

# **OLG Public Interest Disclosures Policy**

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Objective No: A901717



### Message from our Secretary

I am committed to ensuring local councils and council officials maintain a high standard of ethical and accountable conduct when undertaking their functions for the communities that they serve.

This policy emphasises the importance of providing support to, and protections for, public officials within the local government sector who report serious wrongdoing in accordance with the requirements of the *Public Interest Act* 2022 (PID Act). This includes:

- creating a climate of trust, where public officials are comfortable and feel supported to report wrongdoing
- keeping the identity of the public official disclosing the serious wrongdoing confidential, where this is possible and appropriate
- protecting public officials from any detrimental action resulting from making a report of serious wrongdoing
- dealing with reports of serious wrongdoing in a prompt, thorough and impartial way, and taking appropriate action if some form of serious wrongdoing has been found
- keeping public officials who make reports of serious wrongdoing informed of their progress and the outcome

As Secretary of the Department of Planning, Housing and Infrastructure (DPHI), I am defined under the PID Act as an 'integrity agency' for the purposes of exercising certain functions under the *Local Government Act 1993* (LG Act). This means that I can accept reports from public officials about wrongdoing and act where those reports relate to local government.

I have delegated my powers and functions as an integrity agency to officers in the Office of Local Government (OLG). This means that OLG can accept and deal with certain complaints on my behalf. This policy informs how such complaints will be dealt with by OLG.

Under the PID Act, I am responsible for ensuring that:

- I have this policy as an integrity agency
- there is an internal reporting policy for employees of DPHI
- public officials are aware of the contents of the policy and the protections under the PID Act for people who make a public interest disclosure
- OLG complies with this policy and my obligations as an integrity agency under the PID Act

I strongly encourage you to familiarise yourself with this policy, so that you understand your obligations and protections under the PID Act and framework.

#### Kiersten Fishburn

#### Secretary

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## Purpose

This document is the PID policy for the Secretary of the Department of Planning, Housing and Infrastructure (DPHI) in their capacity as an *integrity agency*, when exercising functions of the Departmental Chief Executive under the LG Act. The obligation as an integrity agency comes from section 19(g) of the PID Act.

This policy sets out:

- how OLG will support and manage reports of serious wrongdoing by councils and council officials
- how OLG will fulfil the responsibilities of the Secretary of DPHI as an integrity agency under the PID Act
- how to make a report of serious wrongdoing and where to seek advice about that report
- the protections which are available to reporters of wrongdoing under the PID Act.

# Role of the Office of Local Government

OLG is a unit within DPHI responsible for strengthening the sustainability, performance, integrity, transparency, and accountability of the local government sector within NSW. The Secretary of DPHI has delegated their powers and functions as an integrity agency to officers in OLG. This means that OLG can accept and deal with complaints on the Secretary's behalf. This policy informs how such complaints will be dealt with by the Secretary and OLG. Specific roles and responsibilities for OLG staff in implementing this policy are set out in Appendix A.

# Who does this policy apply to?

This policy applies to the Secretary of DPHI when exercising their functions as in integrity agency, the OLG and its officers when exercising functions on behalf of the Secretary, and to public officials when making public interest disclosures to the Secretary or OLG about local government.



## Who can make a PID?

Only public officials can make a voluntary PID. Councillor and council employees are public officials.

Under section 14 of the PID Act, a public official includes:

- (a) a person employed in or by an agency or otherwise in the service of an agency (which includes the Local Government (LG) authority),
- (b) 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,
- (c) an individual in the service of the Crown,
- (d) a statutory officer,
- (e) a person providing services or exercising functions on behalf of an agency, including a contractor, subcontractor, or volunteer
- (f) if an entity, under a contract, subcontract, or other arrangement, is to provide services on behalf of an agency or exercise functions of an agency in whole or in part—a public official, partner or officer of the entity who is to be involved in providing the services in whole or in part, or who is to exercise the functions,

# How can reports of serious wrongdoing about local government be made?

#### Making a report to your council

Public officials who are a council official can make a report to:

- their manager (if they are a council employee)
- a Disclosure Officer within the council
- the General Manager of the council

#### Making a report to OLG

Public officials can also make a report to OLG:

• by emailing OLG at <u>investigations@olg.nsw.gov.au</u> or <u>olg@olg.nsw.gov.au</u>



- by writing to OLG at: Locked Bag 3015
   NOWRA NSW 2541
- by speaking with an OLG Disclosure Officer (see Appendix A and OLG website)

#### Making a report to another NSW public sector agency

Public officials can also make a report to the head of any NSW public sector agency or a disclosure officer at those agencies.

In certain circumstances, it may be more appropriate for the report to be made to the Independent Commission Against Corruption (ICAC) for corrupt conduct allegations or to the NSW Ombudsman for reports about maladministration. (See **Appendix B** for contact details)

#### Making a report to a NSW Government Minister or member of a Minister's staff

The PID Act requires that such reports must be made in writing if they are to be treated as a voluntary PID. A maker of an oral disclosure should be redirected to an integrity agency to remake the disclosure. The report must be communicated to a disclosure officer or an integrity agency as soon as reasonable practicable.

