

**Office of Transport
Safety Investigations**

Public Interest Disclosure Policy

Version Control

Version	Change from previous	Date	Comment
1.0	New Policy	6 May 2024	

Document Ownership and Approvals

Document Owner
Senior Manager, Business Services

Approved by	Position	Signature	Date
Jim Modrouvanos	A/Chief Investigator & CEO	<i>Jim Modrouvanos</i>	7/05/2024

Contents

Version Control.....	2
Document Ownership and Approvals	2
Preamble	4
1. Purpose	4
2. Accessibility of this policy.....	5
3. Who does this policy apply to?	5
4. Who does this policy not apply to?	5
5. Compliance with the PID Act	6
6. What is contained in this policy?.....	6
7. How to make a report of serious wrongdoing.....	7
a) Reports, complaints, and grievances	7
b) When will a report be a PID?.....	7
c) Who can make a voluntary PID?	8
d) What is serious wrongdoing?	8
e) Who can I make a voluntary PID to?	9
f) What form should a voluntary PID take?.....	10
g) What should I include in my report?	10
h) What if I am not sure if my report is a PID?.....	11
i) Deeming that a report is a voluntary PID	11
j) Who can I talk to if I have questions or concerns?.....	11
8. Protections.....	11
a) How is the maker of a voluntary PID protected?	11
b) Protections for people who make mandatory and witness PIDs	12
9. Reporting detrimental action.....	13
10. General support	13
11. How we will deal with voluntary PIDs	13
a) How OTSI will acknowledge that we have received a report and keep the person who made it informed.....	13
b) How OTSI will deal with voluntary PIDs.....	14
c) Where the report is not a voluntary PID.....	15
d) Where the report is a voluntary PID.....	15
12. How OTSI will protect the confidentiality of the maker of a voluntary PID	15
a) How OTSI will assess and minimise the risk of detrimental action.....	16
b) How OTSI will deal with allegations of a detrimental action offence	17
c) What OTSI will do if an investigation finds that serious wrongdoing has occurred...18	
13. Review and dispute resolution.....	18
a) Internal review	18
b) Voluntary dispute resolution	18
14. Roles and responsibilities.....	19
Annexure A – Contact details for OTSI Disclosure officers	23
Annexure B – List of integrity agencies	24

Preamble

The Public Interest Disclosures Act 2022 (PID Act), which came into force on 1 October 2023, provides a framework for public officials to report serious wrongdoing in the public sector, and to be protected when they do so. Under section 42 of the PID Act, all agencies in NSW are required to have a Public Interest Disclosure (PID) Policy.

The NSW Ombudsman oversees the operation of the PID Act, providing guidelines and other supporting information to NSW public sector agencies. To assist with its functions under the PID Act and to provide consistency with the guidelines, the Office of Transport Safety Investigations (OTSI) has developed its policy based on the NSW Ombudsman's model PID policy.

1. Purpose

OTSI takes reports of serious wrongdoing seriously and is committed to building a 'speak up' culture where public officials are encouraged to report any conduct that they reasonably believe involves wrongdoing.

OTSI's integrity relies on staff, volunteers, contractors, and subcontractors speaking up when they become aware of wrongdoing.

This policy sets out:

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

A speak up culture requires a framework that facilitates public interest reporting of wrongdoing by:

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

In NSW, that framework is the PID Act.

This policy should be read in conjunction with OTSI's:

- Bullying, Harassment and Discrimination Free Workplace Policy
- Code of Conduct
- Conflicts of Interest Policy
- Customer Complaints & Feedback Policy
- Fraud and Corruption Policy
- Grievance Management Policy
- Managing Misconduct & Discipline Policy

2. Accessibility of this policy

This policy is publicly available on the OTSI website – www.otsi.nsw.gov.au – and internally for staff on the OTSI Intranet.

A copy of the policy is provided to all staff of OTSI as part of their induction. A hard copy of the policy can be requested from Business Services.

3. Who does this policy apply to?

This policy applies to, and is 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
- 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
- a judicial officer
- a Member of Parliament (MP), including a Minister
- a person employed under the *Members of Parliament Staff Act 2013*.

