

Oversight of the
***Public Interest
Disclosures Act 1994***
Annual Report 2022–23

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The Hon Ben Franklin MLC
President
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The Hon Greg Piper MP
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Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Mr President and Mr Speaker

Special report on the Ombudsman's oversight of the *Public Interest Disclosures Act 1994*

Pursuant to section 31 of the *Ombudsman Act 1974*, I am providing you with a report titled *Oversight of the Public Interest Disclosures Act 1994 Annual Report 2022-23*.

I draw your attention to the provision of s 31AA of the *Ombudsman Act 1974* in relation to the tabling of this report and request that you make the report public forthwith.

Yours sincerely

A handwritten signature in black ink, appearing to read "Paul Miller".

Paul Miller
NSW Ombudsman

27 November 2023



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Foreword

It is my privilege as the NSW Ombudsman to present the final annual report on my office's oversight of the *Public Interest Disclosures Act 1994* (PID Act 1994).

On 1 October 2023 the PID Act 1994 was repealed and the new *Public Interest Disclosures Act 2022* (PID Act 2022) commenced. During 2022-23 my office continued to carry out its functions under the PID Act 1994, while also increasingly focusing on preparing the NSW public sector for the implementation of the PID Act 2022.

My office has tabled an annual report on our oversight of the public interest disclosure scheme under the PID Act 1994 since 2011-12.

The 1994 legislation has been repealed, including the provisions that had both authorised and required me to report on our oversight of that Act. However, as the PID Act 1994 was in effect for the entirety of the year 2022-23, I have decided that it is in the public interest for my office to issue this final annual report covering our oversight of the Act during the 2022-23 reporting period. I do so under the general power conferred on me by section 31 of the *Ombudsman Act 1974* to make a special report to Parliament, at any time on any matter arising, in connection with the discharge of the Ombudsman's functions.

This report outlines the activities undertaken by my office to support public officials who make public interest disclosures (PIDs), our provision of advice and education to public sector agencies who receive PIDs, and our monitoring and auditing of the operation of the PID Act 1994.

In this report I also highlight the activities undertaken by my office, during the reporting period, to ensure that we are ready to undertake our functions under the PID Act 2022 and that agencies have the resources and support they need to implement the new Act.

The PID Act 2022 articulates the duties of agencies to ensure their public officials have an awareness of the Act, that public officials with responsibilities under the Act are appropriately trained and how agencies must deal with PIDs they receive. It also expands the permissible recipients of PIDs to now include a person's manager and public officials can also make their PID to any agency (such as an integrity agency) and not only the agency with which they are associated.

Last year, I wrote that I was confident the PID Act 2022 would better support a culture where public officials are encouraged to report serious wrongdoing, and would have increased confidence that they would be protected if they did so. I am still of the view that the improved protections in the PID Act 2022, as well as the clearer obligations on agencies to manage the risk of detrimental action, will provide this confidence to public officials. The PID Act 2022 contains more stringent reporting and notification obligations to my office which facilitates our oversight of the scheme.

My office has had the privilege of working with the NSW public sector to prepare for the implementation of the PID Act 2022. This has been a significant body of work, and we are proud to have produced high quality and accessible learning and awareness materials as well as a series of comprehensive guidelines. We have also engaged across the public sector, and this work will continue as agencies operationalise the new Act.

I would like to recognise the work of the PID Unit and other staff within my office who have undertaken this important work.

This report

The PID Act 1994, which was repealed on 1 October 2023, required the Ombudsman to provide an annual report to the NSW Parliament on the Ombudsman’s activities under section 6B of the Act. Sections 6B(1)(e) and (f) required the Ombudsman to report to Parliament specifically on any monitoring and auditing activities.

This report contains the information which was previously required under the repealed PID Act 1994, and is presented to Parliament as a special report under s 31 of the *Ombudsman Act 1974*. Even though the PID Act 1994 has now been repealed, we refer to it in the present tense throughout this report.

The reporting period for this report is 1 July 2022 to 30 June 2023, during which time the PID Act 1994 was in force.

Part 1 briefly describes the PID Act 1994, and the various roles and responsibilities outlined within it.

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

Part 3 provides an overview of our role to promote the objects of the PID Act 1994, to provide training about the PID Act 1994, and to advise and assist public authorities in meeting their obligations under it. It includes an overview of the work my office has done to raise awareness of the PID Act 2022 across NSW public sector agencies and public officials.

Part 4 covers my responsibilities as chair of the PID Steering Committee, and our provision of advice on the administration of the PID Act 1994. It includes an overview of the work the PID Steering Committee has done to advise on key initiatives undertaken for the implementation of the PID Act 2022.

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



Paul Miller
NSW Ombudsman

Part 1

Public interest disclosures

The aim of the PID Act 1994 is to encourage public officials to report wrongdoing in the public sector and provide them with protections when they do so.

The object of the PID Act 1994 is to encourage and facilitate the disclosure, in the public interest, of:

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

PIDs may be made by a public official to an authority concerned - being the authority the official works for or otherwise belongs to, and/or the authority whose conduct is the subject of the disclosure. Under the PID Act 1994, a disclosure to such an authority will be recognised as a PID, only if it is made to the principal officer of the authority or to a person who has been specified as a “disclosure officer” of the authority, under its internal PID reporting policy.

PIDs may also be made directly to the relevant investigating authority for types of wrongdoing – corrupt conduct to the Independent Commission Against Corruption (ICAC), maladministration to the NSW Ombudsman, and so on.

In certain limited circumstances, the PID Act 1994 recognises PIDs that are made to third parties – journalists and Members of Parliament. The PID Act 1994 requires public authorities to establish systems to deal with, and investigate, PIDs.

