

Unclassified



NSW Police Force

Public Interest Disclosures

**Standard Operating Procedures for the Principal Officer,
Nominated Disclosures Coordinator &
Nominated Disclosures Officers**

Professional Standards Command

Unclassified

Public Interest Disclosures - Standard Operating Procedures for the Principal Officer, Nominated Disclosures Coordinator & Nominated Disclosures Officers

These Standard Operating Procedures (SOPs) provide the steps to be taken by nominated staff in the management of public interest disclosures (PIDs) in the NSW Police Force (NSWPF), as per the requirements of the *Public Interest Disclosures Act 1994* (the PID Act). They should be read in conjunction with the *Public Interest Disclosures – Guidelines for the NSW Police Force*, which provide definitions of terminology and relevant staff roles.

Essential Summary

The Principal Officer, Nominated Disclosures Coordinator and Nominated Disclosures Officers are the only officers within the NSWPF who are authorised to receive PIDs. The holders of these positions are listed below:

- The Principal Officer: Commissioner of Police
- The Nominated Disclosures Coordinator: Manager, Complaints Services, Investigations and Field Services, Professional Standards Command (PSC)
- Nominated Disclosures Officers:
 - Assistant Commissioner, Professional Standards Command
 - All Professional Standards Managers, except the Professional Standards Manager, PSC
 - The Manager, Administrative Officer Conduct Unit, PSC.

Document Control Sheet

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Caveat

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1. Scope

These Standard Operating Procedures (SOPs) provide the steps to be taken by nominated staff in the management of public interest disclosures (PIDs) in the NSW Police Force (NSWPF), as per the requirements of the *Public Interest Disclosures Act 1994* (the PID Act). They should be read in conjunction with the *Public Interest Disclosures – Guidelines for the NSW Police Force*, which provide definitions of terminology and relevant staff roles.

As defined by Section 4A of the PID Act, a public official is an individual who is an employee, or is otherwise in the service, of a NSW public authority. For the NSWPF this means all sworn and unsworn members, as well as all temporary staff, contractors and volunteers.

For the purposes of this document, the term 'staff' or 'staff member' will be used to cover all public officials within the NSWPF. Also, the steps outlined below have been written primarily for Nominated Disclosures Officers (NDOs). However, they should also be used by the Commissioner as the Principal Officer or by the Nominated Disclosures Coordinator (NDC) if a report is made to them directly.

2. Procedures

2.1 Steps in the NSWPF assessment & management of a public interest disclosure

The following are the steps to be taken by the NDC or NDOs in assessing and managing a PID.

The NDC and NDOs should be aware that in terms of timeframes, the PID Act specifies that a PID should be acknowledged within 45 days of it being received with a copy of the Public Interest Disclosures - Guidelines for the NSW Police Force attached. It also requires that the reporter be contacted within six months of having made the report to inform them of what action will be taken or is proposed to be taken.

However, given that NSWPF timeframes are more stringent than PID timeframes, and given that timeframes for sworn complaints are captured by the c@ts.i complaints database, the NSWPF will adhere to current complaints timeframes in the acknowledgement and management of PIDs.

2.1.1 Receipt

- The Commissioner of Police, the NDC and NDOs are the only officers authorised to receive disclosures for the NSWPF for the purposes of the PID Act.
- PIDs must be made in writing. The NSW Ombudsman has uploaded a reporting template for use by internal reporters at:

<http://www.ombo.nsw.gov.au/news-and-publications/publications/guidelines/public-interest-disclosures/ensuring-your-internal-reporting-policy-is-best-practice-checklist-public-interest-disclosures>

- The Commissioner must forward an internal report to his Professional Standards Manager (PSM), being the designated NDO for the Commissioner's office, within three days for assessment.
- If a PID is received by a staff member who is not authorised to receive them, they must not forward it to an NDO themselves. Instead, they must advise the internal reporter to report the matter to an NDO.
- If a PID is received about another NSW agency, the NDO must inform the staff member making the PID that they must make the report to the relevant agency, according to that agency's PID policy and procedures or alternatively, they must make the report to a relevant investigative agency, as defined by Section 4 of the PID Act. The NDO should make an appropriate record of the initial report and of the advice being given to the staff member.