OTSI staff are public officials within the meaning of the Act.

The Chief Investigator, other nominated disclosure officers and managers in OTSI have specific responsibilities under the PID Act. This policy 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 OTSI, may use this policy if they want information on who they can report wrongdoing to within OTSI.

4. Who does this policy not apply to?

This policy does not apply to:

- people who have received services from an agency and want to make a complaint about those services
- people, such as contractors, who provide services to an agency. For example, employees of a company that sold computer software to an agency.
- transport employees wanting to report a safety concern under the Confidential Safety Information Reporting Scheme (CSIRS).

This means that if you are not a public official, this policy does not apply to your complaint (there are some circumstances where a complaint can be deemed to be a voluntary PID, see section 7 (i) of this policy for more information).

If you are a transport employee wanting to report a safety concern through the Confidential Safety Information Reporting Scheme (CSIRS) under the provisions of Section 46E of the *Passenger Transport Act 1990*, please refer to the [CSIRS](#) page on the OTSI website - www.otsi.nsw.gov.au.

If you would like to make a complaint to OTSI, you can do so by:

- Phone: 1800 180 528
- Letter: PO Box A2616, Sydney South NSW 1235
- Email: info@otsi.nsw.gov.au

5. Compliance with the PID Act

This policy will be reviewed by the policy owner, the Senior Manager Business Services, every two years on the anniversary of the original publication date.

If a review identifies that alterations should be made to the policy, these changes will be submitted to the Senior Leadership Team for endorsement. Following its endorsement, the Chief Investigator will formally approve the revised policy.

Should any errors be identified in this policy they should be referred to the policy owner, the Senior Manager Business Services.

6. What is contained in this policy?

This policy provides information on:

- ways you can make a voluntary PID to OTSI under the PID Act
- the names and contact details for the nominated disclosure officers in OTSI
- the roles and responsibilities of people who hold particular roles under the PID Act and who are employees of OTSI
- 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 OTSI will do to protect you
- OTSI procedures for dealing with disclosures
- OTSI procedures for managing the risk of detrimental action and reporting detrimental action
- OTSI record-keeping and reporting requirements
- how OTSI will ensure it complies with the PID Act and this policy.

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

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

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

7. How to make a report of serious wrongdoing

a) Reports, complaints, and grievances

When a public official reports suspected or possible 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 grievances may also be PIDs if they have the features of a PID. If an internal complaint or grievance is a report of serious wrongdoing, OTSI will consider whether it is a PID. If it is a PID, OTSI will deal with it as set out in this policy but will also make sure that OTSI's Grievance Management Policy and Procedure and Managing Misconduct & Discipline Policy are followed.

OTSI recognises the importance of ensuring that PIDs are quickly recognised and the reporter is provided with the appropriate protections and support.

b) When will a report be a PID?

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

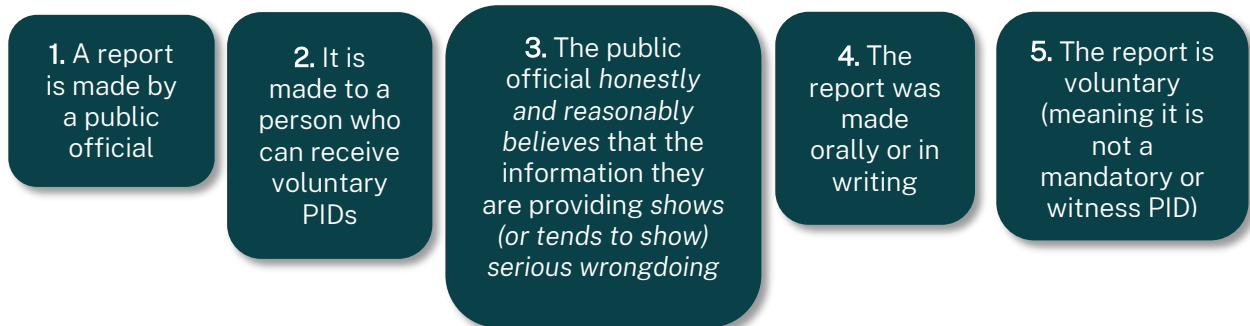
- i) *Voluntary PID*: This is a PID where a report has been made by the public official because they decided, of their own accord, to come forward and disclose what they know.
- ii) *Mandatory PID*: This is a PID where the public official has made a report about serious wrongdoing because they have a legal obligation to make that report, or because making that report is an ordinary aspect of their role or function in an agency.
- iii) *Witness PID*: This is a PID where a person discloses information during an investigation of serious wrongdoing following a request or requirement of the investigator.

