt, people tend to go with the default option. For example, making it mandatory for managers to escalate all reports of wrongdoing, regardless of seriousness, to a centralised area for triage is likely to remove doubt about whether this is the appropriate decision.

Table 2. How paralysis can affect managerial responsiveness

Key behavioural principles	Definition	Example/s	Implication
Paradox of choice	People desire the freedom to choose but can get overwhelmed by it.	Too many options to action issue or protect reporter may result in decision paralysis.	More does not mean better when it comes to helping managers decide on a course of action.
Compromise effect	When they know they have to justify their decision to others, people are more likely to opt for the choice that is easiest to explain.	Choosing a middle ground that doesn’t go far enough for the reporter but that internal stakeholders will more readily accept. Arranging for the reporter to be moved rather than the problem solved.	Managers may try not to ‘rock the boat’ rather than take appropriate action.
Choice supportive bias	People tend to think positively about a choice once it is made – even if it has flaws.	Managers who have previously chosen not to deal with wrongdoing will continue to hold this view even when confronted by a staff report about it. Managers who have chosen not to support the reporter will recall more negative attitudes about that person.	Post-rationalisation of actions will distort the reality of experience.

Source: Bri Williams 2018, *Nudging management of whistleblowing complaints: Behavioural analysis and recommendations*.

Anxiety

Anxiety may well be another reason why managers fail to take steps to deal with a report or protect the reporter – see Table 3. Loss aversion means that people are likely to be more motivated to avoid loss than to seek a gain. They may therefore keep quiet about an issue or limit the investigation of allegations that have the potential to reveal errors or wrongdoing that, in hindsight, they should have uncovered earlier. This phenomenon is also referred to as information avoidance.

Anxiety can be addressed in two ways. The first is to give people nothing to fear while the second is to give people something to fear:

- Option 1 – Because managers won't take action if they are anxious about what it means to do so, we need to mitigate the points at which they are most fearful. This can include providing advice at key decision-making moments such as whether to treat a report as a PID, how best to deal with it, and what action to take to protect the reporter.
- Option 2 – We can encourage action by framing the correct management of an issue as an opportunity to improve the authority, while framing inertia – and the subsequent time, resource, morale, reputational and legal costs of that – as a loss. This also addresses apathy and paralysis.

The terms 'public interest disclosure' or 'whistleblowing' may themselves heighten sensitivity. It may be more appropriate to talk about addressing staff concerns or reports.

Table 3. How anxiety can affect managerial responsiveness

Key behavioural principles	Definition	Example/s	Implication
Loss aversion	People can be more motivated to avoid loss (ie waste, pain) than to seek a gain.	A manager keeps issue quiet to avoid embarrassment.	Managers will be more concerned about what they stand to lose (eg stakeholder reaction) than what they stand to gain (eg complying with obligations).
IKEA effect	People overvalue what they have contributed to and it takes more for them to give it up.	A manager does not want to give up team members even if they may have transgressed. A manager continues to defend an established process that is causing the authority to waste time and resources.	Managers will be loath to make changes to teams, processes or structures they have been involved in establishing.

Key behavioural principles	Definition	Example/s	Implication
Availability heuristics (ie mental shortcuts)	Things that come easily to mind are often relied upon.	A manager jumps to a worst case scenario (ie reputational/ professional damage) because they've seen coverage in the media. A manager treats a staff report as a grievance or performance management issue instead of a PID because they know that process.	Managers may react poorly when a report is made due to a narrow understanding of what is involved.
Information avoidance	People choose to not obtain knowledge that is freely available.	A manager avoids investigating the allegations of the reporter.	Just because information about what to do is provided, this does not mean it will be accessed.
Regret aversion	People anticipate the regret they'll feel if their decision is judged wrong in hindsight.	A manager may prefer to take no action on a report because it feels less like a decision that could come back to bite them.	If managers don't want to be wrong, they'll prefer to do nothing.
Certainty	People overweigh outcomes that are certain over those that are possible. When losses are certain, people become more risk seeking.	If managers know they are certain to be badly affected (ie because they have been ignoring or failed to recognise wrongdoing), they are more likely to undertake risky behaviour.	Expect managers to seek to avoid certain punishment by blocking, obfuscating, delaying or blaming.
Escalation of commitment	People continue a course of action despite it resulting in negative outcomes.	A manager becomes increasingly dismissive of reporter.	To justify previous behaviour and signal nothing is wrong with it, managers may continue in the same vein.

Source: Adapted from Bri Williams 2018, *Nudging management of whistleblowing complaints: Behavioural analysis and recommendations*.

2.3. Small nudges or structural reform?

It is important to design legislation, systems and policies to mitigate the impact of any of these biases. By anticipating the behavioural reasons that affect decision-making, public authorities and our office can design communications, training and processes to more effectively improve the way in which managers respond to PIDs.

Actions public authorities can take

Some actions that public authorities can take to improve the likelihood that reporters of PIDs will be encouraged and appropriately supported:

- Making sure that both staff and managers have a clear understanding of what conduct constitutes serious wrongdoing and may need to be referred to as an external investigating authority such as ICAC. We have found that lower-level corrupt conduct such as timesheet fraud is often not recognised as such and instead dealt with via a performance management process. It is also important to educate staff who may have previously only worked in the private sector about the conduct expected of public officials, particularly in areas such as accepting gifts or benefits.
- Ensuring there is an effective system for supervisors and managers to escalate reports of wrongdoing to a central unit or PID coordinator for triage. Making this mandatory, even for less serious matters, reduces the paradox of choice and removes decision-making from the source of the biases. Reports may then still be devolved to local managers for handling, with guidance if appropriate.
- Including responsibilities for receiving reports of wrongdoing and escalating them to an appropriate area in the role descriptions of managers and supervisors. Regular performance management discussions can check compliance with these obligations.
- Implementing processes that make receiving and assessing a report of wrongdoing as straightforward as possible for managers and supervisors. This may include adopting templates such as our Checklist for recipient of internal report or Initial assessment of internal report documents.
- Setting up an advice line so that experienced PID coordinators and other staff can provide managers and supervisors with advice in difficult situations and help them to overcome anxiety and paralysis.
- Establishing assessment panels – with the responsibility for determining whether a report is a PID and what action should be taken in response so that the function does not lie with any one individual. We have seen public authorities with such panels made up of senior officers from relevant areas of the organisation – such as internal audit, governance or human resources and in one case the CEO. Bringing in different perspectives reduces the influence of each person's bias.

- Debriefing how challenging PIDs were handled without attributing blame. By reflecting on their behaviour, managers may overcome blind-spot bias – failing to recognise one’s own biases. Lessons learnt can be shared with other managers in the authority that have a role in receiving and handling PIDs.

Good practice 2: _____ **Liverpool City Council**

Liverpool City Council ensured its 16 newly appointed disclosures officers were well prepared for their new role. The PID coordinator provided detailed letters of appointment signed by the CEO thanking staff for taking on the role, outlining their PID related responsibilities, and stating council’s commitment to maintaining an ethical workplace where staff can report wrongdoing without fear of reprisal. The new officers received training by the PID coordinator who used a combination of council and NSW Ombudsman PID training materials.

Liverpool City Council also promoted details of the disclosures officers and PIDs to all staff by publishing council’s *Reporting serious wrongdoing* document on the intranet and distributing copies to all depot staff at workplace toolbox sessions. Each staff member was required to sign they had received their copy.