2.1.2 Assessment

- An assessment form is provided at Appendix 4. While assessments are made at face value using the information provided by the internal reporter, the NDO may need to undertake some preliminary enquiries in order to complete the assessment form.
- The NDO must carry out an assessment of the possibility of reprisals at the outset, in conjunction with the internal reporter (see Appendix 5).
- If the report is not assessed as meeting the threshold for a PID, it must still be examined and assessed as a potential complaint.
- Under section 25 of the PID Act, investigative authorities such as the NSW Ombudsman and the Law Enforcement Conduct Commission (LECC) are able to refer matters which they have assessed as being PIDs to PSC or relevant commands. Under section 25(8), a matter referred as a PID under this section remains a PID after it is referred and an NDO receiving such a referral will be required to treat the report as a PID.

2.1.3 Administrative steps at receipt and assessment of a PID report

- As per section 6(D)(1A) of the PID Act, the NDO must send a letter of acknowledgement and a copy of the NSWPF's *Public Interest Disclosures – Guidelines for the NSW Police Force* to the internal reporter. This must be done within seven days of the report being received. A form letter is attached at Appendix 1 for this purpose.
- The NDO must report the matter to the NDC, who will record the matter in the centralised NSWPF PID database held by the Professional Standards Command (PSC). NDOs will be required to provide the NDC with contemporary information on PID progress, in order to allow the NDC to keep the PID database up to date and to generate up to date reports as required.
- The NDO must examine the report to assess whether it meets the threshold test for a PID. The NDO will then write to the internal reporter to inform them of the outcome of the assessment within 21 days of the matter having been received. Form letters are attached at Appendix 2 and 3 for

this purpose. However, it should be noted that these form letters are to be used as a guide only and that each letter will need to be tailored to the individual circumstances of each report.

- If the matter is not assessed as a PID, but will be dealt with as a complaint under other legislation, the NDO will need to provide this information to the NDC for inclusion in the PID database.
- If a PID is made about the conduct of a sworn officer, the matter must be:
 - receipted and caveated on c@ts.i within seven days. The 'Public Interest Disclosure' button must be ticked at entry. The date of receipt will be deemed to be the date received by the NDO
 - triaged and referred to the relevant CMT to determine the most appropriate way to respond to the issues raised by the complaint and to assess the matter for investigation, if it is not declined
 - investigated under the provisions of Part 8A of the Police Act 1990 (the Police Act), if it is decided that the matter requires investigation
 - signed off by the relevant commander if it is decided that the matter will be declined, with the record including the reasoning behind the decision.
- If the PID is made about an administrative staff member, temporary staff member, ministerial employee, contractor or volunteer:
 - the PSC CMT must refer the disclosure to the Manager, Administrative Officer Conduct Unit (AOCU). If necessary, the matter will be investigated under Part 5 of the *Government Sector Employment Act 2013* (the GSE Act); and
 - the matter will be added to the AOCU database as a PID.
- If the PID is made about a systemic issue which does not relate to a specific sworn or unsworn officer, the CMT will recommend appropriate inquiries as required.
- When a PID is referred to the relevant CMT, the confidentiality provisions that will apply will be those under Section 22 of the PID Act.

2.1.4 Investigation

As outlined above, a PID about a sworn officer is also a complaint under Part 8A of the Police Act. Similarly, a PID about an unsworn officer is also a complaint under the GSE Act. As such, if these matters are assessed as PIDs requiring investigation, they will be investigated under the provisions of Part 8A of the Police Act or Part 5 of the GSE Act, as relevant. Reports of systemic wrongdoing that do not focus on individual staff will be otherwise investigated and the NDO who received and assessed the report as being a PID will appropriately allocate the matter for investigation.

2.1.5 Investigation Timeframes

Timeframes for PID investigations will be the same as per investigations under Part 8A of the Police Act or Part 5 of the GSE Act, as relevant. However,

section 27 of the PID Act states that the NSWPF must advise the internal reporter within six months of the report having been made of the action taken or proposed to be taken in respect of the disclosure. Therefore, if the matter is particularly complex, there is an overall six month timeframe for completion. In these cases, investigators must make requests for extensions as per usual investigatory practice.

