

# ***ODPP Public Interest Disclosures Act 2022 Policy***



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## Purpose

All agencies in NSW are required to have a Public Interest Disclosures (PID) policy under section 42 of the *Public Interest Disclosures Act 2022 (PID Act)*.

The Office of the Director of Public Prosecutions NSW (ODPP) takes reports of wrongdoing seriously. It is committed to building a 'speak up' culture where public officials are encouraged to report any conduct that they reasonably believe involves wrongdoing. The integrity of our agency relies upon our staff, volunteers, contractors and subcontractors speaking up when they become aware of wrongdoing.

This policy sets out:

- how the ODPP will support and protect those who come forward with a report of serious wrongdoing
- how the ODPP will deal with that report and its other responsibilities under the *PID Act*
- whom to contact to make a report
- how to make a report
- the protections which are available under the *PID Act*.

This policy also documents the ODPP's commitment to building a 'speak up' culture. Part of that commitment is to have in place a framework that facilitates public interest reporting of wrongdoing by:

- protecting those who speak up from detrimental action
- taking appropriate action to investigate or otherwise deal with reports of wrongdoing received by the ODPP.

This policy should be read in conjunction with other ODPP policies including:

- [ODPP Code of Conduct](#)
- [Prosecution Guidelines](#)
- [Signature Behaviours](#)
- [ODPP Feedback and Complaints Policy](#)
- [ODPP Gifts Benefits and Hospitality Policy](#)
- [ODPP Respectful Workplace Policy](#).

## Accessibility of this policy

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

A copy of the policy is made available to all staff upon commencement in their role. A hard copy of the policy can be requested from the Deputy Solicitor (Legal).



## To whom does this policy apply?

This policy applies to, and for the benefit of, all public officials in NSW. You are a public official if you are:

- a person employed in or by an agency or otherwise in the service of an agency
- a person having public official functions or acting in a public official capacity whose conduct or activities an integrity agency is authorised by another Act or law to investigate
- an individual in the service of the Crown
- a statutory officer
- a person providing services or exercising functions on behalf of an agency, including a contractor, subcontractor or volunteer, or
- an employee, partner or officer of an entity that provides services, under contract, subcontract or other arrangement, on behalf of an agency or exercises functions of an agency, and are involved in providing those services or exercising those functions.

Section 14 of the *PID Act* contains a complete list of public officials.

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

## Whom does this policy not apply to?

This policy does not apply to people who are not public officials, including:

- people who have received services from an agency and want to make a complaint about those services, and
- people, such as contractors, who provide services to an agency. For example, employees of a company that sold computer software to the ODPP, or cleaners.

There are some circumstances where a complaint can be deemed to be a voluntary PID, see [section 1\(i\)](#) of this policy for more information.

In some situations, you may be able to make a complaint to the ODPP outside of the PID procedures. Details of making a complaint are found in the [ODPP Feedback and Complaints Policy](#) or on our [website](#).

## What is contained in this policy?

This policy will provide you with information on the following:

- ways to make a voluntary PID to the ODPP under the *PID Act*
- the names and contact details for the nominated disclosure officers at the ODPP



- the roles and responsibilities of people who hold particular roles under the *PID Act* and who are employees of the ODPP
- what information you will receive once you have made a voluntary PID
- protections available to people who make a report of serious wrongdoing under the *PID Act* and what the ODPP will do to protect them
- the ODPP's procedures for dealing with disclosures
- the ODPP's procedures for managing the risk of detrimental action and reporting detrimental action
- the ODPP's record-keeping and reporting requirements, and
- how the ODPP will ensure it complies with the *PID Act* and this policy.

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

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

For detailed advice with respect to the *PID Act* or your obligations under the *PID Act*, you may need to seek independent legal advice.



# 1. How to make a report of serious wrongdoing

## (a) Reports, complaints and grievances

When a public official reports suspected wrongdoing in the public sector, their report will be a PID if it has certain features which are set out in the *PID Act*.

Some internal complaints or internal grievances may also be PIDs, as long as they have the features of a PID. If an internal complaint or grievance is a report of serious wrongdoing, the ODPP will consider whether it is a PID and if so, will deal with it under this policy. All complaints, whether or not they are a PID, will be dealt with according to the relevant policies listed at [Purpose](#).

It is important that the ODPP quickly identifies whether a report is a PID. This is because once a PID is received, the person who has made the report is entitled to certain protections.

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

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

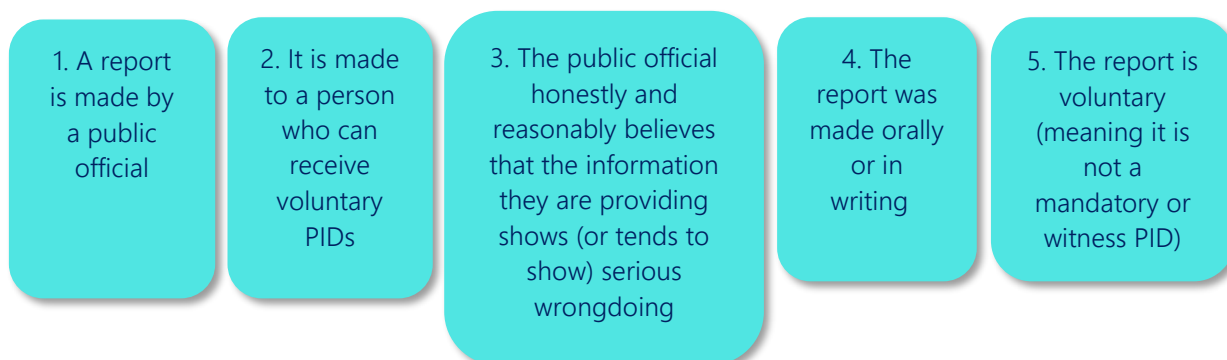
1. *Voluntary PID*  
This is a PID where a report has been made by the public official because they decided, of their own accord, to come forward and disclose what they know.
2. *Mandatory PID*  
This is a PID where the public official has made a report about serious wrongdoing because they have a legal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