Good practice 3: _____ **Roads and Maritime Services**

Roads and Maritime Services developed a PID fact sheet *Responsibilities of nominated disclosure officers*. It sets out what these officers should do ‘as leaders’, including:

- encouraging staff to report suspected wrongdoing
 - promoting the process for making PIDs
 - identifying issues in the course of their work
 - discussing concerns reporters may have
 - reminding reporters about the employee assistance program
 - sending the report to the Audit and Risk Branch.
-

Actions our office can take

Following changes to the PID Act, we are committed to redesigning our guidance material for public authorities to make things easier to find, comprehend and use. We want to make managing a report as easy as possible in order to reduce apathy, paralysis and anxiety.

This will include, for example:

- Reducing the number of guidelines from 25 to ensure that information is able to be located easily.

- Developing some short and sharp guidance material aimed at managers and supervisors who rarely receive reports about what exactly they should do in that situation.
- Acknowledging ‘system 1 thinking’ throughout the material to help managers recognise what might be driving their decisions.

A key publication is our model internal reporting policy. Public authorities are required by s 6D of the PID Act to have regard to our office’s guidelines and model policy when formulating their own policy for receiving, assessing and handling PIDs. Our audit in 2014 confirmed that the majority of PID policies established by authorities are based on our model policy. By streamlining this document, we can make it easier for staff and managers to comprehend and follow the process for reporting wrongdoing.

In focus 1: Using behavioural insights to improve our communication

During 2017-18, we asked the Behavioural Insights Unit (BIU) in the Department of Premier and Cabinet for advice on how we could improve our PID-related communications. This includes correspondence to reporters, our fact sheets, and the text on our website.

While still encouraging the reporting of serious wrongdoing, we wanted to:

- reduce the number of purported PIDs made to our office that did not meet the criteria of the PID Act
- know the best way to tell people that their complaint was not a PID to increase the likelihood of them accepting that decision.

The BIU advised us to:

- Make our website ‘transactional’ rather than simply providing static information. This could involve, for example, stepping people through a number of separate webpages to find out if their report is a PID – and, if not, directing them to a more appropriate place – with a link to our online complaints form at the end. By including information about our process and what is expected from complainants, the person has essentially agreed to this process and standards when they submit their complaint.
 - Work on search engine optimisation to ensure that if people type in words such as ‘whistleblowing’ they are directed to our website.
 - Revise the template letters we have available for public authorities.
 - Revise our standard letters relating to PIDs by making it very clear that we are bound to operate within the constraints of the PID Act when declining to take further action.
-

Our training for public sector managers and staff already incorporates elements of behavioural insights. We make it relevant to attendees by tailoring each session in the following ways:

- Demonstrating how encouraging reporting and dealing with wrongdoing aligns with the authority's values.
- Using wrongdoing examples from the authority's sector (eg local government, university, health).
- Drawing on the authority's PID policy and any associated documentation to explain the reporting process.
- Taking attendees through a case study that asks them to consider the perspectives of the different parties involved.

The behavioural analysis identified ways in which we could build on this. The real life examples we present are necessarily limited to those serious wrongdoing incidents that are reported in the media or publicly released investigation reports. We also plan to include more examples of wrongdoing or case studies that managers are most likely to come across – such as timesheet fraud or improper access to information.

In training exercises, we could, for example:

- Have attendees pretend they are in a 'hot state' while role playing receiving a PID.
- Have managers consider reasons both for and against investigating a particular matter, with a focus on identifying the relevant facts and evidence. Since we automatically focus on information that supports existing views, this may challenge managers to check their assumptions.
- As people reason more effectively when they believe they are making a decision for someone else, have the manager separate themselves from the situation by prompting with questions like 'What would my principal officer do?' or 'If I was mentoring a more junior manager about how they should manage this, what would I say?'.

Research suggests that increasing awareness of biases and other psychological factors can help people to recognise their own unconscious drivers. We will workshop the results of the behavioural audit and other possible solutions at a future practitioner forum.

Wendy Addison, whistleblower and founder of SpeakOut SpeakUp, talks about the need for managers to 'listen up'.³¹ As well as our key communication messages focusing on encouraging staff to speak up, we will reach out to managers about the need to be conscious of their own behaviour when responding to staff reports of wrongdoing.

We will also continue to encourage public authorities to contact us if they need advice on the best way to deal with a matter or protect a reporter.

31. Mara Lemos Stein 2017, 'Whistleblower: Companies need to encourage speak-up culture', *Wall Street Journal*.

Actions governments can take

The main protections the PID Act provides for reporters are making it a criminal offence to take detrimental action substantially in reprisal for the making of a PID, and providing that reporters may seek compensation for any such detriment. However very rarely are we able to find evidence that the adverse impacts alleged by reporters can be traced back to an act of deliberate reprisal.

We are more likely to find evidence that suggests the public authority has failed to realise their obligations in preventing harm to a reporter. Many matters appear to be a result of managers failing to follow procedures – possibly as a result of their blind spots. Rather than being the result of active decisions, they are mistakes or omissions that, in retrospect, are negligent.

We believe that the implementation of the PJC's recommended amendments to the PID Act by the NSW Government will lead to better protection for reporters. As submitted at the time, there should be a greater focus in the legislation on placing proactive obligations on senior management in public authorities to support and protect a reporter.

One idea that was not canvassed in the PJC's review of the PID Act is to include a corresponding provision that allows reporters to seek remedies in cases where damage has occurred because the authority has failed to fulfil their duty to prevent reprisal and are therefore liable. This may help to address management apathy by increasing the risk involved in not dealing with PIDs appropriately as well as increase the effect of loss aversion. A Bill currently before the federal Parliament to amend the *Corporations Act 2001* (Cth), the Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2018, takes this approach.

As discussed in Part 1, an argument can also be made for establishing a whistleblower advocacy role within an existing independent authority. Given human nature, human frailties, and the power differentials between a reporter and the authority, there will inevitably be situations where a reporter needs an advocate. This however goes beyond the current roles of our office.





Part 3: The PID landscape

This part reports on the 1,166 PIDs made internally to public authorities and externally to investigating authorities in 2017-18 and how this compares to other jurisdictions.

3.1. PIDs reported by public authorities

Since 1 January 2012, the PID Act has required public authorities to report certain statistical information about their activities under the Act directly to our office every six months (s 6CA), as well as in their own annual report (s 31). These statistical reports are sent securely to our office via the PID online reporting tool. We use the information provided to inform and appropriately target our future awareness and auditing activities.

Table 4 shows the number of statistical reports provided to our office for the two relevant six monthly periods, as at 31 October 2018. PID practitioners in all public authorities were reminded before the due date of their reporting obligation. It is disappointing that 18% of identified public authorities failed to provide a report to our office in the most recent period.³² We will continue to follow up with individual authorities about their non-compliance.

Table 4. Statistical reports provided by public authorities to our office

Reporting period	Number of statistical reports provided	Proportion of identified authorities
July – December 2017	341	85%
January – June 2018	315	79%

In 2017-18, we also received 82 reports from public authorities that related to previous reporting periods.