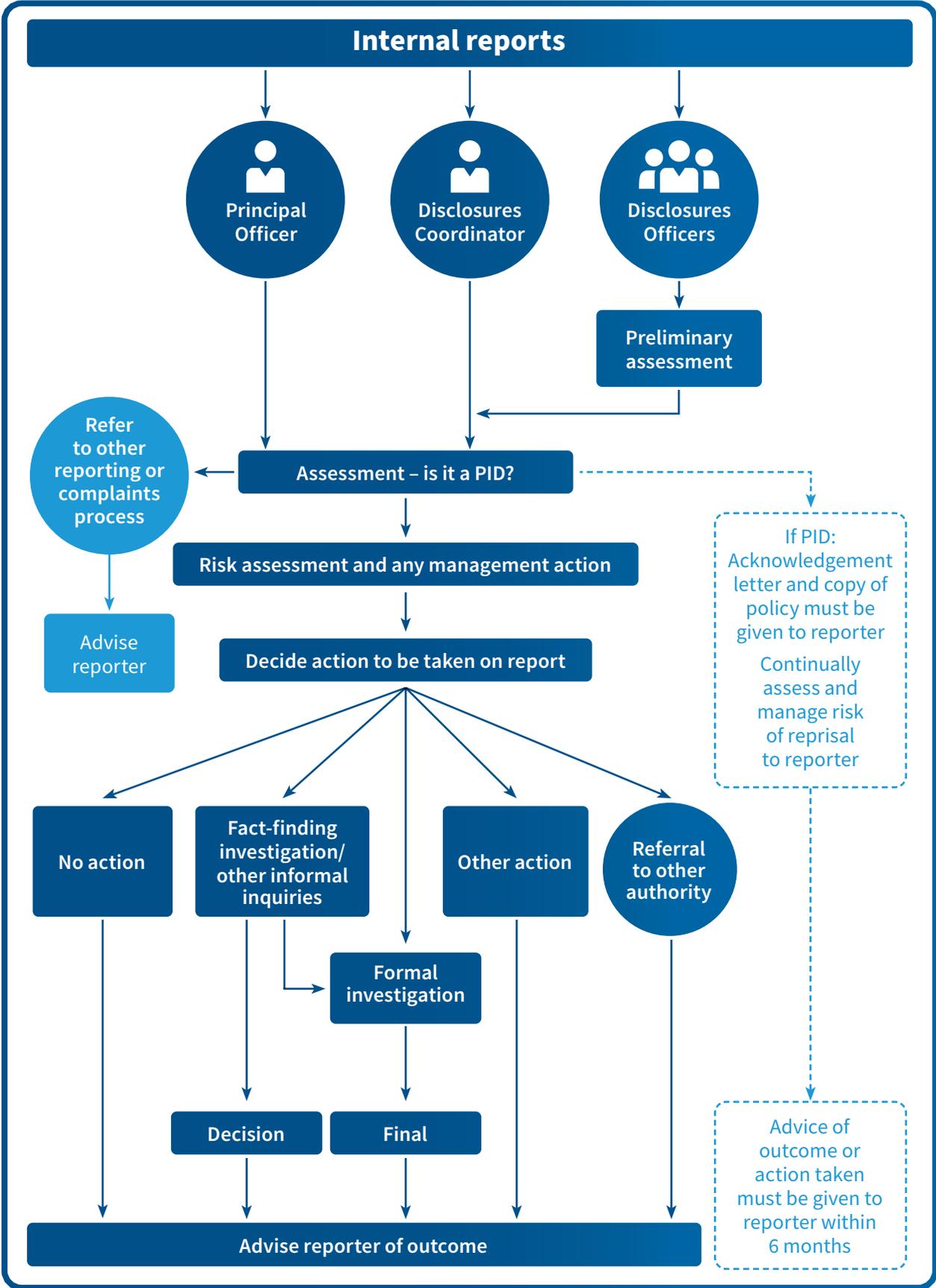
Roles and responsibilities in public interest disclosures

Public authorities

Section 6E of the PID Act 1994 states that the principal officer or other head of a public authority is responsible for ensuring that:

- the public authority has a policy that includes procedures for receiving, assessing, and dealing with PIDs. This policy must have regard to guidelines developed by our office. [Guidelines for the 1994 Act](#) are available on the NSW Ombudsman website
- the staff of the public authority are aware of the policy and the protections under the PID Act 1994
- the public authority complies with its policy and obligations under the PID Act 1994
- the policy designates officers to receive PIDs, commonly referred to as nominated disclosures officers.

Figure 1. The internal reporting process



Our model internal reporting policy allows for a disclosures coordinator to be appointed.

Together with the principal officer, they are responsible for:

- deciding whether to treat a report of wrongdoing as a PID, which they must do if it meets the criteria set out in the PID Act 1994
- assessing the risks of reprisal and other detrimental action that a reporter may face and implementing strategies to mitigate any identified risks
- determining how to deal with a report, which may include: referring the disclosure; making informal inquiries; formally investigating the allegations; or taking no further action
- communicating with, and supporting, the reporter of the PID through the process.

Investigating authorities

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

- NSW Ombudsman
- NSW Audit Office
- ICAC
- NSW Information Commissioner
- Law Enforcement Conduct Commission (LECC)
- Office of Local Government (OLG)
- Inspector of the ICAC
- Inspector of the LECC
- Office of the Children's Guardian.¹

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

The PID Steering Committee

The PID Act 1994 establishes the PID Steering Committee, a statutory advisory mechanism for key stakeholders to provide advice to the Ministers responsible for administering the PID Act 1994, these being the Premier and the Special Minister of State.

The NSW Ombudsman is the chair of the Steering Committee. The other members of the Steering Committee are nominated representatives from the:

- NSW Audit Office
- ICAC
- NSW Information Commissioner

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

- LECC
- OLG
- Department of Premier and Cabinet
- The Public Service Commission
- The NSW Police Force.