This policy deals mainly with voluntary PIDs. People who make a mandatory PID or a witness PID are still entitled to protection. More information about protections is available in [section 2](#) of this policy. You can find more information about mandatory and witness PIDs in the Ombudsman's guidelines 'Dealing with mandatory PIDs' and 'Dealing with witness PIDs' available on their [website](#).

Voluntary PIDs are the kind of PIDs most people have in mind when they think about public interest reporting and 'whistleblowing'. They involve a public official making a report because they have information that they believe shows (or tends to show) serious wrongdoing, where they are not under a legal obligation to make that report and where it is not an ordinary part of their role to report such wrongdoing.



A report is a voluntary PID if it has the following five features, which are set out in sections 24 to 27 of the *PID Act*:



If the report has all five features, it is a voluntary PID.

Those making a PID are not expected to prove that what they reported actually happened or is serious wrongdoing. They *do* have to honestly believe, on reasonable grounds, that the information being reported shows or tends to show serious wrongdoing.

Even though there is no requirement to prove the serious wrongdoing happened or to provide evidence, a mere allegation with no supporting information is unlikely to meet this test.

If the ODPP makes an error and does not identify the report as a voluntary PID, the maker of the PID will still be entitled to the protections under the *PID Act*.

If you make a report and believe the ODPP has made an error by not identifying that you have made a voluntary PID, you should raise this with a nominated disclosure officer (see [Annexure A](#)) or your contact officer for the report. If you are still not satisfied with this outcome, you can seek an internal review, or the ODPP may seek to conciliate the matter. You may also contact the NSW Ombudsman. Further information on your right to an internal review and about conciliation is found in [section 7](#) of this policy.

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

Any public official can make a voluntary PID — see '[To whom does this policy apply](#)'. You are a public official if:

- you are employed by the ODPP
- you are a contractor, subcontractor or volunteer who provides services, or exercises functions, on behalf of the ODPP, such as a Non-Salaried Crown Prosecutor or an agency contractor, or
- you work for an entity (such as a non-government organisation) which is contracted by the ODPP to provide services or exercise functions on behalf of the ODPP — if you are involved in undertaking that contracted work.

A public official can make a PID about serious wrongdoing relating to *any* agency, not just to the agency for which they are working. This means that the ODPP may receive PIDs from public officials outside of our agency. It also means that ODPP staff can make a PID to another agency,





including an integrity agency like the Independent Commission Against Corruption (ICAC) and the NSW Ombudsman. [Annexure B](#) of this policy has a list of integrity agencies.

#### (d) What is serious wrongdoing?

Reports must be of one or more of the following categories of *serious wrongdoing* to be a voluntary PID. Serious wrongdoing is defined in the *PID Act* s 13 as follows (examples provided are not from the Act):

- *corrupt conduct* — such as a public official accepting a bribe
- *serious maladministration* — such as an agency systemically failing to comply with proper recruitment processes when hiring staff
- *a government information contravention* — such as destroying, concealing or altering records to prevent them from being released under a Government Information Public Access application
- *a local government pecuniary interest contravention* — such as a senior council staff member recommending a family member for a council contract and not declaring the relationship
- *a privacy contravention* — such as unlawfully accessing a person's personal information on an agency's database
- *a serious and substantial waste of public money* — such as an agency not following a competitive tendering process when contracting with entities to undertake government work.

When making a report, the PID maker does not need to state what category of serious wrongdoing is being reporting or that serious wrongdoing is being reported.

#### (e) To whom is a voluntary PID made?

For a report to be a voluntary PID, it must be made to certain public officials.

##### ***Making a report to a public official who works for the ODPP***

You can make a report inside the ODPP to:

- The Director
- a disclosure officer for the ODPP — a list of disclosure officers and their contact details can be found at [Annexure A](#) of this policy. There is at least one disclosure officer at each ODPP location.
- your manager — this is the person who directly, or indirectly, supervises you. It can also be the person to whom you directly, or indirectly, report. You may have more than one manager. Your manager will make sure that the report is communicated to a disclosure officer on your behalf, or may accompany you while you make the report to a disclosure officer.



### ***Making a report to a recipient outside of the ODPP***

You can also make your report to a public official in another agency or to an integrity agency. These include:

- the *head of another agency* — this would include the head of any public service agency
- an *integrity agency* — a list of integrity agencies is located at [Annexure B](#) of this policy
- a *disclosure officer for another agency* — information about how to contact disclosure officers for other agencies is located in an agency's PID policy which can be found on its public website, or
- a *Minister or a member of a Minister's staff* (these reports must be made in writing).