In focus 2: An explanation on counting

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

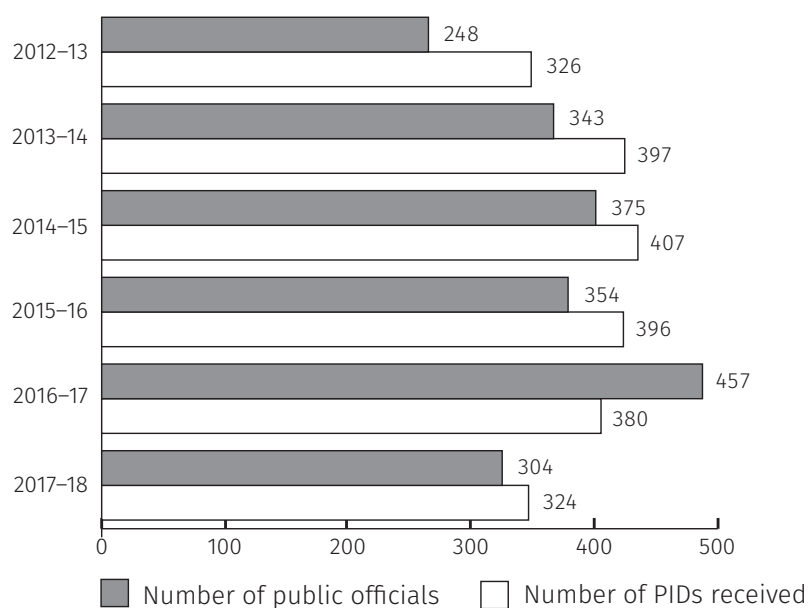
We told public authorities that the number they reported to us should refer to PIDs the authority took responsibility for handling, regardless of whether they were made directly to the authority or referred by another public or investigating authority under s 25 or s 26 of the PID Act. They should not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

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

32. The PID Act defines a public authority as any public authority whose conduct or activities may be investigated by an investigating authority. It specifically includes public service agencies, state owned corporations and their subsidiaries, and local government authorities. However given the broad scope of the definition, it is difficult to comprehensively identify the exact number of other entities such as statutory authorities with responsibilities under the PID Act.

Figure 1 shows the change in the number of public officials who made PIDs directly to public authorities and the number of PIDs received by authorities over time. After the PID Act reporting requirements started in 2012, the number of PIDs received initially increased – perhaps as public authorities became more aware of their responsibilities. Since 2015, however, the number of PIDs received by public authorities has been declining. In 2017–18, public authorities reported receiving 324 PIDs – a 15% decrease from the 380 received in 2016–17.

Figure 1. Number of public officials who made PIDs directly to, and number of PIDs received by, public authorities over time³³



There is no clear explanation why the number of PIDs reported to have been received by public authorities continues to decrease. With the exception of one public authority, all large authorities that we would expect to receive PIDs have submitted their reports to us. It appears to us that there has been a genuine decrease in the number of PIDs received.

Some possible reasons for this decrease include the following:

- In recent years, the Public Service Commission has successfully focused on reducing the level of bullying and harassment in the NSW state government. The number of respondents to the People Matter Survey who said they have been subjected to bullying at work in the last 12 months decreased from 29% in 2012 to 18% in 2018. Given that PIDs are often made in the context of a workplace conflict, the decrease in the rate of bullying may have also led to fewer reports of public interest wrongdoing being made.

33. The number of public officials who made a PID in 2016–17 is due to one authority reporting that 121 public officials made one PID.

- When public authorities submit their report to us, we ask them how many staff they have. This has decreased by 9% (n=40,267) over the past three years. This is likely to be because of the impact of efficiency dividends across the NSW state government and the trend towards service delivery being provided by the private sector. For example:
 - Energy providers typically receive a high number of PIDs and a number of large state owned corporations have been privatised in recent years.³⁴
 - The provision of a significant proportion of disability services has transferred from government to the not-for-profit and private sectors.

Not only were fewer PIDs received this year, but fewer public authorities reported receiving them – only 72 said that they received a PID in 2017–18 (20% of the 356 public authorities that submitted a report during the financial year) compared to 86 public authorities (24%) in the previous year. Most identified public authorities (80%, n=284) did not report receiving any PIDs over the year. As is expected given their size, this differs depending on the type of authority:

- State government departments (100%, n=10), local health districts (82%, n=14) and universities (70%, n=7) were most likely to receive a PID.
- Most state owned corporations (75%, n=6), state government agencies (79%, n=45) and local councils (81%, n=113) did not report receiving a PID.
- Only one local Aboriginal land council (LALC) reported receiving a PID (1%) and other statutory bodies did not receive any.³⁵

We are often concerned when authorities are ‘pleased’ to advise us that they have not received any PIDs. Although it depends on the size of an authority, receiving a large number of PIDs can be indicative of an open culture where staff feel they can raise concerns. In 2018-19, we will start a project exploring positive reporting cultures. This will involve writing to public authorities with at least 100 staff who have reported not receiving a PID since the reporting requirements came into operation to ask them why.

We also looked at the number of PIDs received on a *per capita* basis. As Table 5 shows, state government departments receive the fewest number of PIDs per 10,000 staff, followed closely by local health districts and universities. This shows that – even though these are the types of public authorities that are most likely to receive PIDs – we would expect them to be receiving more given how many public officials they employ.

34. See NSW Parliamentary Research Service 2017, *Privatisation in NSW: a timeline and key sources*.

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

Table 5. Number of PIDs received per 10,000 staff by type of public authority in 2017–18

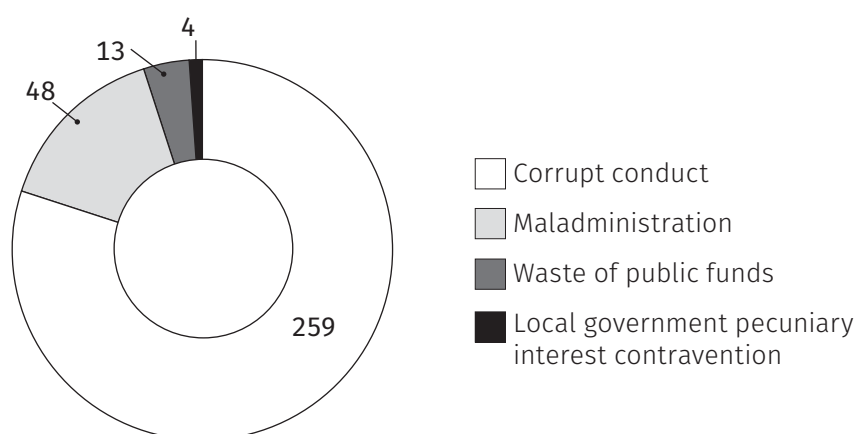
Type of public authority	Number of PIDs received per 10,000 staff
State government departments	4.21
Local health districts	5.43
Universities	6.10
State government agencies	10.20
Local government authorities	11.24
Local Aboriginal land councils	32.41
State owned corporations	42.07

Subject matter of the PIDs

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

Consistent with previous years, Figure 2 shows that the large majority of PIDs people made to public authorities in 2017–18 continue to primarily allege corrupt conduct (80%, n=259). No PIDs received by authorities during the year alleged a government information contravention.

Figure 2. Primary category of wrongdoing alleged (PIDs received by public authorities in 2017–18)

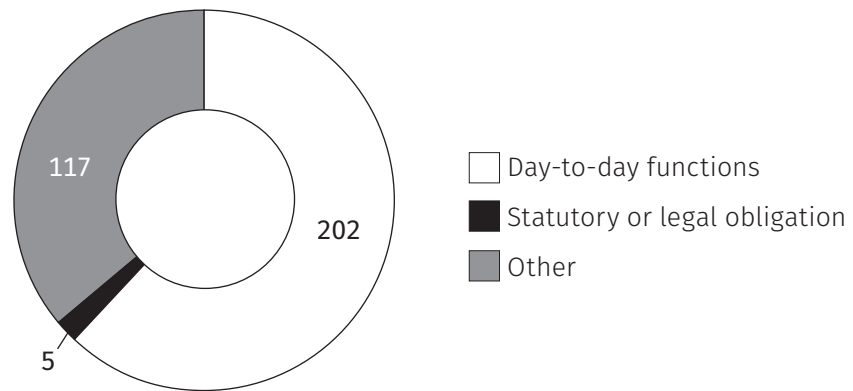


Role of public officials making PIDs

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

Since 1 January 2014, public authorities have been required to provide our office with information about the role of the public officials making PIDs. Figure 3 shows that more than half (62%, n=202) of all PIDs received by authorities over the year were reportedly made in the performance of a public official’s day-to-day responsibilities.