NSW Ombudsman

The Ombudsman has responsibility to oversight the PID Act 1994. Our functions are to:

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

In performing our statutory functions, we aim to:

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

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

Part 2

Public authorities:
reporting public
interest disclosures

Under s 31 of the PID Act 1994, public authorities are required to prepare a report of statistical information on the public authority's compliance with its obligations under this Act. This report must be submitted to the responsible Minister for the public authority and tabled in Parliament. In practice, most public authorities fulfil this obligation by including this information in their annual report.

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

The information public authorities must report is detailed in regulation 4(2) of the *Public Interest Disclosures Regulation 2011* (NSW) (PID Regulation), as follows:

- 1) the number of public officials who have made a public interest disclosure to the public authority
- 2) the number of public interest disclosures received by the public authority in total and the number of public interest disclosures received by the public authority relating to each of the following:
 - (a) corrupt conduct
 - (b) maladministration
 - (c) serious and substantial waste
 - (d) government information contraventions
 - (e) local government pecuniary interest contraventions
- 3) the number of public interest disclosures finalised by the public authority
- 4) whether the public authority has a public interest disclosures policy in place
- 5) what actions the head of the public authority has taken to ensure that their staff awareness responsibilities under section 6E(1)(b) of the PID Act 1994 have been met.

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

Reports by public authorities

The information reported to us by public authorities in 2022–23 is summarised below. Comparisons are also provided over a 3-year reporting period.

Number of reports provided by public authorities in 2022–23

The number of public authorities who provided reports to our office in 2022–23 was lower than those who provided reports in 2021–22.

In July to December 2022, we received 311 reports which meant that 78% of identified public authorities submitted a report. This was 13% less than the number received during the same period in 2021 (362).

In January to June 2023, we received 320 reports which meant that 80% of identified public authorities submitted a report. This was 3% less than the number received during the same period in 2022 (331).

While the overall reporting decreased across the full reporting period, 90% of identified public authorities did submit at least 1 report for the 2022-23 period.

Table 1. Reports provided by public authorities to our office

Reporting period	Number of identified public authorities	Number of statistical reports provided	Proportion of identified authorities
July–December 2022	401	311	78%
January–June 2023	401	320	80%

A number of public authorities did not meet their reporting obligations (Table 1 above). A failure to comply with reporting obligations by some public authorities has featured in every PID Oversight Annual Report, since the report was first published for the 2011–12 reporting period. This is despite proactive measures by our office to engage directly with public authorities, where reports were outstanding, to mitigate non-compliance.

Public authorities that did not meet their reporting obligations in 2022-23 have not been identified in this report on account of limitations with the reporting format. Most notably where there are ‘cluster arrangements’ which have resulted in collective reporting which has impeded accurate differentiation.

This deficiency is addressed with the commencement of the PID Act 2022 as agencies must inform our office when one agency enters into an arrangement for another agency to exercise the agency’s functions under the PID Act on behalf of the agency.² Further, if an agency has arranged to provide an annual return on behalf of another agency or group of agencies, the agency must provide a separate annual return for each agency.³ The PID Act 2022 also requires the Ombudsman to identify agencies that have failed to provide an annual return.⁴

The NSW Ombudsman is developing a new PID portal which we will expect agencies to use to report their yearly returns under the PID Act 2022. The portal will facilitate the provision of more detailed reporting of data and the reporting for each agency, even if they are part of a portfolio of agencies or if they have entered into an arrangement with another agency to submit reports on their behalf.

Number of reports by public authorities identifying receipt of a PID

In 2022-23, 69 public authorities reported they had received a PID during the reporting period. The total number of PIDs reported as having been received across these public authorities is 404.

Most public authorities (80%) reported that they had not received any PIDs during the period 2022–23, which is relatively consistent with the data from the past 3 yearly reporting periods.

As presented in Table 2, the percentage of public authorities that reported the receipt of at least 1 PID during 2022-23 (20%) was consistent with the previous 2 reporting years.

2. *Public Interest Disclosures Act 2022* (NSW) s 81(4)(b).

3. *Public Interest Disclosures Regulation 2022* (NSW) reg 6(2).

4. *Public Interest Disclosures Act 2022* (NSW) s 76(1)(e).

Table 2. Number of PIDs received by Public Authorities in %

Number of PIDs Reported	2020–21	2021–22	2022–23
0	82%	79%	80%
1	6%	10%	7%
2 to 5	8%	7%	10%
6 to 10	2%	2%	1%
11 to 20	1%	1%	1%
21+	1%	1%	1%

Number of public officials who have made a PID

Under the PID Act 1994, public authorities also report the number of public officials who have made a PID to them. Public authorities reported to us that during the 2022-23 period, 377 public officials made a PID.

The number of public officials who are reported to us as having made a PID is lower than the reported number of PIDs received. This is consistent with the reporting we have received in previous years, as shown in Figure 2 (below).

We consider, as we have previously reported, that the 2 principal reasons the reporting shows more PIDs received than public officials making them are likely to include:

- public officials may make more than 1 PID
- the number of public officials making a PID is only recorded if the PID was made directly to the public authority that received it. In some cases, a public official may make a PID directly to 1 public authority where the report would reflect 1 PID received, and 1 public official having made a PID. If the same PID is then referred to another public authority, the second public authority would record 1 PID having been received, but not record that it was made by a public official.