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

### ***Making a report to a Member of Parliament (MP) or journalist***

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

- You must first have made substantially the same disclosure (described here as a 'previous disclosure') to someone who can receive disclosures.
- The previous disclosure must be substantially true.
- The previous disclosure was not made anonymously.
- You did not give a written waiver of your right to receive information relating to your previous disclosure.
- You did not receive the following:
  - notification that the previous disclosure will not be investigated and will also not be referred to another agency, or
  - the following information at the end of the *investigation period*:
    - notice of the decision to investigate the serious wrongdoing
    - a description of the results of an investigation into the serious wrongdoing
    - details of proposed or recommended corrective action as a result of the previous disclosure or investigation.

'Investigation period' means:

- six (6) months from the previous disclosure being made, or
- twelve (12) months from the previous disclosure being made if you applied for an internal review of the agency's decision within six (6) months of making the disclosure.

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



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

You can make a voluntary PID:

- *in writing* — this could be an email or letter to a person who can receive voluntary PIDs
- *orally* — have a private discussion with a person who can receive voluntary PIDs. This can be face-to-face, via telephone or virtually
- *anonymously* — write an email or letter or call a person who can receive PIDs to make a report without providing your name or anything that might identify you. A report will be considered anonymous if there is no reasonable or practical way of communicating with the person making the report. Even if you choose to remain anonymous, you will still be entitled to protection under the *PID Act*. It may be difficult, however, for the ODPP to investigate the matter(s) you have disclosed if it cannot contact you for further information.

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

You should provide as much information as possible so that the ODPP can deal with the report effectively. The type of information you should include is:

- date, time and location of key events
- names of person(s) involved in the suspected wrongdoing, their role, title and how they are involved
- your relationship with the person(s) involved, such as whether you work closely with them
- an explanation of the matter you are reporting
- how you became aware of the matter you are reporting
- names of possible witnesses, and
- other information you have that supports your report.

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

You should report all wrongdoing you become aware of regardless of whether you think it is serious wrongdoing. It is important for the ODPP to be notified of your concerns.

The ODPP is then responsible for making sure your report is handled appropriately under the *PID Act*, or in line with other policies where it is not a PID.

## **(i) Deeming that a report is a voluntary PID**

The Director can, in certain circumstances, determine that a report is a voluntary PID even if the report does not otherwise have all the features of a voluntary PID. This ‘deeming power’ is found in s 29 of the *PID Act*. By deeming that a report is a voluntary PID, it ensures that reporters are provided with protections under the *PID Act*.

If you make a report that does not meet all of the requirements of a voluntary PID, you can refer your matter to the Director, either directly or via your manager or a disclosure officer, to request that the Director consider deeming your report to be a voluntary PID.



A decision to deem a report to be a voluntary PID is at the discretion of the Director. For more information about the deeming power, see the NSW Ombudsman's guideline 'Deeming that a disclosure is a voluntary PID' on its [website](#).

## **(j) Whom can I talk to if I have questions or concerns?**

Anyone wishing to ask questions about the PID process can contact the Coordinating Disclosure Officer (the Deputy Solicitor (Legal)) or any other disclosure officer named in [Annexure A](#). All disclosure officers have been trained in the procedures around PIDs.

## **2. Protections**

### **(a) How is the maker of a voluntary PID protected?**

Makers of voluntary PIDs receive special protections under the *PID Act*.

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

As the maker of a voluntary PID you will be protected in the following ways:

- ***Protection from detrimental action***
  - A person cannot take detrimental action against another person because they have made a voluntary PID or are considering making a PID. Detrimental action includes bullying, harassment, intimidation or dismissal.
  - If the ODPP becomes aware that a voluntary PID by a person employed or otherwise associated with the ODPP has been made, it will undertake a risk assessment and take steps to mitigate the risk of detrimental action against the person who made the voluntary PID.
  - It is a criminal offence for someone to take detrimental action against a person who has made a voluntary PID, which is punishable by a maximum penalty of 200 penalty units or imprisonment for five years or both.
  - A person may seek compensation where unlawful detrimental action has been taken against them.
  - A person can apply for a court order (injunction) where detrimental action is threatened or has occurred (for example, an order to prevent dismissal or to require reinstatement).

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

- ***Immunity from civil and criminal liability***

Many public officials are subject to a duty of confidentiality that prevents them from disclosing certain information obtained in the course of their duties. All ODPP staff and Crown Prosecutors are bound by duties of confidentiality under the [ODPP Code of](#)



[Conduct](#). Sometimes, in order to make a PID, public officials will need to breach or disregard such duties of confidentiality. Section 40 of the *PID Act* provides that a public official cannot be disciplined, sued or criminally charged for breaching confidentiality in the making of a public interest disclosure.

- **Confidentiality**

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

- **Protection from liability for own past conduct**

Under s 41 of the *PID Act*, the Attorney General can give the maker of a PID an undertaking that a disclosure of their own past conduct will not be used against them if a person discloses their own wrongdoing or misconduct while making a report. This undertaking can only be given on application by an integrity agency to the Attorney General.

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

The two other types of reports that are recognised as PIDs under the *PID Act* are witness PIDs and mandatory PIDs (described in [section 1\(b\)](#)).

The following are examples of circumstances which may result in a mandatory PID, where a PID is made while meeting the ordinary requirements of the public official's role:

- An auditor comes across serious mishandling of government money while conducting an audit or review.
- An investigator conducting an internal investigation comes across serious wrongdoing and communicates it as part of their findings.
- A public official who is a manager comes across a serious privacy breach by a staff member and communicates it internally in line with their managerial obligations to deal with the privacy breach.