NDOs should be aware that under section 19 of the PID Act, an internal reporter is able to make their report to a Member of Parliament or journalist after six months, under specific circumstances, being that the staff member must have already made substantially the same disclosure to one of the following:

- the Principal Officer, being the Commissioner of Police; the NDC; or an NDO; or
- an investigating authority, in accordance with the PID Act

and

the NSWPF or investigating authority that received the disclosure must have:

- decided not to investigate the matter; or
- decided to investigate the matter, but not completed the investigation within six months of the original report having been made; or
- investigated the matter but not recommended any action as a result; or
- not told the internal reporter within six months of the disclosure being made whether or not the matter will be investigated.

Further, the internal reporter must have reasonable grounds for believing that the disclosure was 'substantially true and it is in fact substantially true' when making a report to an MP or journalist, in order to be protected under the PID Act.

2.1.6 Support Staff

Commanders will provide primary support for all staff affected by an internal report. As part of the risk assessment of possible reprisal action, the NDO will contact the relevant commander or commanders. They will also contact the Manager, Internal Witness Support Unit (IWSU) to inform them of the report, if necessary. The matter will be assessed by the IWSU and dealt with as per the Internal Witness Support Guidelines and eligibility to join the IWSU program will be assessed as per usual processes. The internal reporter and any witnesses will also be supported by their commanders.

Other staff who may be affected by the report, but who are not eligible for IWSU assistance, are to be supported by their commander, including the subject officer. All staff affected by the report are also able to seek assistance from other authorised sources, such as the Employee Assistance Program (EAPS), Peer Support Officers, NSWPF chaplains or their general practitioner.

If there are multiple staff members who are making a report of the same occurrence of wrongdoing, they must all make individual PID reports to be protected by the provisions of the PID Act. In such cases, each individual report may be brought together under one investigation, unless there are cogent reasons for this not to occur. The investigator must make a record of the reasoning behind the decision to investigate the reports together or separately.

2.2 Responding to Reprisals

NDOs who receive a PID must respond to related reports of detrimental action, including reports of misdirected reprisal action. If the Commissioner of Police or NDC are advised of detrimental action, they must notify the relevant NDO immediately. However, if the NDC has managed the original report of wrongdoing, then they must respond to any related reprisal action for that report.

If the NDO is advised of detrimental action, they must immediately:

- advise the internal reporter's commander, who has the primary responsibility for ensuring that the internal reporter is protected from reprisals and who may choose to take interim risk management action, if necessary
- advise all other commanders who have carriage of the matter or who have staff members affected by the matter and who may also choose to take interim risk management action, if necessary
- advise the relevant CMT
- advise the NDC.

The NDO must allocate the matter to an appropriate investigator, who will keep the staff member who made the complaint of reprisal action informed of progress and of the outcome of the investigation, as per Part 8A or equivalent.

NDOs should be aware that if a staff member feels that any reprisal action is not being dealt with effectively, they have the right to contact the NSW Ombudsman or the Independent Commissioner Against Corruption (ICAC), depending on the type of wrongdoing reported. As such, it is important to ensure that staff that have made a complaint of reprisal action are given regular updates on the progress of the investigation and are told of the investigation outcome.

Under section 20(5) of the PID Act, after an investigation into reprisal action has been completed or discontinued, the NSWPF must refer any evidence of the offence to the PIC. If an investigation finds that reprisal action has taken place, the matter must be referred to the Office of the Director of Public Prosecutions. Under section 20(3) of the PID Act, proceedings for an offence of reprisal action may be instituted at any time within three years after the offence is alleged to have been committed.

2.3 Statutory Reporting

The NDC and NDOs must keep accurate and timely records of PID reports as they are received, managed and completed. The NDC is responsible for managing the NSWPF PID database and NDOS are responsible for providing accurate and timely

information to the NDC for inclusion in the PID Database. The NDC is responsible for all statutory PID reporting.

There are two types of reports mandated by the PID Act, as described below. The Public Interest Disclosures Regulation 2011 outlines the information that must be included in these reports. These reports will be made via the Commissioner, for his information.