Figure 3. Role of public officials making PIDs (PIDs received by public authorities in 2017–18)



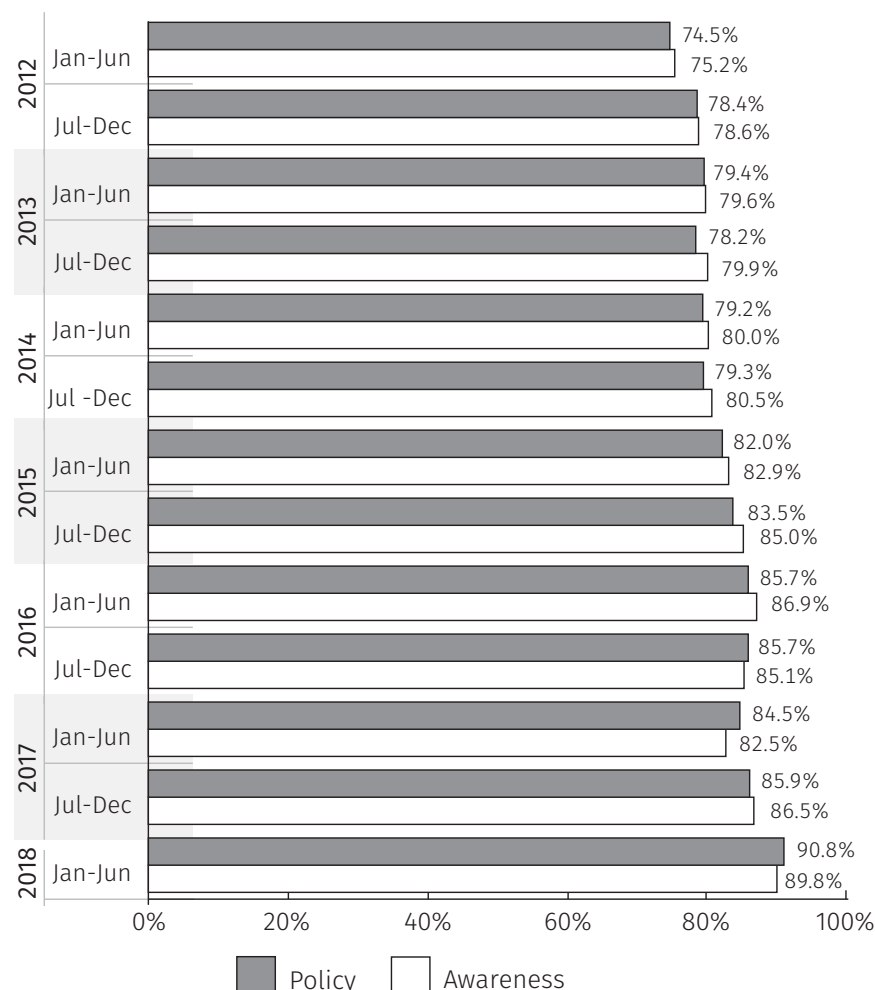
In responding to enquiries from public authorities and clarifying the reports provided, we have noted some misinterpretations of these categories – for example, the belief that PIDs referred to or from the ICAC should be included in the ‘statutory or other legal obligation’ category. Many authorities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

Internal reporting policies and staff awareness

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

The six monthly reports we receive from public authorities show there has been an increase in the proportion indicating they have an internal reporting policy – from 75% in the first reporting period (January to June 2012) to 91% in the January to June 2018 period (see Figure 4).

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



Some public authorities that have not established a reporting policy are entities for which this would serve no good purpose, such as trusts that do not have any staff. The majority are LALCs and we continue to promote our model internal reporting policy designed specifically for LALCs to them.

The heads of public authorities are responsible under s 6E(1)(b) of the PID Act for ensuring their staff are aware of the contents of the authority's internal reporting policy and the protections provided under the Act. There has been an improvement over time in the proportion of authorities that report the head of the authority has taken action to meet their staff awareness obligations – up from 75% in the January to June 2012 period to 90% most recently (see Figure 4).

Good practice 4: --- Raising staff awareness

- The **Office of Environment and Heritage** had a governance awareness campaign during which material was distributed to managers so they could talk to their staff about common issues. One focused on reporting wrongdoing.
 - As part of their good governance reviews, **Murrumbidgee Local Health District** surveys staff about their knowledge, access to information and (for managers) ability to identify potential PIDs.
 - **Federation Council** sought staff feedback as part of a 'Speak up 2018 staff survey' project.
 - The Chief Executive Officer of **Service NSW** mentions PID processes and reporting in periodic staff updates.
 - **Trangie LALC** involves employees, board members and members in writing and reviewing policies and procedures that include fraud, fraud risk management, reporting fraudulent activities, management and employee responsibilities, and the code of conduct.
 - **Berrigan Shire Council** briefed all staff recruited in the previous 12 months on their internal reporting policy, including how to make a PID. Follow up information was provided to all staff in a handout with payslips.
 - **Georges River Council** provided an information session to all staff at their annual conference and regular messages are included in the General Manager's newsletter.
-

3.2. PIDs handled by investigating authorities

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

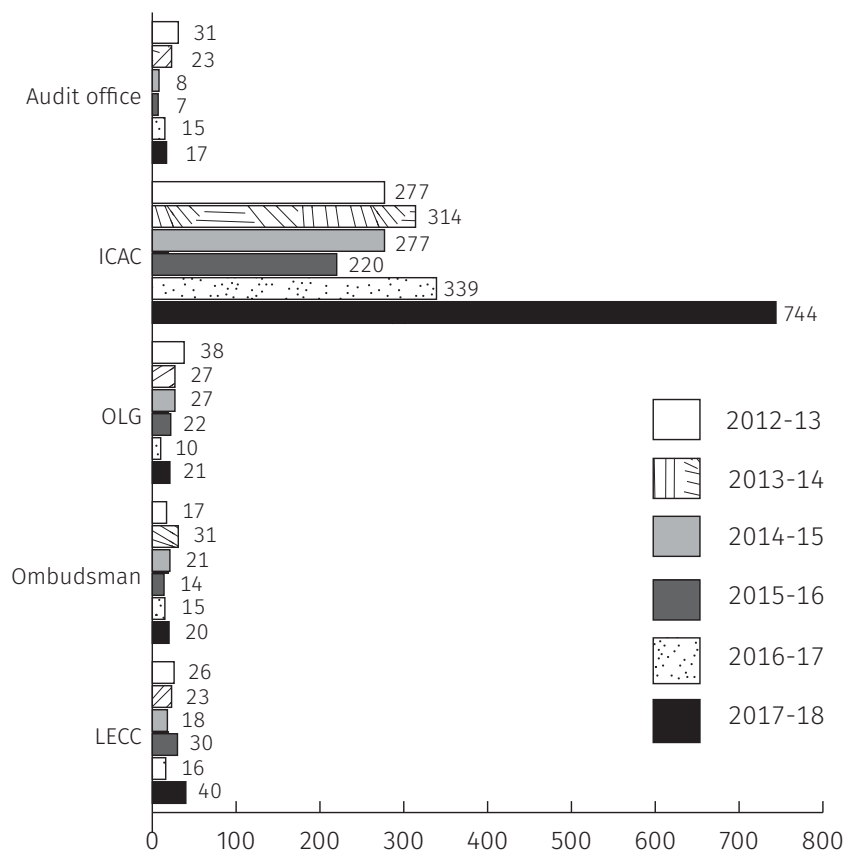
In 2017–18, there were eight investigating authorities under the PID Act. They were the:

- Audit Office
- ICAC
- Information Commissioner
- Law Enforcement Conduct Commission (LECC)
- Office of Local Government (OLG)
- Ombudsman

- Inspector of the ICAC
- Inspector of the LECC.