In NSW, mandatory reporting is regulated by the [Children and Young Persons \(Care and Protection\) Act 1998](#). Mandatory reporters are required by law to report suspected child abuse and neglect to government authorities. Mandatory reporters include people who deliver welfare services, wholly or partly, to children as part of their professional work or other paid employment, and those in management positions in these services. ODPP Witness Assistance Officers are covered by this requirement.

Another example of a mandatory PID is section 11 of the [Independent Commission Against Corruption Act 1988](#), which requires heads of agencies to report any matter to the Independent Commission Against Corruption which they suspect, on reasonable grounds, may involve corrupt conduct.

Witness PIDs occur when a person is requested to provide information in the course of an investigation into a voluntary or mandatory PID.

Protections for makers of mandatory and witness PIDs are detailed in the table below.



Protection	Mandatory PID	Witness PID
Detrimental action — It is an offence to take detrimental action against a person based on the suspicion, belief or awareness that a person has made, may have made or may make a PID.	✓	✓
Right to compensation — A person can initiate proceedings and seek compensation for injury, damage or loss suffered as a result of detrimental action being taken against them.	✓	✓
Ability to seek injunction — An injunction can be sought to prevent the commission or possible commission of a detrimental action offence against a person. For example, an order to prevent dismissal or to require reinstatement.	✓	✓
Immunity from civil and criminal liability — a person will not incur civil or criminal liability if the person breaches a duty of confidentiality while making a disclosure. This means that legal action cannot be taken against a person for: <ul style="list-style-type: none"> <li>breaching a duty of secrecy or confidentiality, or</li> <li>breaching another restriction on disclosure.</li> </ul>	✓	✓

### 3. Reporting detrimental action

If you experience adverse treatment or detrimental action as a result of making a PID, such as bullying or harassment, you should report this immediately. You can report this directly to the ODPP, or to an integrity agency. To make a report within the ODPP you should contact a disclosure officer as set out in [Annexure A](#), or your manager who will refer the matter on. A list of integrity agencies is located at [Annexure B](#) of this policy.

### 4. General support

Makers of a PID will be supported throughout the process by the ODPP, in the following ways:

- A disclosure officer will be available to explain the process when the PID is first made.
- A contact person will be allocated to the maker of a PID, who will take steps to protect their interests, notably where the maker may be at risk of detrimental action. The contact person will be the disclosure officer or manager who is already involved in the process unless arrangements are made for a different person to perform this role in consultation with the maker of the PID.
- The ODPP's Employee Assistance Program Benestar is available to all staff, see intranet page [Best You by Benestar](#).



## 5. Roles and responsibilities of ODPP employees

Certain people within the ODPP have responsibilities under the *PID Act*.

### (a) The Director

The Director is responsible for:

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

### (b) Disclosure officers

Disclosure officers are responsible for:

- receiving reports from public officials
- receiving reports when they are passed on to them by managers
- ensuring reports are dealt with appropriately, including by referring the matter to the Coordinating Disclosure Officer, and
- ensuring that any oral reports that have been received are recorded in writing.

The Director has designated the Deputy Solicitor (Legal) as the Coordinating Disclosure Officer who is responsible for:

- receiving reports from other disclosure officers and taking over management of the PID process from that point
- ensuring a contact person is appointed, in consultation with the maker of the PID
- assessing disclosures, making recommendations to the Director and overseeing corrective action in consultation with the Director of Human Resources, and
- assisting the Director in the performance of their duties (above) as Head of the Agency.



## **(c) Managers**

The responsibilities of managers include:

- receiving reports from persons who report to them or whom they supervise
- ensuring that any oral reports that have been received are recorded in writing, and
- passing on reports they receive to a local disclosure officer, or directly to the Coordinating Disclosure Officer ie the Deputy Solicitor (Legal).

## **(d) All employees**

All employees must:

- report suspected serious wrongdoing or other misconduct
- use their best endeavours to assist in an investigation of serious wrongdoing if asked to do so by a person dealing with a voluntary PID on behalf of the ODPP, and
- treat any person dealing with or investigating reports of serious wrongdoing with respect.

All employees must avoid taking any detrimental action against any person whom they suspect or believe has made, may in the future make, or is suspected to have made, a PID where the suspicion or belief is a contributing factor to the taking of detrimental action.

# **6. How voluntary PIDs are dealt with**

## **(a) How the ODPP will acknowledge receipt of a report and keep the maker informed**

A flowchart showing the ODPP processes for dealing with PIDs is attached as [Annexure C](#).

When a disclosure officer at the ODPP receives a report which is a voluntary PID, or appears to be a voluntary PID, it should be referred to the Coordinating Disclosure Officer. The person who made the report will then receive the following information:

- An acknowledgment that the report has been received. This acknowledgement will:
  - state that the report will be assessed to identify whether it is a PID
  - state that the *PID Act* applies to the ODPP's handling of the report
  - provide clear information on how to access this PID policy
  - provide details of a contact person and available supports, and
  - advise that the report is being handled by the Coordinating Disclosure Officer (this is the likely course of action unless there are cogent reasons for it not to occur)
- If the report is assessed to be a voluntary PID, the ODPP will inform the PID maker as soon as possible how it intends to deal with the report. This may include:
  - investigating the serious wrongdoing
  - in some cases, referring the report to a different agency to investigate. The PID maker will be provided with details of this referral, or





- if it is decided not to investigate the report and not to refer it to another agency for investigation, the PID maker will be given the reasons for the decision. The ODPP will also notify the NSW Ombudsman of the decision.
- Where there is an investigation, the PID maker will receive updates on the investigation at least every three months. They will be able to nominate how they would like to be updated, for example by email, phone or in person. During this time, if they would like more frequent updates, they can advise the contact person of this.
- If the ODPP investigates the serious wrongdoing, the PID maker will be provided with the following information once the investigation is complete:
  - details of the result of the investigation — that is, whether there was a finding that serious wrongdoing took place, and
  - information about any corrective action required as a result of the investigation. Corrective action is discussed below in [section 6\(f\)](#).