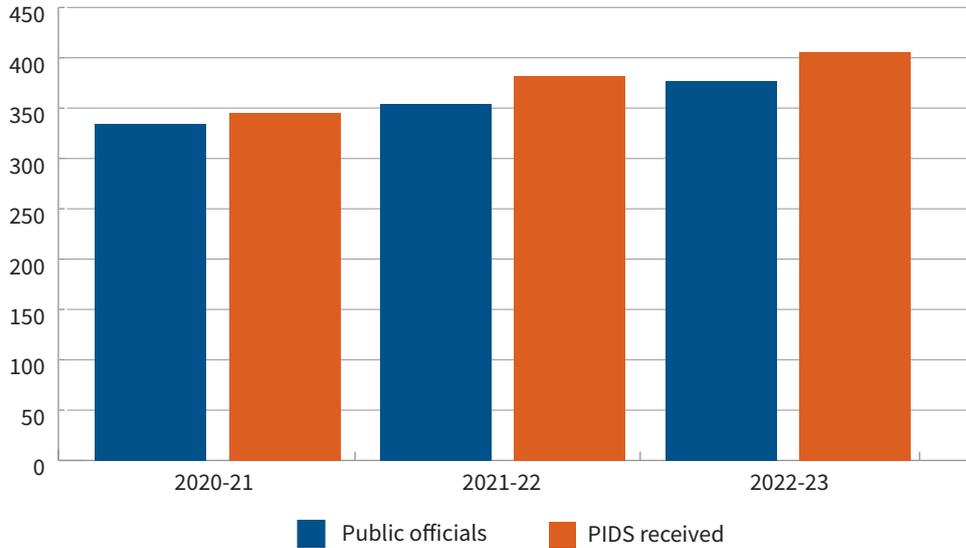
With the introduction of the PID Act 2022 more comprehensive reporting obligations will provide us with greater accuracy on the number of PIDs received, the type of serious wrongdoing reported, the maker of the report and how the PID was finalised.

The changes will enable us to assess whether PIDs are appropriately handled by agencies. This information will also enhance our ability to undertake our oversight functions, by allowing us to better target our audit, monitoring and training programs; proactively engage with agencies; and provide more detailed advice to Government and Parliament about the operation of the PID legislation.

Figure 2 shows the number of PIDs received by public authorities, and the number of public officials who made PIDs, over the past 3 reporting periods.

The data indicates a progressive increase in the number of PIDs made to public authorities and the number of public officials making PIDs since 2020-21. For the 2022-23 reporting period, the number of PIDs received and the number of public officials making PIDs both increased by 6% when compared to 2021-22.

Figure 2. Number of public officials who made PIDs directly to, and number of PIDs received by, public authorities, since 2020–21



Number of PIDs finalised

Public authorities reported finalising 273 PIDs in 2022–23. That figure may include PIDs received in previous years which were finalised in 2022-23.

Type of public authority

The majority of PIDs were reported as having been received by state government agencies, equating to 64% of all PIDs received, which is a 3% increase in the proportion of PIDs received by state government agencies compared to 2021-22. The number of PIDs reported as having been received by state-owned corporations and local government authorities was also slightly higher than in 2021-22 (by 1% and 2% respectively). The proportion of PIDs reported as having been received by local health districts decreased by 2%, representing 11% of all PIDs received in 2022-23 (compared with 13% of all PIDs received in 2021-22).

Table 3. Number of PIDs received by public authority type

Public Authority	Total Number of PIDs 2022-23
State government agencies	254 (64%)
Local government authorities	46 (11%)
Local health districts	45 (11%)
State owned corporations	41 (10%)
Universities	17 (4%)
Local Aboriginal Land Councils	1 (0%)
Total	404

Subject matter of PIDs

Under the PID Regulations, authorities must report on the number of PIDs received that relate to:

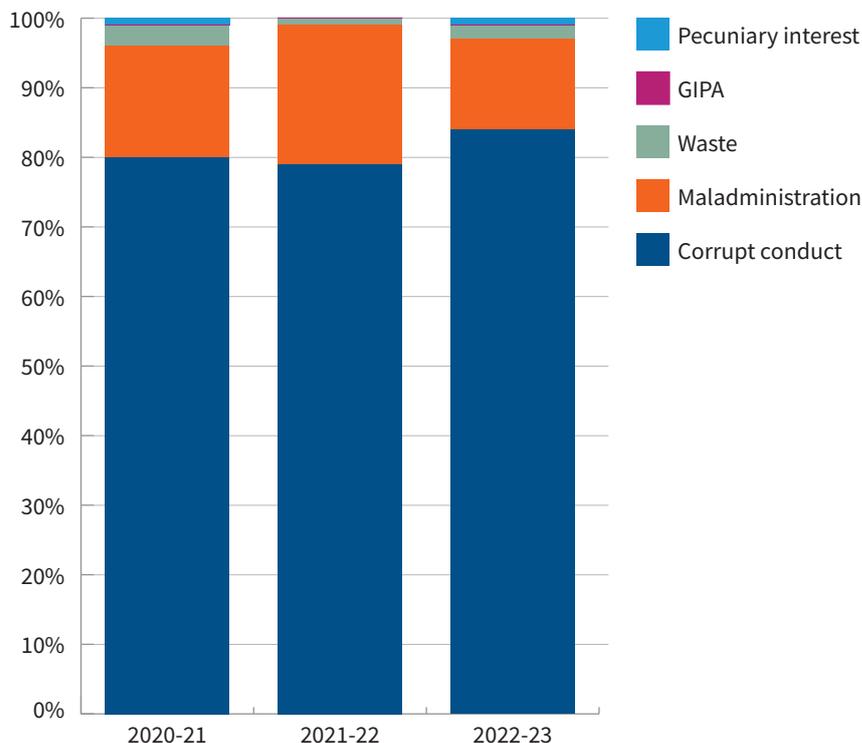
- corrupt conduct
- maladministration
- serious and substantial waste of public or local government money
- government information contravention, and
- local government pecuniary interest contraventions.