Figure 5 shows the number of PIDs received by key investigating authorities over time. The Information Commissioner, the Inspector of the ICAC and the Inspector of the LECC did not receive any PIDs in the reporting period. In total, investigating authorities received 842 PIDs in 2017–18, more than double the number received in the previous year (n=395).

Figure 5. Number of PIDs received by key investigating authorities over time



The increase this year is attributable to changes in the way the ICAC is assessing and reporting matters. Previously, the ICAC recorded PIDs separately to complaints received under s 10 of the ICAC Act and notifications from principal officers of authorities received under s 11.³⁶

Of the 744 PIDs received by the ICAC in 2017-18, 512 were received as s 11 notifications – an increase of 400 from the previous year. This means that there may be two PIDs relating to the same wrongdoing incident – the first disclosure by a staff member internally and the second being when the principal officer discloses the corrupt conduct to the ICAC.

³⁶ Principal officers have a duty under s 11 of the ICAC Act to report to the ICAC any matter that the person suspects on reasonable grounds concerns or may concern corrupt conduct.

3.3. PIDs around Australia

There is legislation in all states and territories of Australia to encourage the disclosure of wrongdoing and to provide protection to public officials who make PIDs. A direct comparison of reports made under the various acts is not possible because they vary in who can make a disclosure, what conduct can be disclosed, how a disclosure can be made, how disclosures are responded to, and how those who make disclosures are managed and protected.

The following is a summary of disclosures in other jurisdictions in 2016–17:

- Australian Capital Territory – The Ombudsman is a ‘disclosure officer’ under the *Public Interest Disclosure Act 2012* (ACT) and can also take complaints and review the handling of a PID. Four disclosures were received during the reporting period and referred to the head of the respective directorate for investigation. One complaint about the handling of a disclosure by a directorate was received and an investigation undertaken.³⁷
- Commonwealth – While a total of 684 PIDs were received in 2016–17 under the *Public Interest Disclosure Act 2013* (Cth), 227 were assessed as not meeting the threshold under the legislation. An additional 60 approaches were made to the Commonwealth Ombudsman, of which 40 were accepted as PIDs.³⁸
- Northern Territory – The Commissioner for Public Interest Disclosures handled 46 disclosure files during the reporting period under the *Public Interest Disclosure Act 2008* (NT) – 29 of these were received during the period. The Commissioner also received two formal complaints of reprisal.³⁹
- Queensland – A total of 798 PIDs were reported to the Queensland Ombudsman, an increase of 36% compared with the previous year. These increases were attributed to improved identification and assessment of PIDs, and consequently a higher level of reporting by particular agencies.⁴⁰
- Tasmania – The Tasmanian Ombudsman received two disclosures under the *Public Interest Disclosures Act 2002* (Tas), although both were withdrawn. The Ombudsman also wrote to all large public bodies to ask what, if any, steps they were taking to inform contractors of their ability to make disclosures to the Integrity Commission or the Ombudsman. Many are now providing information in their contractor induction material.⁴¹

37. Australian Capital Territory Ombudsman 2017, *Annual report 2016–17*.

38. Commonwealth Ombudsman.

39. Commissioner for Public Interest Disclosures 2017, *Annual report 2016–17*.

40. Queensland Ombudsman 2017.

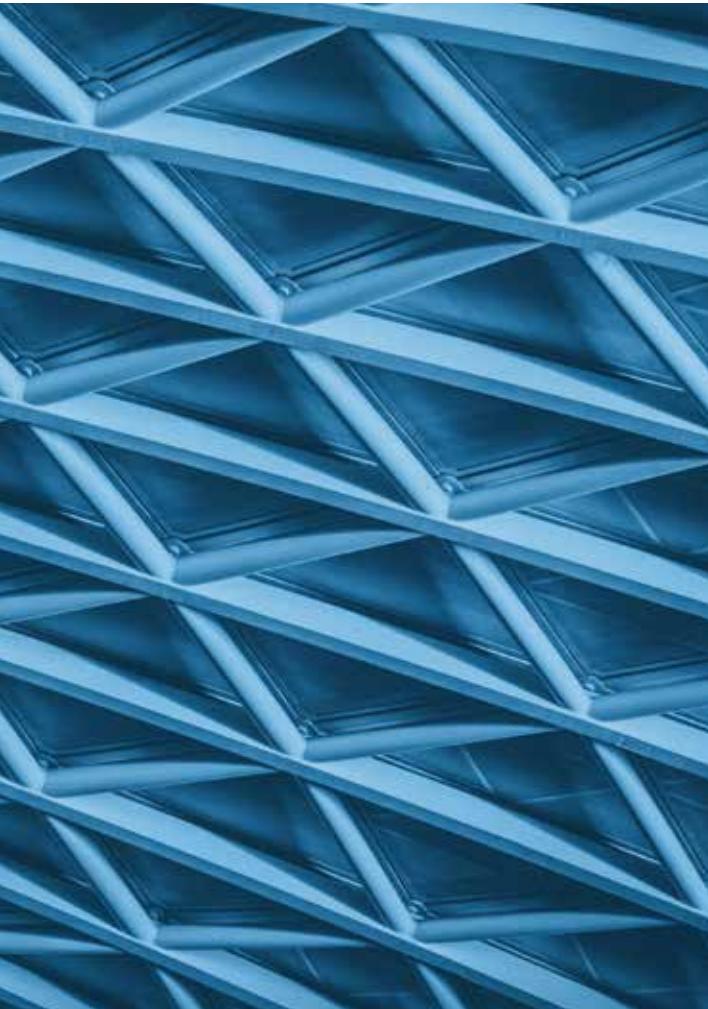
41. Tasmanian Ombudsman 2017, *Annual report 2016–17*.

- Victoria – The Independent Broad-based Anti-corruption Commission assessed 579 matters as protected disclosures under the *Protected Disclosure Act 2012* (Vic). All complaints made by a police officer about another police officer are defined as ‘protected disclosures’ under this legislation.⁴²
- Western Australia – The Public Sector Commission received four PID matters which were actioned under the provisions of the *Public Interest Disclosure Act 2003* (WA). This is comparable to the six PID matters received in 2015–16.⁴³

42. Independent Broad-based Anti-corruption Commission 2017, *Annual report 2016–17*.

43. Public Service Commission 2017, *Annual report 2016–17*.





Part 4: Performing our functions

Our work includes considering legislative change, handling PID related complaints, auditing public authorities, raising awareness and providing training, building practitioner capacity, providing advice and information, and conducting research and informing policy.

4.1. Considering legislative change

The PJC started a statutory review of the PID Act in June 2016. We prepared a background paper to assist the committee and made a formal submission to the review in August 2016.

In October 2017, the PJC tabled its review report. The 38 recommendations in the report focus on simplifying the disclosure process, improving remedies for detrimental action, refining reporting requirements and clarifying the PID Act.

For example, the PJC recommended that:

- The PID Act be redrafted in simpler language and with a clearer structure, while maintaining its substance.
- To address the gaps or technicalities in the legislation that can cause people who make disclosures to miss out on protections, the PID Act should be amended to protect reporters who make a disclosure to the wrong authority. Authorities should also be required to nominate a sufficient number of employees to receive PIDs.
- Reporters can be deemed to be a public official for the purposes of the Act so that protection can be afforded to people who become aware of public sector wrongdoing but are not covered by the Act – for example, former public officials, subcontractors or public officials from other jurisdictions.
- Disclosures to a wider range of people and bodies should be protected, including the Privacy Commissioner, Ministers when the disclosure relates to their portfolios, and principal departments within clusters. Misdirected disclosures should also be protected if the reporter believed they were making it to the appropriate public authority.
- The head of a public authority should ensure that the authority establishes a procedure to assess the risk of detrimental action. In addition, our office will be notified when allegations of detrimental action are made so that we can assist the authority to handle them.
- To alleviate unnecessary administrative burdens on authorities, reporting to our office should only be required annually instead of every six months and more information on outcomes and purported PIDs will be provided in these reports. Authorities would no longer be required to include information in their own annual report.
- The PID Act should explicitly exclude individual employment related grievances and make clear that reasonable management action is not considered detrimental action.
- Public officials should be required to use their best endeavours to assist a PID investigation.