This policy mostly relates to making a voluntary PID and how OTSI will deal 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 8 of this policy.

Information about mandatory and witness PIDs can be found in the NSW Ombudsman's guidelines 'Dealing with mandatory PIDs' and 'Dealing with witness PIDs'.

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.

You will not be expected to prove that what you reported actually happened or is serious wrongdoing. You *do* have to honestly believe, on reasonable grounds, that the information you are reporting shows or tends to show serious wrongdoing.

Even though you do not have to prove the serious wrongdoing happened or provide evidence, a mere allegation with no supporting information is unlikely to meet this test.

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

If you make a report and believe OTSI has made an error by not identifying that you have made a voluntary PID, you should raise this with a nominated disclosure officer or your contact officer for the report. If you are still not satisfied with this outcome, you can seek an internal review or OTSI may seek to conciliate the matter. You may also contact the NSW Ombudsman.

Further information on rights to internal review and conciliation is found in section 13 of this policy.

c) Who can make a voluntary PID?

Any public official can make a voluntary PID — see section 3 ‘Who does this policy apply to?’.

A public official can make a PID about serious wrongdoing relating to *any* agency, not just the agency they are working for. This means that OTSI may receive PIDs from public officials from another agency. It also means that you can make a PID to any agency, including an integrity agency like the Independent Commission Against Corruption (ICAC) and the NSW Ombudsman. 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 (in addition to having the other features set out here). Serious wrongdoing is defined in the PID Act as:

- *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 you make your report, you do not need to state to OTSI what category of serious wrongdoing you are reporting or that you are reporting serious wrongdoing.

e) Who can I make a voluntary PID to?

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 OTSI

You can make a report inside OTSI to:

- the Chief Investigator
- a disclosure officer for OTSI — a list of disclosure officers for OTSI can be found at Annexure A of this policy
- your manager — this is the person who directly, or indirectly, supervises you. It can also be the person who you directly, or indirectly, report to. 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 OTSI

You can also make your report to a public official in another agency (meaning an agency you do not work for) or an integrity agency. These include:

- the *head of another agency* — this means 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* — ways to contact disclosure officers for other agencies is located in an agency’s PID policy which can be found on their public website
- a *Minister or a member of a Minister’s staff*, but the report *must be made in writing*.

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

Making a report to a Member of Parliament or journalist

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

- you must have first made substantially the same disclosure (described here as a ‘previous disclosure’) to someone who can receive disclosures

- the previous disclosure must be substantially true.
- you did not make the previous disclosure anonymously.
- you did not give a written waiver of your right to receive information relating to your previous disclosure.
- you did not receive the following from OTSI:
 - notification that OTSI will not investigate the serious wrongdoing and will also not refer the previous disclosure to another agency, or
 - the following information at the end of the investigation period:
 - notice of OTSI 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:

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

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

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 as the maker of the report. A report will only be considered anonymous if there is no reasonable or practical way of communicating with the person making the report. Even if you choose to remain anonymous, you will still be protected under the PID Act. It may be difficult, however, for OTSI to investigate the matter(s) you have disclosed if OTSI cannot contact you for further information.

g) What should I include in my report?

You should provide as much information as possible so OTSI 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
- your explanation of the matter you are reporting
- how you became aware of the matter you are reporting

- possible witnesses
- 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 OTSI to understand what is or may be occurring.

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

i) Deeming that a report is a voluntary PID

The Chief Investigator can, in certain circumstances, determine that a report is a voluntary PID even if the report does not otherwise have all the features of a voluntary PID. This is known as the 'deeming power'.