Certain details about both the findings made as a result of the investigation and the corrective action taken may not be able to be revealed. The ODPP must balance the right of a person who makes a report to know the outcome of that report, with other legal obligations that arise in relation to the information.

In the case of an anonymous report, it may not be possible for the ODPP to provide the PID maker with information about the progress of the matter and its resolution.

## **(b) How the ODPP will deal with a voluntary PID**

Once a report which may be a voluntary PID is received by the Coordinating Disclosure Officer, an assessment will be undertaken as to whether the report is a voluntary PID or another type of disclosure. If it is a voluntary PID, the ODPP will comply with the requirements in the *PID Act*.

The process to be followed is as follows:

1. The receiving Disclosure Officer (or manager if they choose to refer it directly) will refer the PID to the Coordinating Disclosure Officer with a recommendation on the appropriate assessment of the PID and any other information relevant to the circumstances of the making of the PID, for example issues pertaining to the wellbeing of the maker of the PID or details of any risk of detrimental action.
2. The Coordinating Disclosure Officer will provide a copy of the PID and related recommendation and any other relevant information received, to the Director Human Resources. Each officer will separately conduct a further assessment of the PID and decide how the ODPP should deal with the report, and provide a recommendation to the Director.
3. The Director will determine whether an investigation or other action is required. Other action may include referral to the ICAC or to another integrity agency. If the Director determines that an investigation is required, the Director will also determine whether it will be conducted by an external investigator or by an internal investigator.



The Director will take into account the complexity of the matter and the other relevant surrounding circumstances in making these determinations.

Where an investigation is required, the following processes apply:

1. The Director of Human Resources will refer the matter to an external investigator or set up an internal investigation process, in accordance with the Director's determination ([see "Where the Report is a voluntary PID" below](#)).
2. The report of the external or internal investigator is provided to the Director of Human Resources, who makes a recommendation to the Director as to appropriate action.
3. The Director of Human Resources will also provide the investigation report and the related recommendation, to the Coordinating Disclosure Officer, who will review the relevant documentation and also make a recommendation to the Director as to appropriate action.
4. The investigator's report along with the recommendations from the Director of Human Resources and the Coordinating Disclosure Office will be provided to the Director for a decision.
5. The Director will make findings which will identify any corrective action required and nominate those responsible for attending to each aspect of corrective action.
6. The maker of the PID will be notified by the Director Human Resources or the Coordinating Disclosure Officer or the contact officer of the outcome of the PID investigation and any proposed corrective action, noting that certain details may not be able to be revealed as set out in section 6(a).

The time standards which apply to the above processes are as follows:

1. The Director is to make a determination as to the need for an investigation within two (2) weeks of the report being identified as a Voluntary PID.
2. Where an investigation is required, depending on the type of investigation, then within two (2) weeks of the Director's determination in (1) above, either:
  - an external investigator is to be appointed; or
  - the internal investigation is to commence.
3. The investigation is to be completed within 3 months of referral to the investigator.
4. The Director of Human Resources and the Coordinating Disclosure Officer are to make recommendations within two (2) weeks of receiving the report from the investigator.
5. The Director is to make a determination as to the appropriate action to be taken within four (4) weeks of receiving the recommendations from the Director Human



Resources and the Coordinating Disclosure Officer and the related investigation report.

The above timeframes may be extended with the approval of the Director in matters of exceptional complexity or for other compelling reasons.

### ***Where the report is a voluntary PID***

If the report is a voluntary PID:

- In most cases, the ODPP will set up an investigation into whether the serious wrongdoing occurred, who was involved, who was responsible, and whether the people involved, or the agency, engaged in serious wrongdoing.
- In some cases, the ODPP will conduct this investigation itself. Any internal investigation will be overseen by the Director of Human Resources who is also a disclosure officer.
- In other cases, the ODPP will appoint an external investigator. This will be necessary where the investigation is complex or requires particular expertise, for example where there is a need to conduct a broad-ranging inquiry involving interviews with numerous staff. The Director of Human Resources will arrange for the appointment of an external investigator.
- There may be circumstances in which the ODPP believes an investigation is not warranted, for example if the conduct has previously been investigated.
- There may also be circumstances where the ODPP decides that the report should be referred to another agency, such as an integrity agency. For example, reports concerning possible corrupt conduct may be required to be reported to ICAC in accordance with section 11 of the *Independent Commission Against Corruption Act 1988*. Before referring a matter, the ODPP will discuss the referral with the other agency, and will provide the PID maker with details of the referral and of a contact person within the other agency.
- If the ODPP decides not to investigate a report and not to refer the matter to another agency, the PID maker will be advised of the reasons for that decision. The ODPP will notify the NSW Ombudsman of this decision.