Some PIDs may relate to several categories of wrongdoing – for example, corrupt conduct may also be a form of maladministration. In practice, public authorities will only report the ‘primary’ category of wrongdoing. For example, a PID may allege both corrupt conduct and a serious and substantial waste of public money. Where corrupt conduct was identified as the primary issue, the PID would only be recorded against that category.

Figure 3 shows the primary allegation of wrongdoing identified in PIDs received by public authorities in the last 3 years. Consistent with previous years, the primary issue in a significant majority of PIDs made to public authorities in 2022–23 were allegations of corrupt conduct (84%).

The second most common primary issue recorded (13%) were allegations of maladministration. Given the point mentioned above (that only one ‘primary’ category of wrongdoing is reported in respect of each PID), these matters refer to those PIDs that alleged maladministration but not also corrupt conduct.

Figure 3. Types of wrongdoing recorded as primary issues in PIDs received by public authorities



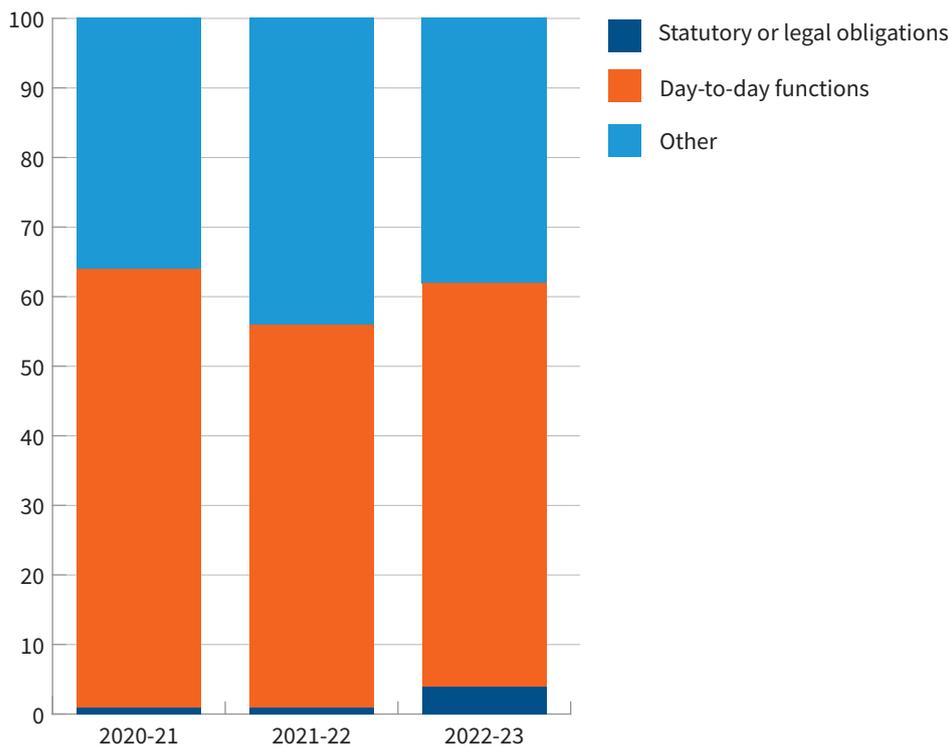
Circumstances under which public officials make PIDs

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

- through the performance of a person’s day-to-day functions (for example, by managers, internal auditors, corruption prevention staff, and investigators)
- because of a statutory or other legal obligation (for example, a police officer reporting misconduct under the *Police Act 1990*)
- through any ‘other’ circumstances (for example, employees who become aware of wrongdoing and voluntarily report it through the public authority’s internal reporting policy).

Of the total number of PIDs made by public officials in 2022-23 (377), 58% (218) were made in the performance of a public official’s day-to-day functions (see Figure 4 below). A statutory or legal obligation requiring public officials to report the conduct resulted in 16 PIDs (4%) being made. The remaining 143 PIDs (38%) made by public officials in 2022-23 were made by public officials as a result of other circumstances.

Figure 4. Circumstances under which public officials made PIDs from 2020-21 to 2022-23



Internal reporting policies

Under section 6D of the PID Act 1994, all public authorities must have a policy that sets out procedures for receiving, assessing, and dealing with PIDs. 95% of all public authorities reported to us during the period 2022-23, that they had an internal reporting policy.

Table 4 shows the proportion of public authorities, by type, which reported having an internal reporting policy in place.

Table 4. Public authorities with an internal reporting policy in 2022-23

Type of public authority	Internal reporting policy in place 2022-23
State government agencies	95%
Local government authorities	95%
State owned corporations	100%
Local health districts	93%
Universities	100%
Local Aboriginal Land Councils	86%