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 has not met all the requirements of a voluntary PID, you can refer your matter to the Chief Investigator to request that they 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 Chief Investigator. For more information about the deeming power, see the Ombudsman's guideline 'Deeming that a disclosure is a voluntary PID'.

j) Who can I talk to if I have questions or concerns?

You can contact one of the disclosure officers listed in Appendix A who can provide further information so that your concerns can be addressed. Your inquiries will be treated as confidential.

8. Protections

a) How is the maker of a voluntary PID protected?

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

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

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

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

- *Protection from detrimental action*
 - a person 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

- once we become aware that a voluntary PID by a person employed or otherwise associated with OTSI that concerns serious wrongdoing relating to OTSI has been made, we will undertake a risk assessment and take steps to mitigate the risk of detrimental action occurring against the person who made the voluntary PID
- it is a criminal offence for someone to take detrimental action against a person because they have made or may make a voluntary PID. It is punishable by a maximum penalty of 200 penalty units or imprisonment for five years or both
- a person may seek compensation where 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)
- note that a person who makes a PID can still be subject to reasonable management action (such as ordinary performance reviews and performance management). Provided such action is not taken because of the PID, it is not detrimental action under the PID Act.

- *Immunity from civil and criminal liability*

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

- *Confidentiality*

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

- *Protection from liability for own past conduct*

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

b) Protections for people who make mandatory and witness PIDs

Apart from PIDs that are made voluntarily by public officials, there are other types of reports that are recognised as PIDs under the PID Act:

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

Protections for makers of mandatory and witness PIDs 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"> - breaching a duty of secrecy or confidentiality, or - breaching another restriction on disclosure. 	✓	✓

9. Reporting detrimental action

If you experience adverse treatment or detrimental action, such as bullying or harassment, you should report this immediately. You can report any experience of adverse treatment or detrimental action directly to OTSI, or to an integrity agency. A list of integrity agencies is located at Annexure B of this policy.

10. General support

OTSI provides all staff who have reported wrongdoing, including PID reporters, access to professional support, including counselling services provided via the Employee Assistance Program (EAP). Access to support may also be available for other staff involved in the internal reporting process where appropriate. Staff who make a report and other staff involved in the process can discuss their support options with their manager or a disclosure officer.

11. How we will deal with voluntary PIDs

a) How OTSI will acknowledge that we have received a report and keep the person who made it informed

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

- You will receive an acknowledgment that the report has been received. This acknowledgement will:
 - state that the report will be assessed to identify whether it is a PID
 - state that the PID Act applies to how OTSI deals with the report
 - provide clear information on how you can access this PID policy
 - provide you with details of a contact person and available supports.
- If the report is a voluntary PID, OTSI will inform you as soon as possible how the report will be dealt with. This may include:
 - that OTSI is investigating the serious wrongdoing
 - that OTSI will refer the report to a different agency (if appropriate) to deal with the voluntary PID. If OTSI does this, you will be provided with details of this referral
 - If OTSI decide to not investigate the report and to not refer it to another agency for it to be investigated, you will be told the reasons for this decision. OTSI will also notify the NSW Ombudsman of this decision.
- If OTSI decides to investigate the serious wrongdoing, you will be provided with updates on the investigation at least every three months. During this time, if you would like more frequent updates, you should contact the contact person who was nominated when you made the report.
 - If OTSI investigate the serious wrongdoing, you will be provided with the following information once the investigation is complete:
 - a description of the results of the investigation — that is, OTSI will tell you whether serious wrongdoing was found to have taken place.
 - information about any corrective action as a result of the investigation/s — this means OTSI will tell you what action was taken in relation to the person who engaged in the serious wrongdoing or if the serious wrongdoing was by OTSI, what corrective measures have been put in place to address the serious wrongdoing.
 - Corrective action could include taking disciplinary action against someone or changing the practices, policies and procedures that OTSI have in place which led to the serious wrongdoing.
- There may be some details about both the findings made as a result of the investigation and the corrective action taken that cannot be revealed to you. OTSI will always balance the right of a person who makes a report to know the outcome of that report, with other legal obligations
- If you have made an anonymous report, in many cases OTSI may not be able to provide this information to you.

b) How OTSI will deal with voluntary PIDs

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

c) Where the report is not a voluntary PID

Even if the report is not a voluntary PID, it will still need to be dealt with in a manner consistent with OTSI's Managing Misconduct & Discipline Policy or Grievance Management Policy and Procedure.