### ***Report not a voluntary PID***

If a report is not a voluntary PID, it will be dealt with according to the relevant ODPP policy, as set out under [Purpose](#). The ODPP will advise the PID maker that the *PID Act* does not apply to the report and how the concerns raised in the report will be addressed.

If you disagree with the assessment, you can raise your concerns with the person who has communicated the outcome to you, or with another disclosure officer, and can request an internal review or request that the matter be conciliated. The ODPP can, but is not obliged to, request the NSW Ombudsman to conciliate the matter. The ODPP will advise you of its decision in this regard and will continue to provide the same supports as set out above at [General Support](#) throughout this process.



## ***End of process of dealing with report as voluntary PID***

The ODPP may stop dealing with a voluntary PID if it determines that it does not meet the definition of a voluntary PID. Where this occurs the ODPP will provide the maker of the PID with reasons for its decision, as soon as practicable after the decision has been made.

### **(c) How the ODPP will protect the confidentiality of the maker of a voluntary PID**

Some people who make voluntary PIDs want their identity as the maker of a report to remain confidential. Under the *PID Act*, information tending to identify a person as the maker of a voluntary PID (known as identifying information) is not to be disclosed by a public official or an agency.

There are certain circumstances under the *PID Act* s 64(2) that allow for the disclosure of identifying information. These include:

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

The ODPP will not disclose identifying information unless it is necessary and is authorised by the *PID Act*.

The ODPP will put in place steps to keep the identity of the maker and the fact that a report has been made confidential. It may not be possible to maintain complete confidentiality during an investigation, but the ODPP will do all that it practically can to avoid the unnecessary disclosure of information from which the maker of the report can be identified. This will involve:

- limiting the number of people who are aware of the maker's identity, or of information that could identify them, to those involved in the assessment, investigation, communication and reporting process
- not disclosing the actual identity of the maker of the PID without their consent to do so, even if information that must be disclosed has the potential to identify them



- ensuring that any person who does know the identity of the maker of a PID is reminded that they have a legal obligation to keep the maker's identity confidential
- ensuring that only authorised persons have access to emails, files or other documentation that contain information about the identity of the maker, and
- undertaking an assessment to determine whether anyone who is aware of the maker's identity has a motive to cause detrimental action to be taken against the maker or to impede the progress of the investigation.

The ODPP will provide information to the maker of the PID about the importance of maintaining confidentiality and how best to protect their identity, for example, by suggesting they do not discuss their report with other staff.

If confidentiality cannot be maintained or is unlikely to be maintained, the ODPP will take appropriate action which may involve:

- advising the affected person that their identity may become known
- updating the agency's risk assessment and risk management plan
- implementing strategies to minimise the risk of detrimental action
- providing additional supports to the person who has made the PID, and
- reminding persons who become aware of the identifying information of the consequences of failing to maintain confidentiality and that engaging in detrimental action is a criminal offence and may also be a disciplinary matter.

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

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

- injury, damage or loss
- property damage
- reputational damage
- intimidation, bullying or harassment
- unfavourable treatment in relation to another person's job
- discrimination, prejudice or adverse treatment
- disciplinary proceedings or disciplinary action, or
- any other type of disadvantage.

Detrimental action does not include:

- lawful action taken by a person or body to investigate serious wrongdoing or other misconduct



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

The ODPP will not tolerate any detrimental action being taken by any person against someone who has made a PID, or against investigators, witnesses or against the person whom the report is about (other than appropriate corrective action justified by the findings at the conclusion of a PID investigation).

The ODPP will take steps to assess and minimise the risk of detrimental action by:

- explaining that a risk assessment will be undertaken, and a risk management plan will be created (including reassessing the risk throughout the entirety of the matter)
- providing details of the unit/role that will be responsible for undertaking a risk assessment
- explaining the approvals for risk assessment and the risk management plan, that is, the rank or role of the person who has authority to provide final approval
- explaining how the ODPP will communicate with the PID maker to identify risks
- listing the protections that will be offered, that is, the ODPP will discuss protection options with the maker which may including remote working or approved leave for the duration of the investigation, and
- advising what supports will be provided.

### **(e) How the ODPP will deal with allegations of a detrimental action offence**

If the ODPP become(s) aware of an allegation that a detrimental action offence has occurred or may occur, it will:

- take all available steps to stop the detrimental action and protect the relevant person(s)
- where appropriate, take disciplinary action against anyone responsible for the detrimental action
- where appropriate, refer any evidence of a detrimental action offence to the Commissioner of Police and the ICAC or the Law Enforcement Conduct Commission (whichever is applicable), and
- notify the NSW Ombudsman about the allegation of a detrimental action offence having occurred.



The Director will make the referrals referred to above having considered the evidence capable of supporting the allegation of detrimental action.

A maker of a PID who is concerned about detrimental action having occurred should report it immediately to the Coordinating Disclosure Officer, or to the contact person nominated to assist them through the process, or to another disclosure officer listed in [Annexure A](#). The maker of the PID will be supported by the contact person who will provide updates on how the issue of detrimental action is being addressed.

## **(f) What the ODPP will do if an investigation finds that serious wrongdoing has occurred**

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

Corrective action can include:

- a formal apology
- improving internal policies to adequately prevent and respond to similar instances of wrongdoing
- providing additional education and training to staff where required
- taking disciplinary action against persons involved in the wrongdoing (such as termination of employment, a caution or a reprimand) and/or arranging for relocation of staff, and
- payment of compensation to people who have been affected by serious wrongdoing or other misconduct.