As of 1 January 2014, PIDs will be categorised as being one of three types, as per the requirements of the Public Interest Disclosures Amendment (Reporting) Regulation 2013. PIDs will be categorised as either:

1. PIDs made by public officials in performing their day to day functions as such public officials;
2. PIDs not included in (1) above that are made under a statutory or other legal obligation; and
3. all other PIDs.

These three categories will be reflected in the PID reporting databases used by the NDC.

2.3.1 Six-monthly reports

Section 6CA of the PID Act requires that a six monthly report of PIDs be made to the NSW Ombudsman. These reports must be made within 30 days of the six monthly due dates, being 30 June and 31 December of any year.

They must provide statistical information as per the Ombudsman's requirements. The Ombudsman has set up a secure online reporting tool for the making of six monthly statistical reports.

2.3.2 Annual report

Section 31 of the PID Act requires that an annual report on PIDs be produced for the Minister for Police and Emergency Services within four months of the end of each financial year and tabled in parliament. A copy of this report is to be provided to the NSW Ombudsman.

The NSW Ombudsman has written a guide to writing PID annual reports, entitled 'Reporting annually on public interest disclosures' which is available on the Ombudsman's website.

2.4 Assistance for NDOs

NDOs requiring assistance in any step of the PID process should contact the NDC for information and advice. The NDC will coordinate feedback and provide opportunities for NDOs to discuss issues arising at appropriate meetings eg Professional Standards Managers' Forums.

2.5 A Guide for the Initial Meeting with an Internal Reporter

The following points are to assist the NDO in their initial meeting or discussion with the internal reporter.

Inform the internal reporter of the following:

- they will be sent a written acknowledgement of their report and copy of the Public Interest Disclosures – Guidelines for the NSW Police Force within seven days
- they will be sent further correspondence within 21 days, which will advise them of whether or not the report has been assessed as being a PID. It will also advise them of how the report is to be dealt with by the NSWPF
- if the matter is to be investigated, they will be contacted with the name of the investigator, once allocated. That investigator will contact them with any likely timeframes for any investigation and with regular updates
- their identity will be kept confidential if possible. If there is any reason why this cannot be the case, or why it cannot continue, they will be advised prior to their identity being made known eg if it is required for the investigation to progress or if the internal reporter will need to give evidence in a criminal matter
- within six months of the original report having been made, they will be provided with written information about the final outcome of the matter and if relevant, advice about whether the internal reporter will be involved as a witness in any further matters, such as in disciplinary or criminal proceedings.

Provide the internal reporter with the following:

- information about available support services.

Ask the internal reporter the following questions in order to initiate a risk assessment:

- How would you like to be contacted e.g. home email, mobile phone, certain times of day etc?
- What are your expectations now that you have made the report?
- Is anyone else aware of the matter? If so, who?
- Have you discussed the matter with anyone else? If so, with whom?
- Have you made the report to anyone else? If so, to whom?
- Do you anticipate reprisals or negative consequences in the workplace as a result of the report? Are there any existing workplace issues or tensions that may be exacerbated by the report? If so, please give details.

3. Further Information

For further information on these SOPs and the corresponding *Public Interest Disclosure - Guidelines for the NSW Police Force*, contact the Corporate Advice – Policy and Projects Team, Corporate Advice and Response, Professional Standards Command.

Appendix 1 – Letter of receipt

Dear [name]

I am writing to acknowledge receipt of your report of [brief description of report] at [location/unit where alleged conduct occurred] on [date of incident/s].

As a Nominated Disclosure Officer for the NSW Police Force, I will assess your report as per the provisions of the *Public Interest Disclosure Act 1994*.

I will contact you again in the following weeks with the outcome of my assessment. In the meantime, please find attached a copy of the *Public Interest Disclosures – Guidelines for the NSW Police Force* for your information.

Yours sincerely,

[name]

[title]

Nominated Disclosure Officer

Appendix 2 - Assessment Letter (if a PID)

Dear [name],

I am writing to inform you that as a Nominated Disclosure Officer for the NSW Police Force, I have assessed your report of [brief description of report] at [location/unit where alleged conduct occurred] on [date of incident/s] as per the provisions of the *Public Interest Disclosures Act 1994* (the PID Act).