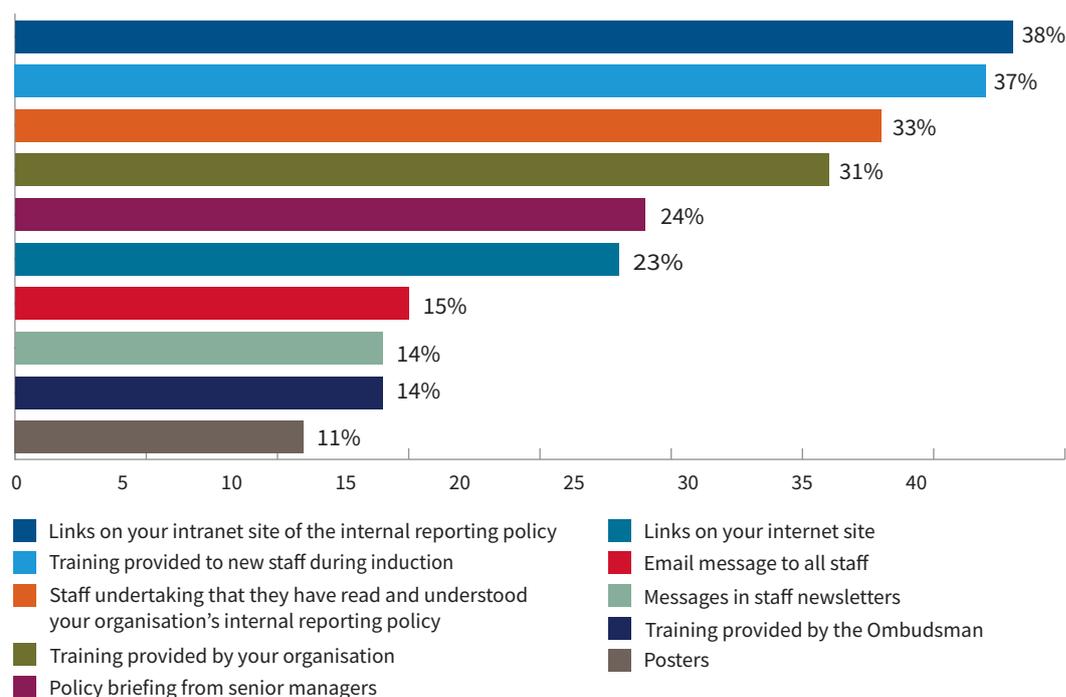
Staff awareness

The head of a public authority is responsible, under s 6E(1)(b) of the PID Act 1994, to ensure their staff are aware of their internal reporting policy and the protections provided under the PID Act 1994. Public authorities are required to report on the awareness raising activities that were conducted in the relevant reporting period.

In 2022-23, most public authorities (87%) reported that the head of the authority had taken action to meet their staff awareness obligations. A total of 59% reporting they had completed some form of training activity.

Agencies reported on the types of awareness activities they had undertaken (see Figure 5 below). This reporting indicated that the 3 most commonly offered awareness activities in 2022-23 were publishing a link to the internal reporting policy on the agency's intranet, providing induction training to new staff and having staff sign an undertaking that they had read and understood the internal reporting policy.

Figure 5. Top 10 PID awareness activities undertaken by public authorities



PIDs handled by investigating authorities

Under the PID Act 1994, investigating authorities are not required to report statistical information to our office in their capacity as investigating authorities. However, all the investigating authorities have agreed to provide our office with details of the PIDs they received as investigating authorities. This information provides a better understanding of how the PID Act is operating in practice.

Table 5 shows the number of PIDs received by investigating authorities over the previous 4 years. In total, investigating authorities received 1,294 PIDs in 2022-23 in their capacity as investigating authorities. This represents a 37% increase in PIDs from the 2021-22 reporting period, when 945 PIDs were received.

Table 5. PIDs received by investigating authorities over the previous 4 reporting periods

	2019-20	2020-21	2021-22	2022-23
Audit Office	5	6	11	16
ICAC*	144 (697)	155 (679)	130 (717)	237 (965)
Information Commissioner	0	1	0	0
Inspector of ICAC	0	0	0	0
Inspector of LECC	3	0	1	0
OLG	21	35	6	17
Ombudsman	5	14	31	33
LECC	74	56	49	26

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

Under section 11 of the *Independent Commission Against Corruption Act 1988*, the principal officer of any public authority is under a duty to report to the ICAC any matter that they suspect concerns, or may concern, corrupt conduct. Of the 1202 PIDs received by the ICAC, 965 (80%) comprised notifications from principal officers of authorities pursuant to this section.

Data limitations

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

While we report the data as received, not all public authorities comply with their reporting obligations. The accuracy of the data relies on all public authorities properly identifying, and recording, internal disclosures of wrongdoing as PIDs. Where this is not the case, the number of PIDs made in NSW is likely to be under-reported.

Conversely, referral pathways between investigating authorities and public authorities may result in over-reporting with 2 agencies reporting a PID which may relate to the same alleged wrongdoing. This may occur when a staff member discloses a matter internally which is subsequently reported to the ICAC. This may result in the originating public authority reporting it as a PID as well as the ICAC reporting the same matter.

Part 3

Training, awareness,
advice and research

Training and awareness

We have a statutory function to promote public awareness and understanding of the PID Act 1994. We have undertaken this function by providing information, advice, assistance, and training to public authorities on their functions under the Act. We also issue guidelines and other publications.

Our PID Act 1994 training was designed to build PID management capabilities across the public sector, and covered key aspects of the PID system, including:

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

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

During 2022-23, we held 25 PID management sessions attended by 995 participants.

This included 3 workshops at the Australian Public Sector Anti-Corruption conference.

Throughout the year, we continued to support the [Corruption Prevention Network](#) as subject matter experts on issues relating to public interest disclosures. We also delivered 3 Corruption Prevention Network seminars.

In addition, we provided engagement and awareness-raising activities to support the implementation of the new PID Act, including meetings with relevant staff within agencies and executive groups.

Training delivery updated

Since the PID Act 2022 received assent on 13 April 2022, a refreshed PID training program was developed which included:

- simulated real and relatable scenarios
- leveraging a range of platforms to cater for a diverse audience with different needs (including E-learning, webinars, and in person briefing and information sessions)
- addressing participant needs relative to their role
- aligning training with best practice, suited for the modern learner, and delivered through fit-for-purpose learning technology
- highlighting the importance of a positive reporting culture.

We have developed two e Learning modules to help agencies meet their training obligation under s 48 of the PID Act 2022, under which agencies have to ensure disclosure officers and managers are trained:

- no later than 6 months after 1 October 2023, or
- 3 months after a person commences as a disclosure officer or a manager if that is later.

The first eLearning course is designed for disclosure officers, including the head of agency. The second course is aimed at managers and supervisors. These courses, and particularly the managers course, will need to reach a very large number of public officials in a comparatively short period of time.