## **7. Review and dispute resolution**

### **(a) Internal review**

People who make voluntary PIDs can seek internal review under s 60 of the *PID Act* of certain decisions made by the ODPP, namely a decision:

- that the ODPP is not required to deal with the report as a voluntary PID
- to stop dealing with the report because the ODPP concluded that it was not a voluntary PID
- not to investigate the serious wrongdoing and/or not to refer the report to another agency, or
- to cease investigating the serious wrongdoing without completing the investigation or referring the report to another agency for investigation.

The ODPP will ensure that internal reviews are conducted in compliance with the *PID Act*.



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

Applications for an internal review should be sent to the Coordinating Disclosure Officer. The internal review will be conducted by the Solicitor for Public Prosecutions in the case of the Solicitor's Office and Corporate Services, and the Senior Crown Prosecutor in the case of Crown Chambers. The reviewer will be provided with all of the relevant documentation from the PID process conducted to date, along with the written application for an internal review. The review process will be completed within one (1) month of receipt of the written application. In matters of exceptional complexity or for other compelling reasons, this period may be extended with the approval of the Director.

## **(b) Voluntary dispute resolution**

If a dispute arises between the ODPP and a person who has made a report which is, or may be, a voluntary PID, the ODPP may request that the NSW Ombudsman conciliate the dispute. Conciliation is a voluntary process and will only be suitable for disputes where the ODPP and the maker of the report are willing to engage with each other in order to explore the resolution of the dispute.

# **8. Other agency obligations**

## **(a) Record-keeping requirements**

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

The Director of Human Resources will be responsible for keeping records in relation to any PIDs received by the ODPP, along with the investigation report, the related recommendations and determination and any records of corrective action taken. The Co-ordinating Disclosure Officer will retain information necessary for discharging reporting functions under the PID Act.

Information relating to PIDs is to be stored confidentially by all officers who have possession of it. Hard copy material must be stored in locked filing cabinets or locked drawers or another secure receptacle. Copies of material associated with the PID held by others at the ODPP (i.e other than the Director Human Resources and the Coordinating Disclosure Officer), whether in electronic or other form, are to be deleted or shredded (if held in hard copy) once the matter is finalised.

## **(b) Reporting of voluntary PIDs and the ODPP annual return to the Ombudsman**

Each year the ODPP will provide an annual return to the NSW Ombudsman which includes information about:

- voluntary PIDs received by the ODPP during each return period (starting 1 July and ending on the following 30 June)





- action taken by the ODPP to deal with voluntary PIDs during the return period, and
- how the ODPP has promoted a culture in the workplace in which PIDs are encouraged.

The Coordinating Disclosure Officer (Deputy Solicitor (Legal)) is responsible for lodging the annual return.

### **(c) How the ODPP will ensure compliance with the *PID Act* and this policy**

Compliance with the *PID Act* will be the responsibility of the Coordinating Disclosure Officer who will oversee on behalf of the Director:

- the establishment and maintenance of a training program in accordance with the requirements of the *PID Act*. Links to training resources will be available on the ODPP intranet.
- implementation of knowledge checks to measure the success of the training
- monitoring of any corrective measures directed following a PID
- annual audit of PIDs prior to lodgement of the annual return
- provision of compliance report to the ODPP Audit and Risk Committee on a quarterly basis, and
- timely updating of [Annexure A](#) with names and contact details of disclosure officers.



# Annexure A — Names and contact details of disclosure officers at the ODPP

## **Sydney**

### Head office

Sally Dowling SC – Director of Public Prosecutions  
Telephone: 02 9285 8888  
Email: SDowlingSC@odpp.nsw.gov.au

Craig Hyland – Solicitor for Public Prosecutions  
Telephone: 02 9285 8760  
Email: CHyland@odpp.nsw.gov.au

Nigel Richardson – Director of Human Resources  
Telephone: 02 9285 2549  
Email: NRichardson@odpp.nsw.gov.au

Anne Whitehead – Deputy Solicitor (Legal)/Coordinating Disclosure Officer  
Telephone: 02 9285 8996  
Email: AWhitehead@odpp.nsw.gov.au

Esther Kwiet – Deputy Solicitor (Legal Operations)  
Telephone: 02 9285 8636  
Email: EKwiet@odpp.nsw.gov.au

## **Sydney West**

### Campbelltown

Louise Thompson – Managing Solicitor  
Telephone: 02 4629 2862  
Email: LThompson@odpp.nsw.gov.au

### Parramatta Office

Benjamin Ng – Managing Solicitor  
Telephone: 02 9762 8501  
Email: BNg@odpp.nsw.gov.au

### Penrith Office

Meagan Betteridge – Managing Solicitor  
Telephone: 02 4721 6148  
Email: MBetteridge@odpp.nsw.gov.au

## **Southern Region**

### Dubbo Office

John Gibson – Managing Solicitor  
Telephone: 02 6881 3330  
Email: jgibson2@odpp.nsw.gov.au

### Wagga Office

Rennae Gee – Managing Solicitor  
Telephone: 02 6937 8305  
Email: RGee@odpp.nsw.gov.au

### Wollongong Office

Kim Woodward – Managing Solicitor  
Telephone: 02 4224 7111  
Email: KWoodward@odpp.nsw.gov.au



## **Northern Region**

### Gosford Office

Georgia Rowe – Managing Solicitor  
Telephone: 02 4337 1178  
Email: GRowe@odpp.nsw.gov.au