- Role reporters and witnesses should be considered to have made a PID only for the purposes of protection. Other requirements of the PID Act, such as reporting on these matters, would not apply.
- The threshold for external disclosures to the media or MPs should be lowered.
- Reporters should be able to claim for any remedy, including exemplary damages, if they are found to have experienced detrimental action. Reporters should not have to pay the costs of such proceedings unless they are initiated vexatiously.
- The criminal offence provision should be amended to omit the words 'substantially in reprisal' and provide instead that a public official takes detrimental action against another person if the making of a PID was only a contributing factor to the taking of detrimental action.

The government response to the PID Act review was tabled in Parliament in April 2018. It stated that the government will prepare a Bill to reform the PID system. That reform will be in accordance with the PJC's recommendations and the principles of:

- making it easier for public officials to make PIDs
- improving protections and remedies for those who suffer detrimental action in reprisal
- continuing to protect the reputation of individuals against defamation and public disclosure of confidential information.

PID Steering Committee

The PID Steering Committee is made up of the heads of the PID Act investigating authorities – as well as the Department of Premier and Cabinet, the Public Service Commissioner and the NSW Police Force. The Ombudsman chairs the steering committee and our office provides secretariat support.

The statutory functions of the steering committee are to:

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

At one of two meetings in 2017-18, the steering committee examined in detail the implementation issues arising from the findings of the PID Act review. The advice of the committee on each of the 38 recommendations was subsequently provided to the Premier to inform the government's response to the PID Act review.

On behalf of the Premier, the government formally requested that the steering committee consider the draft Bill prepared in response to the PID Act review. We look forward to this consultation occurring in 2018-19.

Another issue the PID Steering Committee considered during the year was the application of the PID Act to LALCs. There are 120 LALCs across NSW – established to improve, protect and foster the best interests of all Aboriginal people within the council's area.

To clarify the status of LALCs under the PID Act, we issued a discussion paper that:

- set out the relevant legislative interpretation issues
- considered whether, as a matter of policy, LALC public officials should receive protection for making reports of serious wrongdoing
- sought feedback on whether LALCs should be exempt from the PID Act reporting requirements.

The steering committee considered the responses received from stakeholders and recommended that, when reforming the PID Act, the government amend the definition of a public authority to explicitly include LALCs.

As required under the PID Act, a separate PID Steering Committee annual report 2017–18 outlines the activities of the steering committee during the reporting period.

4.2. Handling complaints

We received 35 formal complaints this year that were PID-related. Of these:

- Twenty complaints were assessed as meeting the criteria to be a PID. We formally investigated six; we started a formal investigation into one; we made inquiries with the relevant public authority about eight; and we declined the remainder for a range of reasons.
- Seven complaints were about the handling of a PID by a public authority. We made inquiries about six with the relevant authority, but took no action in the other as we were of the view that the original complaint did not meet the criteria to be a PID. Schedule 1 of the Ombudsman Act excludes our office from looking at employment-related matters unless the conduct arises from the making of a PID.
- Eight complaints were purported PIDs – that is, the person making the complaint claimed it was a PID but we assessed it as not meeting at least one of the mandatory criteria set out in the PID Act.

We also exercised our monitoring power under 6B (1) of the PID Act once during the year, in response to a complaint made about the handling of a PID.

Case study 8: *Monitoring progress in real time*

We received a complaint from the chair of a board of a public authority about the handling of a PID that had been made about him. The board had been the subject of a governance review and the PID alleged that he had influenced the outcome of the review. Relations between the chair and other senior executives were already strained when the governance review was done. The chair believed that the PID had been lodged as part of this conflict.

We had previously made inquiries about a complaint that was related to the review and the PID additionally alleged that the chair had sought to mislead our office when responding to the complaint. The person who made the PID was also subsequently involved in processing an application made under the *Government Information (Public Access) Act 2009* for a copy of the governance review.

An external investigator had been retained to investigate the allegations against the chair, but the chair objected to the choice of investigator. The investigator had worked on a previous matter involving the public authority, which the chair argued amounted to a conflict of interests.

Due to the issues involved in the PID and the complexities involved, we decided to exercise our monitoring power under s 6B(1) of the PID Act. We requested a copy of the terms of reference for the investigation, updates on the progress of the investigation, and a copy of the draft and final investigation report.

We also asked the public authority for advice about:

- the action that it had taken to date to try and remedy the relationship between the chair and the other senior executives
- what action it intended to take in the future to remedy this relationship.

After receiving the investigation report, which found that the chair did not interfere with the governance review, we were satisfied the investigation had been conducted appropriately and there was no need for us to be involved any further.

Case study 9 highlights the complexities in the current PID Act, including inconsistencies and unnecessary restrictions in terms of who can receive PIDs depending on who the subjects of the allegations are and the type of conduct they concern. We draw on this experience when making recommendations to reform the PID system, as discussed in the previous section.

Case study 9: *Narrow reporting pathways need widening*

We received a referral from the ICAC under s 25 of the PID Act and s 53 of the ICAC Act. The referral concerned a PID made by a councillor at a local council. The matter was referred to us as the complaint raised concerns about the council's handling of the PID.

The councillor had lodged a PID with council's General Manager and General Counsel at a meeting. Her complaint concerned allegations that a Minister attempted to influence her to vote a certain way in relation to a planning agreement. It was alleged that the Minister had sought to influence her and other councillors to vote against the development and tied this to their future preselection as a councillor for the Liberal Party of Australia.

The ICAC had already examined the substantive allegations by the time the matter was referred and decided not to take any further action. We cannot investigate the conduct of a Minister. The aspects that the ICAC referred to us concerned council's handling of the PID, including allegations that it was not acknowledged by council and that no action was taken in relation to the concerns. We reviewed the complaint and found that council had taken action – in that it had referred the matter to the ICAC to handle – but that it had not taken this action until the issue was the subject of media attention. The council also did not acknowledge receiving the PID.

We provided feedback to the council that they should have assessed whether the report from the councillor satisfied the criteria to be a PID when it was first received. We noted that the councillor should also have received this advice from council.

We also provided feedback to the council and the ICAC that the report by the councillor to the General Manager was not technically a PID. For the report to have satisfied the criteria set out in the PID Act, the Minister needed to be a 'public authority' as defined in the Act or an officer of the council. This means that PIDs about Members of Parliament can only be made to an investigating authority or to the principal officer of the Department of Parliamentary Services, the Department of the Legislative Assembly or the Department of the Legislative Council. This seems needlessly restrictive considering that reports about other public officials can be made to the principal officer of any public authority.

4.3. Auditing public authorities

We have a statutory function to audit the exercise of functions under and compliance with the PID Act by public authorities. In 2017–18 we conducted audits of the handling of PIDs within three public authorities – two state government departments and one local council. These involved reviewing 124 files – 66 PIDs and 58 internal reports.