There are some public officials that either do not have access to an online Learning Management System or are provided with training in person. We have worked to develop three courses to be delivered by agencies face to face. These are available to agencies, and include a presenter pack with slides and a facilitator's guide as well as a learner booklet. The courses are for:

- heads of agency
- disclosure officers, and
- managers and supervisors.

We will be monitoring the online and face to face training and using any feedback from agencies and those who complete the courses to refine and improve future training.

Providing advice

We provide advice to agencies on the interpretation and application of the PID Act 1994 and 2022. Our website provides guidance material to assist public authorities to understand and meet their obligations under the relevant legislation.

Throughout the reporting period, we have been building a specialised PID advice team within the PID Unit. Our primary focus has been to ensure that we provide practical and accurate advice to NSW Government agencies and public officials on the PID Act 2022. We also continued to provide advice on the PID Act 1994. We responded to requests for advice on a range of topics, including PID protections, policy requirements, the meaning of 'maladministration', assessing PIDs and how to make a PID.

We have worked collaboratively with agencies who have sought our advice to ensure that they were prepared for the commencement of the new Act.

During 2022–23 we responded to 74 requests for advice. This represents a 72% increase on the previous reporting period. The majority of requests for advice related to the PID Act 1994, however, some related to both the PID Act 1994 and PID Act 2022.

Agencies also requested information about the availability of materials to assist them in preparing for the commencement of the PID Act 2022 which is indicative of their engagement with the new Act. For example, we have worked with agencies to identify the measures they might consider for creating a speak-up culture including informing employees of their right to disclose information about their own or other agencies, making public statements that detrimental action will not be tolerated and reassuring employees that they will be protected if they make a disclosure, and ensuring that agencies are able to implement robust risk management strategies to protect reporters from detrimental action.

The most common topics for which agencies sought advice included:

- interpretation of the PID Act 2022 or guidance material
- training requests
- assessing and managing PIDs

- conducting risk assessments
- dealing with allegations of detrimental action
- developing plans to prevent detrimental action, and
- reviews of PID policies and procedures.

We also publish guidance on our website for public officials who are considering making a report. During the year we refreshed the PID webpages on the NSW Ombudsman website.

PID Act 2022 - awareness campaign

Guidelines and other supporting material

During 2022-23 we developed significant resources to assist agencies preparing for the PID Act 2022. This included awareness videos, factsheets, and training modules designed to support agencies to meet their PID obligations.

We prepared guidelines under s 72(1)(c) of the PID Act 2022 to assist agencies understand their obligations and to assist public officials understand the operation of the Act and what protections are available to them.

We also developed a model PID policy for agencies to adopt to assist agencies comply with the obligation that all agencies have a PID policy.⁵

Agency engagement

As part of our awareness-raising activities to support the implementation of the PID Act 2022, we engaged directly with relevant staff within agencies and with executive groups. We have delivered sessions in the following forums: the Corruption Prevention Network; local government networks; the Australian Public Sector Anti-Corruption Conference; the National Investigations Symposium and Whistleblowers Australia.

Aboriginal community engagement

To better support the Aboriginal community, we have proactively engaged with the Aboriginal Land Council network. We held roundtable discussions with the Office of the Registrar Aboriginal Land Rights Act and the NSW Aboriginal Land Council. We are also in the process of establishing communication and engagement strategies for the Aboriginal Land Council sector. This includes the development of culturally contextualised learning materials, and products, in order to assist them to meet their obligations.

5. *Public Interest Disclosures Act 2022 (NSW) s 42.*

Part 4

Legislative and
administrative advice

Under s 6B(1)(g) of the PID Act 1994 we have had a role in providing reports and recommendations to the Minister about proposals for legislative and administrative changes to further the objects of the Act. This continues to be one of our functions under the PID Act 2022.⁶

This policy role is generally performed through our work in chairing and supporting the PID Steering Committee.

With the commencement of the PID Act 2022, the PID Unit will be collating information from agencies and other stakeholders through our advice, engagement, audit and monitoring activities, about areas in the legislation which may require legislative or administrative changes to be considered. The PID Unit will raise these with the Ombudsman and with the PID Steering Committee, where appropriate, given their functions under the legislation.

The PID Steering Committee

Section 6A of the PID Act 1994 established a PID Steering Committee. Under the 1994 Act the functions are to provide advice to the Minister on the operation of the Act and recommendations for reform, and to consider any reports provided by the Ombudsman in the exercise of its functions and provide advice to the Minister regarding these reports.

These functions continue under the PID Act 2022, with the addition of a function to provide advice to the Minister on regulations which are proposed to be made under the 2022 Act.

The Ombudsman is the chairperson of the PID Steering Committee.

Implementation of the PID Act 2022

Throughout the 2022-23 reporting year, the Steering Committee provided input on our preparations for the implementation of the PID Act 2022. Our PID Unit provided updates on the implementation plan, the communications strategy and the creation of the training materials and guidelines.

Working group for the preparation of the PID 2022 guidelines

During 2022-23, a Working Group was established, at the recommendation of the Ombudsman, to provide consideration and input into the drafting of the new Guidelines. The working group was made of a representative from each Steering Committee member.

The Ombudsman's office engaged with members of the working group by providing draft versions of the guidelines, which required their expertise, to the members for their input. Members were requested to review, comment and advise on the sections of the guidelines that were relevant to the agency they represented and for which they had subject matter expertise.

6. *Public Interest Disclosures Act 2022* (NSW) s 72(1)(e).