I have considered the information provided and determined that the report is a public interest disclosure. The matter will now be sent for triage [where?] and appropriate [investigation]. Your commander [name] has been informed of the disclosure and will provide you with support as required.

I would like to take this opportunity to thank you for reporting this matter. Reporting such matters is in the public interest and is important in maintaining the integrity of the NSW Police Force.

If you have any questions regarding any of the above information, please don't hesitate to contact me.

Yours sincerely,

[Name]

[Title]

Nominated Disclosure Officer

Appendix 3 - Assessment Letter (if NOT a PID)

Dear [name],

I am writing to inform you that as a Nominated Disclosure Officer for the NSW Police Force, I have assessed your report of [brief description of report] at [location/unit where alleged conduct occurred] on [date of incident/s] as per the provisions of the *Public Interest Disclosures Act 1994* (the PID Act).

I have considered the information provided and determined that the report does not meet the threshold for a public interest disclosure. [add reason for decision here]. Nevertheless, your matter will be assessed for appropriate investigation, as required.

I would like to take this opportunity to thank you for reporting this matter, which will assist in maintaining the integrity of the NSW Police Force.

If you have any questions regarding any of the above information, please don't hesitate to contact me.

Yours sincerely,

[Name]

[Title]

Nominated Disclosure Officer

Appendix 4 - PID Assessment Form

<input type="checkbox"/> PID	<input type="checkbox"/> NOT A PID
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The following checklist has been prepared based on discussions with the Ombudsman’s Office and by reference to the Ombudsman’s PID Team Information Sheets.

The contents of a disclosure report have to meet a number of tests simultaneously to be a ‘Public Interest Disclosure’.

1. Was the report of wrongdoing made by a public official?

A public official is defined in s4A of the PID Act. (Sworn & unsworn employees, contractors, volunteers etc)

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2. Was the disclosure made to the Principal Officer (being the Commissioner of Police), the Nominated Disclosures Coordinator or a Nominated Disclosures Officer in accordance with a procedure established by the authority under the PID Act (s8)?

If the disclosure is not made to the Commissioner of Police, the NDC or an NDO, it is not a PID. It is not enough that the staff member sends it to the wrong person and they send it to the Commissioner, NDC or an NDO on the staff member’s behalf.

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3. Are the concerns about:

a) Corrupt Conduct:

The definition of corruption for the purposes of the PID Act is as per sections 8 and 9 of the *Independent Commission Against Corruption Act 1988* (the ICAC Act), as follows:

Section 8

- any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or
- any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or

- any conduct of a public official or former public official that constitutes or involves a breach of public trust, or
- any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.
- Corrupt conduct is also any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority and which could involve any of the following matters:
 - (a) official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition),
 - (b) bribery,
 - (c) blackmail,
 - (d) obtaining or offering secret commissions,
 - (e) fraud,
 - (f) theft,
 - (g) perverting the course of justice,
 - (h) embezzlement,
 - (i) election bribery,
 - (j) election funding offences,
 - (k) election fraud,
 - (l) treating,
 - (m) tax evasion,
 - (n) revenue evasion,
 - (o) currency violations,
 - (p) illegal drug dealings,
 - (q) illegal gambling,
 - (r) obtaining financial benefit by vice engaged in by others,
 - (s) bankruptcy and company violations,
 - (t) harbouring criminals,
 - (u) forgery,
 - (v) treason or other offences against the Sovereign,
 - (w) homicide or violence,
 - (x) matters of the same or a similar nature to any listed above,
 - (y) any conspiracy or attempt in relation to any of the above.

If it meets the above criteria it is not corrupt conduct for the purposes of the Act unless it also meets the second test in section 9, i.e. it could constitute or involve:

- a criminal offence; or
- a disciplinary offence; or
- reasonable grounds for dismissing, dispensing with the services of, or otherwise terminating the services of a public official.

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b) Maladministration:

This is conduct that involves action or inaction of a serious nature that is contrary to law, unjust, oppressive or improperly discriminatory or based wholly or partly on improper motives.