### Lismore Office

Renee McKenzie – Managing Solicitor  
Telephone: 02 4907 4577  
Email: RMcKenzie@odpp.nsw.gov.au

### Newcastle Office

Carla Black – Managing Solicitor  
Telephone: 02 6627 2207  
Email: CBlack@odpp.nsw.gov.au

## **Drug Courts**

### Sydney Drug Court

Diana Weston – Senior Solicitor  
Telephone: 02 9287 7082  
Email: DWeston@odpp.nsw.gov.au

### Toronto Drug Court

Fiona Irwin – Senior Solicitor  
Telephone: 02 4935 8387  
Email: FIrwin@odpp.nsw.gov.au

### Parramatta Drug Court

Anne Broomfield – Managing Solicitor  
Telephone: 02 9685 8023  
Email: ABroomfield@odpp.nsw.gov.au

### Dubbo Drug Court

Nicole Walmsley – Senior Solicitor (Locum based in Parramatta)  
Telephone: 02 9685 8024  
Email: NWalmsley@odpp.nsw.gov.au

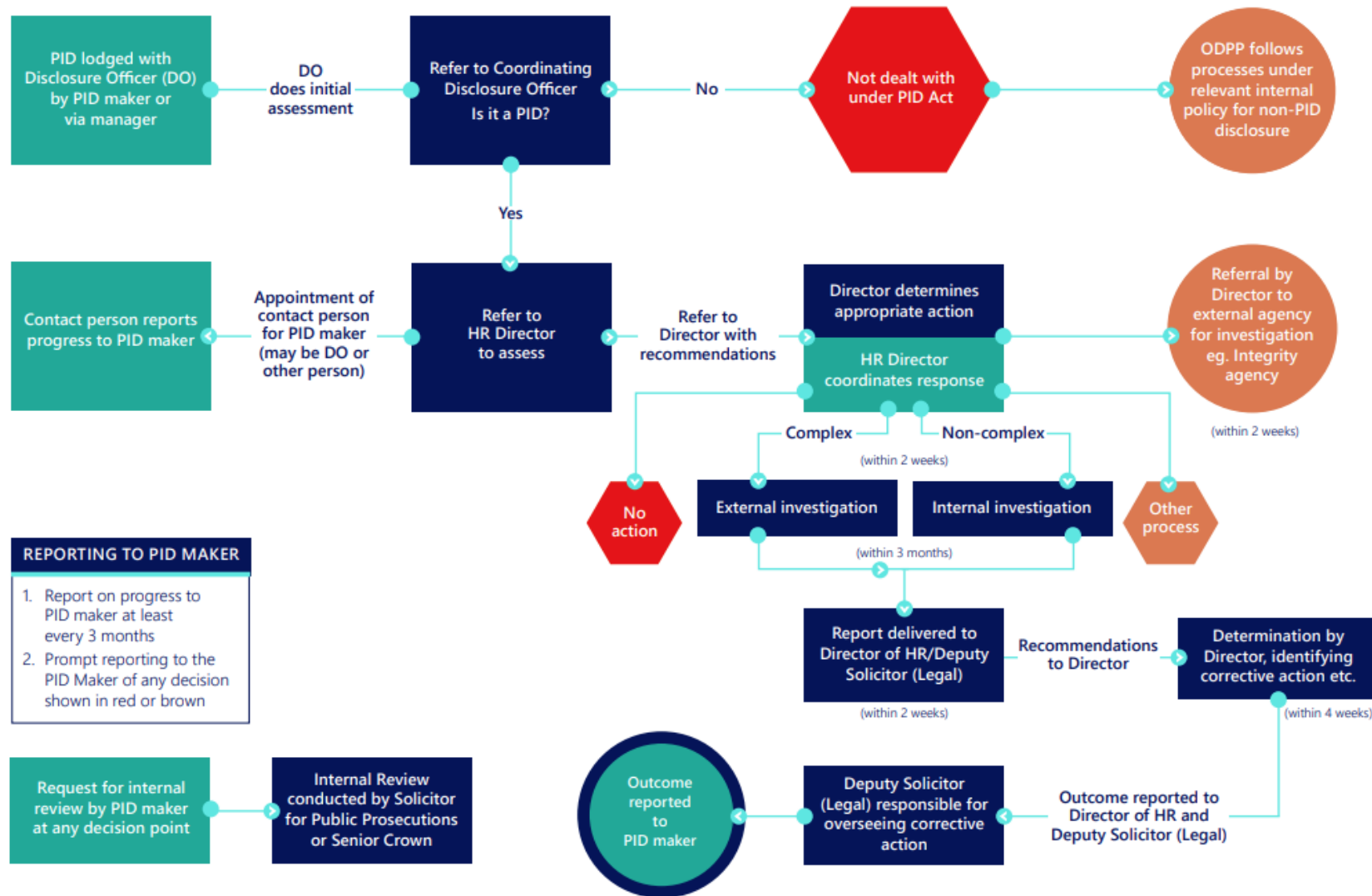


## Annexure B — List of integrity agencies

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



## Annexure C — Flowchart of processes under *PID Act 2022*





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**Office of the Director of Public Prosecutions**

Level 6, Parkline Place,  
252 Pitt Street,  
Sydney NSW 2000

Locked Bag A8  
Sydney South NSW 1235

**Phone** 02 9285 8606  
**[odpp.nsw.gov.au](http://odpp.nsw.gov.au)**

ABN 27 445 689 335