Before the audits, we believed the two departments had received a relatively low number of PIDs given their size and functions. Our audits confirmed this to be the case, although for different reasons:

- Counter to their policy, one large department had the practice of only considering whether reports by staff were PIDs if the staff member requested this or raised concerns of reprisal. There were also inconsistencies in assessing when witnesses providing information to investigators were making PIDs.
- Another department revised its internal reporting policy when it was notified of the audit. Before this, only five officers were nominated to receive PIDs and all were located at head office. PID training had also not been conducted across the cluster since 2015. We believed these factors may have contributed to the small number of PIDs having been received by the department.

We noted this year that record keeping continues to be a problem. One department that we audited had lost its files relating to PIDs received before October 2015. This significantly hampered our review and understanding of the way in which PIDs had been handled over the relevant years. In addition, we found that many of the files reviewed as part of the audit were missing key documents. The council that we audited had similar problems with record keeping with many documents missing from files. These included written assessments, acknowledgement letters, risk assessments, outcome letters to reporters and investigation reports. In both cases, we made suggestions to improve record keeping.

On the positive side, we noted that one of the departments and the council routinely conducted risk assessments in relation to PID files – although in some cases this was not formally documented in a written risk assessment. Some of the strategies used by the authorities to mitigate risk included:

- Removing the reporter from the workplace when it was likely that they would be identified.
- Taking measures to ensure that the reporter's identity would be kept confidential.
- Sending letters of direction to the subject officer/s advising them not to engage in certain sorts of behaviours or to take reprisal action.
- Moving the subject officer to an alternative location/duties.
- Conducting interviews of witnesses in a covert manner.
- Having senior staff monitor the subject officer.

Some of the recommendations we made to authorities audited during the year included that they should:

- Conduct PID training for all officers nominated to receive PIDs.
- Conduct PID training for staff.

'The organisation needs to display/talk about this process more. Why do I know who my first aid officer is but not who I report a PID to?'

'I can't express enough how much I enjoyed this session and the fantastic presenter was able to walk us through this critical information so clearly. Thank you!'

- Participant of PID training

- Review particular internal reports that had not been identified as PIDs and assess whether, after that review, they met the criteria in the PID Act (as in our view they did).
- Consider using a case management database or some other means such as a running sheet to track actions taken on individual cases.
- Make sure internal reports that *prima facie* concern one of the categories of conduct in the PID Act are assessed on receipt to determine if they are PIDs.
- Ensure a written acknowledgment is sent to each PID reporter.
- Consider nominating additional disclosures officers that are more accessible to staff than those currently nominated in the internal reporting policy.
- Review their processes for capturing and reporting the number of PIDs received to identify if the method currently used allows them to accurately and easily report on this.
- Review their case review process and other tools available for managing delayed files to identify if these are effective.
- Develop guidance to assist in assessing when witnesses providing information to investigators are making PIDs.

4.4. Raising awareness and providing training

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

As well as providing open workshops that anyone may attend, we provide free training sessions to public authorities for groups of ten or more. These training sessions help public authorities to promote staff awareness of the importance of PIDs, encourage a positive reporting environment, comply with the requirements of the PID Act and manage PIDs effectively.

We offer two types of training:

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

We also have four e-learning modules on our website that provide a convenient training alternative. They are targeted at different audiences:

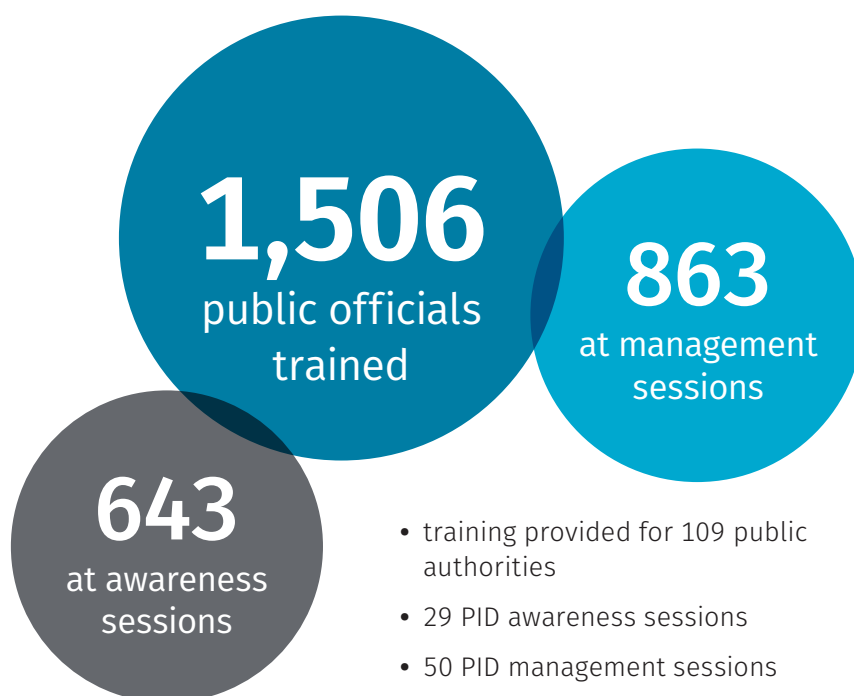
- PID awareness – is an overview of the PID Act for all public officials.
- PID reporting – provides advice to staff thinking about making a PID.
- PID management – is for those staff who receive or deal with PIDs.
- PID executive – explains leadership and management obligations.

Many public authorities have uploaded the e-learning modules to their own learning management systems so that they can track which staff have completed the training.

Good practice 5:

TAFE NSW

During the year, TAFE NSW asked if they could modify our PID e-learning modules for a TAFE NSW audience. To emphasise the importance of PIDs, each module is introduced by the Managing Director of TAFE NSW. All existing TAFE NSW staff have completed the module via a learning management system. It is also part of the induction process for new staff.



Evaluating our training

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

Most of the public officials who attended PID training sessions completed an evaluation form. Participants were asked to comment on the session, the presenter, the content, and their confidence in

'Really enjoyed the variety of teaching techniques used which made it a good learning experience.'

'The trainer was excellent. She was engaging and clear in her explanations, involved the whole group, was extremely respectful and professional.'

'Thank you so very much for your presentation to our disclosure officers... it was roundly received as one of the most professional presentations we have seen. Everyone who provided us with feedback was very grateful for the level of detail and the efforts you made to tailor the presentation.'

- Participants of PID training

Locations



Regional –

- 1. Armidale/Parkes
- 2. Ballina
- 3. Coffs Harbour
- 4. Katoomba
- 5. Kingswood
- 6. Lismore
- 7. Maitland
- 8. Newcastle
- 9. Penrith
- 10. Port Macquarie
- 11. Wagga Wagga
- 12. Waratah (Newcastle)
- 13. Wollongong

Metropolitan –

- 13. Baulkham Hills
- 14. Bondi Junction
- 15. Chippendale
- 16. Gladesville
- 17. Hurstville
- 18. Kensington
- 19. Milsons Point
- 20. Parramatta
- 21. Petersham
- 22. Rozelle
- 23. St Leonards
- 24. Sydney
- 25. Sydney Olympic Park
- 26. Ultimo

implementing what they have learnt back in their workplace. Overall their satisfaction rating was 98.5% for PID management sessions and 97% for PID awareness sessions. This feedback has reinforced that our training is useful and relevant.

'As always, your wise counsel has resonated with your audience.'

Attending conferences and events

Attending government conferences and events is one way we make ourselves available to connect with and raise awareness of PIDs among public officials. During the year, we hosted information stalls at the Corruption Prevention Network Forum and the Australian Public Sector Anti-Corruption Conference.

- Organiser
of event

We were also invited to attend and speak at the following events:

- the Ministry of Health's forum for PID practitioners
- the Australian and New Zealand Academy of Management conference
- Transport for NSW's executive briefing.

We also developed a PID materials promoting the message to take staff concerns seriously.