Proposals for legislative and administrative change

On 19 October 2021 we tabled a *Special report by the NSW Ombudsman on the Public Interest Disclosures Bill 2021*. In that report we suggested that the following matters be considered by the Steering Committee for future possible legislative amendment to the PID Act 2022:

- Whether the definition of ‘serious wrongdoing’ should either be expanded to include additional categories, or otherwise simplified
An example of an additional category for consideration was identified as ‘conduct that endangers health, safety or the environment’
- Whether the definition of ‘maladministration’ should be expanded to include other types of workplace wrongdoing, that on Crown Solicitor Office advice, may not fall within the scope of maladministration
- Whether the definition of ‘public official’ appropriately deals with the broad nature of relationships that agencies enter into when contracting out the delivery of their services

These matters were not considered for legislative amendment in 2022-23 as there was an informal understanding between Steering Committee members that the PID Act 2022 should first commence and be operationalised.

In 2023 – 24 our office will further research these issues and raise them with the Steering Committee for consideration.

Commencement of the PID Act 2022

In October 2022 the Ombudsman wrote to the Attorney General seeking that they make a proclamation for the PID Act 2022 to commence on 1 October 2023. This was endorsed by the Steering Committee.

In preparation for the enhanced statutory functions in the PID Act 2022, we developed and put into effect an operating model that supports our enhanced functions. These functions include:

- promoting public awareness and understanding of the legislation and its objects
- providing information, advice, assistance and training to agencies and public officials
- developing and publishing guidelines and other materials for the assistance of agencies, public officials, and other persons
- auditing and monitoring agencies on how they undertake their functions under the new PID Act
- providing reports and recommendations to the Premier and the Special Minister of State about proposals for legislative and administrative change.

As the primary oversight agency for the PID Act, in 2022-23 our office planned a communications and engagement strategy to ensure agencies and public officials had the relevant information and support to assist them to prepare for the PID Act 2022. These plans were fully executed in 2023-24 and we will report upon these in detail in the first annual report under the 2022 PID Act next year.

During 2022 – 23, our office developed new PID guidelines and training packages, to assist those who may make a PID as well as those who may receive or manage PIDs. The resources included a Model PID policy specifically designed to help agencies with their drafting process and enable them to satisfy the mandatory policy obligation, specified in section 42 of the PID Act 2022.

Part 5

PID Audits

Section 6B(1)(f) of the PID Act provides that the Ombudsman may undertake audits, and provide audit reports to Parliament, on the exercise of functions under the Act and compliance with the Act by public authorities.

(The Ombudsman will have a function of auditing and monitoring the exercise by agencies of their functions under the 2022 PID Act.)

Public interest disclosure audit of 6 local councils

We conducted an audit on the PID policies and practices of 6 local councils over a 3 year period spanning 2018–20. We tabled our report *Public Interest Disclosures Act 1994 Audit Report: Summary of Public Interest Disclosure Audit of 6 Local Councils* in Parliament on 21 November 2022.

The 6 councils were selected from the 128 local councils in NSW. This list was refined to develop a list of 58 council which:

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

We further refined this to identify the 6 selected councils by ensuring we had excluded councils that we had previously audited, that had recently experienced localised natural disasters and to ensure that they represented a geographical spread.

Audit purpose and scope

The purpose of the audit was to identify any issues in the culture, systems of practices within the audited councils, which had the potential to result in one or more of the following:

- barriers, including behavioural or cultural barriers, to public officials making PIDs (where warranted) the council not identifying disclosures as PIDs
- the council identifying, but not reporting, PIDs.

Audit findings

This report summarises our key findings from the audits of six local government councils to help paint a picture of the state of the local government sector, and more generally in relation to PID handling practices and the promotion of a positive reporting culture. The audit report discusses several interrelated risks we identified in relation to the following key areas:

- cultural barriers to reporting, including:
 - staff awareness of PIDs
 - PID awareness and training activities
- training of people with PID responsibilities
- ease with which staff can access nominated officers
- ease with which staff can contact nominated officers
- staff access to information about PIDs

- identification of PIDs
- location and content of PID policies
- guidance to staff about making PIDs
- PID responsibilities set out in their role descriptions

In relation to each key area we identified how many of the audited councils demonstrated that they:

- generally had good practices
- one or more issues for improvement
- inadequate or poor practices

We also identified where we were unable to make a finding in relation to a council in one of the areas indicated above.

Audit recommendations

Through these audits, we identified a range of factors that, when taken together, increase the risk that PIDs will not be made due to cultural or other barriers to reporting and/or that PIDs that are made are not reported or identified. We made 10 recommendations which were aimed at addressing these risks, rather than focusing only on statutory compliance. We also ensured that our recommendations also focused on enhancing reporting culture and practice, in a way that would also prepare agencies for the implementation of the enhanced obligations in the PID Act 2022.

We identified a range of measures that all local councils and agencies – including but not limited to the audited councils – could put in place to identify and address issues that might contribute to PIDs not being made, identified or reported.

In summary, the 10 recommendations were:

1. That councils scope, plan and conduct a staff survey to assess the reporting culture in their council, including identifying levels of PID awareness and any barriers to reporting
2. That councils develop a tailored program of PID training and awareness activities
3. That councils develop a rolling training program for staff who have PID responsibilities
4. That councils increase the number of nominated disclosure officers and ensure there is at least one nominated disclosure officer in the human resources area
5. That councils provide a range of reporting mechanisms for staff to make PIDs and that they provide the contact details of nominated disclosure officers
6. That councils consolidate PID information into their PID policy
7. That councils ensure their PID policy is accessible to all staff
8. That councils review and amend their PID policies to address the recommendations in the audit report
9. That councils develop and implement internal guidance documents and templates for staff with PID responsibilities
10. That the role descriptions of staff with PID responsibilities be updated to include those PID responsibilities

The complete audit report can be accessed here.

www.ombo.nsw.gov.au/Find-a-publication/publications/reports-to-parliament/other-special-reports/pid-audit-report-summary-pid-audits-of-6-councils.

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