If the report is not a voluntary PID, OTSI will let you know that the PID Act does not apply to the report and how your concerns raised in the report will be dealt with.

If you are not happy with this assessment or otherwise disagree with it, you can:

- raise it with the person who has communicated the outcome with you or a disclosure officer,
- request an internal review or request that the matter be conciliated.
- Raise the issue with NSW Ombudsman.

d) Where the report is a voluntary PID

If the report is a voluntary PID:

- in most cases OTSI will conduct an investigation to make findings about whether the serious wrongdoing disclosed in the report occurred, who was involved, who was responsible, and whether the people involved, or the agency engaged, in serious wrongdoing. There may be circumstances where OTSI believe an investigation is not warranted – for example, if the conduct has previously been investigated
- there may also be circumstances where OTSI 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 the ICAC in accordance with section 11 of the Independent Commission Against Corruption Act 1988
- before referring a matter, OTSI will discuss the referral with the other agency, and will provide you with details of the referral and a contact person within the other agency
- if OTSI decide not to investigate a report and to not refer the matter to another agency, you will be provided with the reasons for this and notify the NSW Ombudsman.

12. How OTSI will protect the confidentiality of the maker of a voluntary PID

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

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

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

- where the person consents in writing to the disclosure
- where it is generally known that the person is the maker of the voluntary PID because of their voluntary self-identification as the maker
- when the public official or OTSI reasonably considers it necessary to disclose the information to protect a person from detriment
- where it is necessary the information be disclosed to a person whose interests are affected by the disclosure

- where the information has previously been lawfully published
- when the information is disclosed to a medical practitioner or psychologist for the purposes of providing medical or psychiatric care, treatment or counselling to the individual disclosing the information
- when the information is disclosed for the purposes of proceedings before a court or tribunal
- when the disclosure of the information is necessary to deal with the disclosure effectively
- if it is otherwise in the public interest to disclose the identifying information.

OTSI will not disclose identifying information unless it is necessary and authorised under the PID Act.

OTSI will take steps to keep the identifying information of the maker and the fact that a report has been made confidential. It may not be possible for OTSI to maintain complete confidentiality while the investigation progresses, but all practical steps will be taken to not unnecessarily disclose information from which the maker of the report can be identified. OTSI will do this by:

- limiting the number of people who are aware of the maker's identity or information that could identify them
- if information must be disclosed that may identify the maker of the PID, OTSI will still not disclose the actual identity of the maker of the PID, unless consent has been provided to do so
- OTSI will ensure that any person who does know the identity of the maker of a PID is reminded that they have a legal obligation to keep their identity confidential
- OTSI will ensure that only authorised persons have access to emails, files or other documentation that contain information about the identity of the maker
- OTSI will undertake an assessment to determine if anyone is aware of the maker's identity and if those persons have a motive to cause detrimental action to be taken against the maker or impede the progress of the investigation
- OTSI will provide information to the maker of the PID about the importance of maintaining confidentiality and advising them how best to protect their identity, for example, by telling them not to discuss their report with other staff.

If confidentiality cannot be maintained or is unlikely to be maintained, OTSI will consult with you and will consider this when a plan is developed to support and protect you from potential detrimental action.

a) How OTSI will assess and minimise the risk of detrimental action

OTSI will not tolerate any detrimental action being taken by any person against a person who has made a PID, investigators, witnesses or the person the report is about.

OTSI will assess and take steps to mitigate detrimental action from being taken against the maker of a voluntary PID, the person whose conduct is the subject of a PID, investigators and witnesses.