4.5. Building capacity

Engaging with PID practitioners within public authorities is an important part of the work we do to meet our statutory requirements. Developing and maintaining good professional relationships enables us to promote awareness of the PID Act, provide support and guidance, identify any problems and respond appropriately.

'Sharing knowledge in an open and honest way.'

'I found the presentation on the case study was outstanding in unpacking the complexities in managing a case where confidentiality could not be maintained.'

'Clear, useful presentations with a practical focus.'

'The robust discussion and ideas that resulted following the small group discussion.'

- Participants at PID forums

Holding PID practitioner forums

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

We held two PID practitioner forums during the year:

- December 2017 – Support: We spoke about why it is important to support reporters and asked for feedback from practitioners on a draft support plan template.
- May 2018 – Confidentiality: Guest speakers included the ICAC and PID coordinators from a regional local council where the identity of the reporter could not be kept confidential and a department that established an external hotline to receive staff reports of wrongdoing anonymously.

These forums were rated as good or excellent by 93% of attendees. Feedback helps us to identify areas of interest for PID practitioners, which we use to inform future forums.

Distributing the PID e-News

Our regular electronic newsletter is an effective and efficient way to disseminate information to the community of PID practitioners and other interested stakeholders. Past issues can be accessed from our website.

During 2017–18, we distributed two issues of the PID eNews to 1,295 subscribers. The articles covered topics such as:

- an overview of our PID practitioner forums for regional authorities who are unable to attend
- advice on counting and acknowledging PIDs
- updates on the PID Act review and our office's activities
- summaries of case law and links to articles of interest
- World Whistleblowing Day and the importance of reporting wrongdoing
- upcoming conferences and events.

Whistling Wiki

The Whistling Wiki is a closed online community hosted in govdex, a website managed by the Commonwealth Department of Finance. We work with our colleagues at the Queensland Ombudsman and the Commonwealth Ombudsman's offices to support the community of practitioners across Australia. It provides a repository of resources, media articles and other information.

4.6. Providing advice and information

We regularly speak to public authorities to help them respond to individual PIDs, interpret the PID Act and develop internal reporting policies. We also provide advice to public officials who are thinking about reporting wrongdoing or who have made a disclosure and have questions about the process.

This advice covers issues such as:

- the protections available under the Act
- the information they should provide when making a report
- how to make a report in a way that minimises risks
- the appropriate investigating authority to make a report to
- the normal procedures we follow when we receive such a report.

We received a total of 154 PID enquiries during 2017–18, a significant decrease from the previous year (n=213).



We also responded to approximately 290 enquiries from public authorities about the administrative processes around submitting a PID report to our office.

Case study 10: Can PIDs be made to an external hotline?

The Department of Industry asked for our advice about setting up an external hotline to receive reports of wrongdoing from staff. The PID Act states that disclosures must be made to an ‘officer’ of a public authority, in accordance with any procedure established by the authority – but does this include outside contractors engaged by an authority to operate a hotline?

Although we are unable to provide legal advice, we reconsidered our view and believe that it may. This is based on:

- A provision in the *Government Sector Employment Act 2013* that interprets officer to be any other person whose services a statutory body or officer makes use of.

- The relationship drawn between ‘officers’ and ‘public officials’ (who can be contractors) in the PID Act.
- The fact that the PID Act allows an authority to create its own procedures for receiving, assessing and handling PIDs.
- The remedial/beneficial nature of PID legislation.
- The implications of accepting a narrow interpretation.

After receiving our advice and their own internal legal advice, the department introduced an anonymous ‘Speak Up’ service. This service is provided by an independent company, whose staff are able to receive reports and information from departmental staff, clients, stakeholders and members of the public about possible corruption and misconduct. These reports can be made anonymously. When people dial the hotline, they are greeted with a message from the Secretary thanking them for caring enough to speak up and giving his personal assurance that all reports made to the hotline are taken seriously and managed professionally.

Case study 11: *Balancing the right to information with the right to confidentiality*

An investigating authority asked us for advice about an investigation that it had recently conducted. During the course of that investigation, the authority summonsed a number of public officials to appear before it and give evidence. A number of those public officials had also made PIDs about related issues.

The subject of the PID requested, through their legal representatives, copies of the transcripts of witnesses who provided information to the investigating authority – stating that procedural fairness required the provision of the transcripts. The investigating authority asked us for advice. It was apparent that if the request was complied with, it was likely that the subject of the PID would identify the people who had provided evidence against them.

We advised that the provision of extracts of interviews and summaries of evidence in a report is generally sufficient to satisfy procedural fairness requirements. In this case, the draft report referred to and extracted relevant quotes from the transcripts of witnesses.

We advised that – when we undertake formal investigations using our Royal Commission powers – our view is that the provision of extracts of interviews and summaries of evidence in a report is generally enough to satisfy procedural fairness requirements. In this case, the draft report referred to and extracted relevant quotes from the transcripts of witnesses.

When making a decision about whether to disclose information from a witness, the rights of the person about whom adverse comment may be made in the report must be balanced against

the rights of the witnesses who have cooperated with the investigation. If witnesses have also made PIDs, it would only be in exceptional circumstances that we would provide transcripts. This is because it could lead to the identity of the reporters being revealed and the potential for adverse consequences for them, including reprisal action.

After receiving our advice, the investigating authority decided not to provide the subject officer with the transcripts.

'Thanks once again for the support you gave us as we were learning about PID! We've now got a policy in place and have educated the staff and board, so we are a long way ahead of where we were!'

Our PID publications and webpages

During the year, we released the following publications:

- a new guideline on responding to allegations of reprisal
- a revised guideline on assessing the risk of reprisals and conflict
- a PID risk assessment template that public authorities can adapt.

'Thanks for coming to my rescue once again!'

These materials help public authorities to identify, analyse, treat and monitor the risk of reprisals and any related workplace conflict – as well as responding to reprisal allegations when they are made. Public authorities need to assess and respond to allegations of reprisal effectively and efficiently, as this conveys to staff that the behaviour will not be tolerated.

- Staff who sought our advice

All of our publications are available on our website. Our PID webpages are a useful way for public authorities and public officials to access practical guidance and procedures for making PIDs at a time and place that suits them. Table 6 shows that there were over 22,000 unique page views of our PID publications and webpages in 2017–18.

Table 6. Online access (unique page views)⁴⁴ to PID resources in 2017–18

PID fact sheets	3,671
PID guidelines and templates	4,045
PID training and e-learning	2,938
Other PID webpages	11,789
Total	22,443

44. This is the number of visits during which the specific page was viewed at least once. Where a person views the same webpage from the same computer more than once, this will only be counted as one unique page view.

4.7. Conducting research and informing policy

We regularly contribute to research and the development of whistleblowing policy beyond the jurisdiction of NSW. Some examples of our collaborative work include the following.

Whistling While They Work 2 research project

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

Australian and international standards on whistleblowing

We are members of a Standards Australia technical committee on organisational governance (QR-017) that is responsible for a number of governance standards. Of particular interest to our office is reviving the Australian standard for whistleblowing programs in organisations that is currently withdrawn.

The intention is for this standard to mirror the first international management system standard in this field. We provided input to the justification study and new work item proposal for this standard, which have now been formally approved. The standard will include minimum requirements for a comprehensive whistleblowing program applicable across sectors, regardless of organisational size.

Protections for the private sector

We made a submission to the Commonwealth Senate Economics Legislation Committee about the Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017 that will widen protections for whistleblowers in corporations. We drew the committee's attention to:

- the challenges faced in pursuing both criminal prosecutions of reprisal and civil remedies if the reporter has suffered detriment
- the importance of ensuring whistleblowing schemes encourage reports of public interest wrongdoing, rather than employment-related grievances.



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