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

In some circumstances, making a report of wrongdoing to an MP or a journalist is a voluntary PID. The reporter must first have made substantially the same disclosure to someone who can receive disclosures. For the purposes of this part of the policy, this is referred to as a 'previous disclosure'.

As well as the previous disclosure already having been made to someone authorised to receive disclosures, the previous disclosure must have the following characteristics to be a voluntary PID:

- The previous disclosure must be substantially true
- The previous disclosure cannot be made anonymously
- The reporter did not give a written waiver of their right to receive information relating to the previous disclosure; and
- The reporter received from the agency, notification that they would not investigate the serious wrongdoing and would also not refer the previous disclosure to another agency
- The reporter did not receive from the agency the following information at the end of the investigation period:
  - notice of the agency's decision to conduct an assessment/investigation into the report, or



- notice of the outcome(s) of the assessment/investigation of the report and whether corrective action was taken.

Investigation period means:

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

If all the above requirements are met, disclosure to an MP or journalist may be a voluntary PID and therefore will entitle the reporter to the protections of the PID Act, and the agency will follow the processes set out in this policy.

# What is serious wrongdoing?

Reports must be of one or more of the following categories of *serious wrongdoing*<sup>1</sup> to be considered a PID:

- *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 public official/s
- *a government information contravention* such as destroying, concealing, or altering records to prevent them from being publicly released
- *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.

<sup>&</sup>lt;sup>1</sup> Section 13, PID Act

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# **Classification of PIDs**

OLG will classify a PID based on the criteria in the PID Act. This classification will have an impact on how we deal with the PID as set out in the PID Act. There are three types of PIDs:

- 1. *Voluntary PID*: a report made by a public official because they decided, of their own accord, to come forward and disclose what they know.
- 2. *Mandatory PID*: where a public official has made a report because they have a legal obligation to make that report, or because making that report is an ordinary aspect of their role or function in an agency.
- 3. *Witness PID*: If a person (not restricted to a public official) provides information in response to a request or requirement during an investigation into 'serious wrongdoing' (whether it is the subject matter of a PID or not), they are making a witness PID

A voluntary PID must have <u>all</u> the following five features:

- 1. A report is made by a public official
- 2. It is made to a person who can receive voluntary PIDs
- 3. The public official honestly and reasonably believes that the information they are providing shows (or tends to show) serious wrongdoing
- 4. The report was made orally or in writing
- 5. The report is voluntary (meaning it is not a mandatory or witness PID

The reporter is not expected to prove that what they reported actually happened or that it is serious wrongdoing. The reporter <u>does</u> have to honestly believe, on reasonable grounds, that the information they are reporting shows or tends to show serious wrongdoing.

A report will not be a PID if the information disclosed relates only to a disagreement with a government policy, including:

- (a) a government decision concerning amounts, purposes, or priorities of public expenditure, or
- (b) a policy of the governing body of a local government authority.
- (c) concerns only a grievance about a matter relating to the employment or former employment of an individual, and either,



- (i) does not have significant implications beyond matters personally affecting or tending to personally affect the individual, or
- (ii) relates to a disagreement with the taking or proposed taking of reasonable management action.

Any public official, other than a member of Parliament, can make a voluntary PID.

#### Deeming that a report is a voluntary PID

The Secretary or their delegate (for OLG it will be the OLG Disclosure Co-ordinator) 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.

By deeming that a disclosure is a voluntary PID, it ensures that reporters are provided with protections and that serious wrongdoing is acted upon.

## How will OLG deal with report of serious wrongdoing?

- OLG will acknowledge reports of wrongdoing in writing, provided that the reporter has provided contact details to allow this to occur.
- When OLG receives a report of serious wrongdoing from a public official, it will conduct an assessment to determine if the report is a PID, as defined in the PID Act.
- OLG's Disclosure Coordinator will make a determination as to whether the report is a PID.
- Written confirmation of the status of the report will be provided to the reporter provided that the reporter has provided contact details to allow this to occur.
- Should the report be determined not to be a PID, the reporter will be advised of the most appropriate pathway to deal with their concern.
- If the report is determined to be a PID, it will be subject to further assessment, and if considered warranted, OLG will investigate the matter to determine if the alleged serious wrongdoing has occurred.
- Will conduct a risk assessment and speak with the reporter to ensure the reporter is appropriately supported. Under section 61 of the PID Act, a council is the *'responsible agency'* who must take steps to assess and minimise the risk of detrimental action. OLG will ensure the council is aware of their responsibilities in this regard.



- Where it is determined an allegation of wrongdoing requires an investigation to establish whether serious wrongdoing may or may not have occurred, the matter will be managed in accordance with OLG's adopted procedures for dealing with such matters.
- There may be circumstances where we believe an investigation is not warranted for example, if the conduct has previously been investigated or is being investigated by another agency.
- There may be circumstances where the Secretary or their delegate decides a report should be referred to another agency, such as the relevant council, or another integrity agency as defined by section 19 of the PID Act. Before referring a matter, we will discuss the referral with the other agency.
- Where a matter is referred to another agency, we will provide the reporter with details of the referral and a contact person within the other agency.
- OLG will provide the reporter with updates on the progress of any investigation at intervals of not more than 3 months throughout the duration of the investigation.
- Where OLG investigated a matter and finds that serious wrongdoing has occurred, this will be dealt with in accordance with the applicable provisions of the *Local Government Act 1993*. The relevant council may also be required to take corrective action pursuant to section 66 of the PID Act. The reporter must be informed of these outcomes.
- If OLG ceases to deal with a disclosure as a voluntary public interest disclosure, OLG must inform the maker of the disclosure of the agency's reasons for the decision.