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

- undertaking a risk assessment to identify the risk of detrimental action resulting from making a PID, as well as indirect but related risks of workplace conflict or other difficulties
- developing strategies to manage identified risks and determine the appropriate level of protection and ongoing support required
- where appropriate, implementing additional measures in line with the Managing Misconduct & Discipline Policy.

These actions are to protect people who may be impacted by the matter. They are not a punishment and affected staff will be consulted before a strategy is implemented.

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:	Detrimental action does not include:
injury, damage or loss	lawful action taken by a person or body to investigate serious wrongdoing or other misconduct
property damage	the lawful reporting or publication of a finding of serious wrongdoing or other misconduct
reputational damage	the lawful making of adverse comment, resulting from investigative action
intimidation, bullying or harassment	the prosecution of a person for a criminal offence
unfavourable treatment in relation to another person's job	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.
discrimination, prejudice or adverse treatment	
disciplinary proceedings or disciplinary action, or any other type of disadvantage.	

b) How OTSI will deal with allegations of a detrimental action offence

If you believe that detrimental action has been, or is being taken, against you or someone else for reporting wrongdoing, you should immediately inform a Disclosure Officer.

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

- take all steps possible to stop the action and protect the person(s)

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

If you allege detrimental action, you will be kept informed of the progress and outcome of any action taken in response to the allegation.

c) What OTSI will do if an investigation finds that serious wrongdoing has occurred

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

Corrective action can include:

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

13. Review and dispute resolution

a) Internal review

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

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

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

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

b) Voluntary dispute resolution

If a dispute arises between OTSI and a person who has made a report which is, or may be, a voluntary PID, OTSI may request the NSW Ombudsman to conciliate the dispute.

Conciliation is a voluntary process and will only be suitable for disputes where OTSI and the maker of the report are willing to resolve the dispute.

14. Roles and responsibilities

a) The role of OTSI

OTSI is responsible for:

- dealing with all reports of wrongdoing fairly and reasonably and respects the rights of any persons who are the subject of a report, and
- keeping full and accurate records with respect to all information received in connection with the PID Act to ensure that OTSI complies with its obligations under the State Records Act 1998, including:
 - ensuring all PID information is be stored using Integrated Records Management in accordance with OTSI's Records Management Procedure
 - ensuring access to the files where PID information is stored is restricted
- providing training to all staff with roles outlined in 15 (b) – 15 (d) on their responsibilities in line with Section 48(2) of the PID Act.

b) Chief Investigator

The Chief Investigator is responsible for:

- ensuring there is compliance with this Policy and the PID Act
- fostering a 'speak up' culture where reporting is encouraged
- receiving disclosures from public officials
- exercising the 'deeming power' under Section 29 of the PID Act
- ensuring there is a system in place for assessing disclosures
- making decisions following an investigation, including disciplinary and/or remedial actions, or appointing an appropriate decision-maker
- coordinating responses to written requests for information from the NSW Ombudsman
- receiving reports of detrimental action allegations and coordinating the referral of evidence of a detrimental action offence to the Commissioner of Police and either the ICAC or, if the evidence relates to a member of the NSW Police Force or the NSW Crime Commission – the LECC
- informing the NSW Ombudsman of the following decisions:
 - where OTSI has decided not to investigate a disclosure and not to refer it to another agency to investigate
 - where OTSI has decided to cease investigating a matter without completing the investigation or referring the disclosure to another agency
- where required, recommending and/or overseeing corrective action in response to reports, or substantiated findings of serious wrongdoing.

- To fulfill their responsibilities, the Chief Investigator may direct staff within their function to complete certain tasks on their behalf.

c) Senior Manger Business Services

The Senior Manager Business Services is responsible for:

- complying with yearly reporting obligations to the NSW Ombudsman including:
 - information about voluntary PIDs received by OTSI during each return period (yearly with the start date being 1 July)
 - action taken by OTSI to deal with voluntary PIDs during the return period
 - how OTSI promoted a culture in the workplace where PIDs are encouraged.
- ensuring that the Chief Investigator and all disclosure officers and Managers are given training in relation to their responsibilities under the PID Act and this policy in accordance with the requirements of the PID Act.
- ensuring refresher training takes place at intervals of no more than three years.
- ensuring all public officials are aware of this policy and how to make a PID.
- dealing with disclosures made under the OTSI Code of Conduct and in accordance with relevant policies and procedures
- assuring compliance with this procedure by overseeing internal compliance with the PID Act, including reviewing and conducting assurance activities, for example as they relate to:
 - ensuring updates are provided to the makers of voluntary PIDs by the party who is dealing with the report
 - assessing the risk of detrimental action and workplace conflict related to, or, likely to arise out of a report, and developing strategies to manage any risk identified
- ensuring that there are appropriate systems in place for:
 - supporting staff who make a report and protecting them from detrimental action
 - implementing corrective action if allegations of serious wrongdoing are substantiated
- ensuring staff in breach of this policy are treated in accordance with applicable Managing Misconduct & Discipline Policy.
- conducting annual reviews depending on whether any disclosures have been made during the period. The results of any reviews will be reported to the Senior Leadership Team meeting and to the external Auditors as part of the annual audit regime.
- where required, providing or coordinating support for staff involved in the reporting or investigation process, including protecting the interests of any person who is the subject of a report

d) Directors and managers

Managers and supervisors are responsible for:

- understanding and communicating the internal reporting processes and the protections available to staff who report wrongdoing to those they manage
- encouraging staff to report known or suspected wrongdoing and supporting staff when they do
- receiving reports from staff that they manage or supervise
- where the manager or supervisor is not a disclosure officer – passing on reports they receive which could be PIDs to a disclosure officer for the agency with which either the manager or the public official who made the disclosure is associated
- in consultation with the Chief Investigator, implementing strategies to minimise the risk of detrimental action against a discloser or workplace conflict after a report has been made
- immediately notifying the Chief Investigator if they believe a staff member is being, or may be, subjected to detrimental action.

e) All staff

All OTSI staff are responsible for:

- reporting all known or suspected wrongdoing and support those who have made reports of wrongdoing
- if requested, assisting those dealing with a report, including supplying information and cooperating with any investigations
- maintaining confidentiality regarding reports of wrongdoing or actions taken in response to a report
- treating those dealing with or investigating reports of wrongdoing with courtesy and respect
- respecting the rights of persons who are the subject of reports, and
- acting in a manner consistent with the OTSI Code of Conduct.

Staff must not:

- victimise, harass or take detrimental action against any person who has made a report, may in the future make, or is suspected of having made a PID
- victimise, harass or take detrimental action against any person who is the subject of a report, or
- provide false or misleading reports of wrongdoing, nor provide false or misleading information in any investigation of such reports (*note: it is a criminal offence under the PID Act to wilfully make a false or misleading statement when reporting wrongdoing*).

f) Disclosure officers

Disclosure officers are responsible for:

- receiving reports from public officials
- receiving reports when they are passed on to them by managers
- ensuring that any verbal reports they have received are documented in writing,

- ensuring staff can make reports privately, discreetly and, when requested, away from the workplace
- discussing with disclosers whether they have any concerns about detrimental action or workplace conflict
- ensuring reports are documented and dealt with appropriately.

Annexure A – Contact details for OTSI disclosure officers

OTSI employees wishing to make a disclosure should contact the:

- Chief Investigator
- Senior Manager, Business Services

For persons external to OTSI please email info@otsi.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: info@ombo.nsw.gov.au
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: governance@audit.nsw.gov.au
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: icac@icac.nsw.gov.au
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: oiicac_executive@oiicac.nsw.gov.au
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: contactus@lecc.nsw.gov.au
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: oilc_executive@oilc.nsw.gov.au
Office of the Local Government	Local government pecuniary interest contraventions	Email: olg@olg.nsw.gov.au
The Privacy Commissioner	Privacy contraventions	Telephone: 1800 472 679 Writing: GPO Box 7011, Sydney NSW 2001 Email: ipcinfo@ipc.nsw.gov.au
The Information Commissioner	Government information contraventions	Telephone: 1800 472 679 Writing: GPO Box 7011, Sydney NSW 2001 Email: ipcinfo@ipc.nsw.gov.au