Some examples of maladministration are:

- Awarding contracts and tenders to private parties that are related by family friendship or association
- Failing to make a decision in accordance with official policy for no appropriate reason
- Refusing to grant a person a licence for reasons that do not relate to the merits of their application
- Issuing an order against a person without giving them procedural fairness

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c) Serious & substantial waste of public money:

A serious and substantial waste of public money is any uneconomical, inefficient or ineffective use of resources, authorised or unauthorised which results in a public loss of funds or resources.

Serious and substantial waste can be:

- Absolute - where the waste is regarded as significant
- Systemic - where the waste indicates a pattern that results from a weakness within organisation's systems
- Material - where the waste is about the organisations expenditure or a particular item of expenditure, or is to such an extent that it affects an organisations capacity to perform its primary functions.

Some examples are:

- Misappropriation or misuse of public property
- The purchase of unnecessary or inadequate goods and services
- Overstaffing in particular areas
- Staff being remunerated for skills they do not have, but are required to have under the terms or conditions of their employment
- Programs not achieving their objectives and therefore the program's costs being clearly ineffective or inefficient.

Waste can result from such things as:

- Insufficient safeguards to prevent the theft or misuse of public property
- Purchasing practices that do not ensure goods and services are necessary and adequate for their intended purpose
- Poor recruiting practices.

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- d) **Government Information contravention (*Government Information (Public Access) Act 2009* i.e. GIPA):**

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- 4. **Does the internal reporter have an honest belief based on reasonable grounds that the information they have provided shows or tends to show the alleged wrongdoing?**

Honest belief

A belief is more than a suspicion. You must be more likely to accept the idea that wrongdoing occurred than reject it. An honest belief is a belief that is genuinely held.

Unless there is strong evidence that the internal reporter couldn't have had an honest belief, under s9A their belief is presumed an honest belief.

Reasonable grounds

From an objective viewpoint is the basis for the reporter's belief reasonable? Would a reasonable person in the same circumstances as the reporter believe that wrongdoing (corrupt conduct, maladministration or waste of public funds etc ie a) to e) above had occurred?

The belief cannot be based on personal animosity or prejudice alone.

Shows or tends to show

There must be sufficient information provided by the reporter to indicate the wrongdoing has happened or is happening. Sufficient information would include:

- Direct observation of the wrongdoing
- Corroborative observation by others
- Evidence such as unbalanced accounts, missing items of value or contradictory records.

There should be no reasonable alternative explanation for the conduct or activities that could be easily thought of.

Taken together an honest belief on reasonable grounds that information shows or tends to show cannot be based on a mere allegation or suspicion that is unsupported by facts, circumstances or evidence.

Does the information from the reporter, if viewed by a reasonable person, provide some evidence of corruption, maladministration or waste of public funds by a public official?

Does the evidence provided by the reporter show that their allegations are more than a mere allegation or suspicion and are supported by facts, circumstances or evidence?

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INFORMATION TO BE PROVIDED TO AN INTERNAL REPORTER WHEN MATTER ASSESSED AS PID:

1. Written acknowledgement of receipt of the report and a copy of the internal reporting policy

The PID Act (s6D) requires public agencies to provide an acknowledgement of receipt and a copy of their PID policy to the internal reporter within 45 days of the report having been received. The NSWPF's Public Interest Disclosures – Guidelines for the NSW Police Force require for an acknowledgement and copy of the Public Interest Disclosures – Guidelines for the NSW Police Force to be sent to the internal reporter within seven days of the report having been received.

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2. Advice about how the report will be dealt with

The PID Act (s27) requires an organisation to notify an internal reporter about any action taken or proposed in response to their PID within six months of their PID being made. The Public Interest Disclosures – Guidelines for the NSW Police Force require that the reporter be told whether or not their report has been assessed as being a PID and be given advice about how their report will be dealt with within 21 days of the report having been made. The Guidelines also require that any reports that are to be investigated are to be completed within Part 8A or Part 2.7 timeliness requirements and that the reporter be informed of the outcome any response or investigation within six months of the report having been made.

.....
.....

PID

Refer matter to Complaints Management Team to assess whether the matter will be investigated.

Date referred:

NOT A PID

Action taken, if any:

.....
.....

Signed:.....

Name:

Principal Officer/ Nominated Disclosure Coordinator/ Nominated Disclosure Officer

Date:.....