# Confidentiality

OLG understands that public officials who report wrongdoing may want their identity and the fact that they have made a report to be confidential. OLG will take any of the following steps to manage confidentiality:

- limit the number of people who are aware of the reporter's identity or information that could identify them
- seek the reporters consent if we must disclose the reporter's identity
- remind any person who does know the identity of the reporter that they have a legal obligation to keep their identity confidential
- restrict access to emails, files or other documentation that contain information about the identity of the maker



- advise the reporter to contact the OLG Disclosure Co-ordinator or OLG Investigations team if they consider detrimental action is or may be taken against them
- provide information to the reporter about the importance of maintaining confidentiality and advising them not to discuss their report with other public officials.

There are, however, certain circumstances that allow for the disclosure of identifying information. These include:

- where the reporter consents in writing to the disclosure
- where it is generally known that the reporter is the maker of the voluntary PID because they have informed others about the report
- when the OLG reasonably considers it necessary to disclose the information to protect a person from detrimental action
- 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 reporter
- 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.

## Protections

Protections for reporters of PIDs are detailed in the table below.

#### Table 1 Protections for PID reporters

Protection provided by the PID Act	Voluntary PID	Mandatory PID	Witness PID
Detrimental action – it is an offence to take detrimental action against any person based on a suspicion, belief, or awareness that a person has made, may have made, or may make a PID	$\checkmark$	$\checkmark$	$\checkmark$
<b>Right to compensation</b> – A person can initiate proceedings and seek compensation for injury, damage	$\checkmark$	$\checkmark$	$\checkmark$



or loss suffered because of detrimental action being taken against them.			
<b>Right to seek preventive injunction</b> – An injunction can be sought to prevent the commission or possible commission of a detrimental action offence against a person	$\checkmark$	$\checkmark$	$\checkmark$
Ability to seek remedial injunction – If a person has suffered unlawful detrimental action, an injunction can be applied for to remedy that offence (for example, to reinstate the person's employment)	$\checkmark$	$\checkmark$	$\checkmark$
<b>Confidentiality</b> – Information that may identify a person as the maker of a voluntary PID cannot be disclosed by the public official or an agency except in specific circumstances.			
Note (*) However, where possible and provided it does not hinder an investigation, it is best practice for agencies to maintain confidentiality of a maker's identity whether it is a mandatory or witness PID, or some other type of complaint.	$\checkmark$	*	*
Protection from civil and criminal liability – A person will not incur civil or criminal liability in relation to making a disclosure. This means that legal action cannot be taken against a person for:	$\checkmark$	$\checkmark$	$\checkmark$
<ul> <li>Breaching a duty of secrecy or confidentiality, or</li> <li>Breaching another restriction or disclosure</li> </ul>			
Protection from liability for own past conduct – if a person discloses their own wrongdoing or misconduct while they are making a PID, they are <i>not</i> protected from liability for their own past conduct. However, the Attorney General may give the maker of a PID a <i>conditional</i> or <i>unconditional</i> undertaking that the disclosure of their own conduct will not be used against them.	Can only be provided by the Attorney General	Can only be provided by the Attorney General	Can only be provided by the Attorney General



The reporter of a 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 may include injury, damage or loss, property damage, reputational damage, intimidation, bullying or harassment, unfavourable treatment in relation to another person's job, discrimination, prejudice or adverse treatment, disciplinary proceedings or disciplinary action, or any other type of disadvantage.
  - Investigators of serious wrongdoing are also protected from detrimental action and can apply for an injunction to prevent the commission or possible commission of a detrimental action offence.
  - An order requiring a person to do an act or thing to remedy conduct that constitutes a detrimental action offence. This can include:
    - a formal apology to the person who suffered detrimental action, or
    - reinstating someone to the same or similar role if their employment has been terminated.
  - 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 require a formal apology, 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. *Note:* this protection is not available to reporters of Witness PIDs or Mandatory PIDs.



OLG will not disclose identifying information unless it is necessary and authorised to do so under the PID Act.

• Protection from liability for own past conduct

The Attorney General can give the reporter an undertaking that a disclosure of their own past conduct will not be used against them if a person discloses their own serious wrongdoing or misconduct while making a report.

## Dealing with allegations of detrimental action

If the OLG becomes aware of an allegation that detrimental action has been taken or may be taken against a person who has made a PID to the OLG, the OLG will, through the OLG Disclosure Coordinator, take certain steps to deal with the circumstance in accordance with the PID Act.

The steps that may be taken include:

- Gather evidence of the alleged detrimental action
- Contacting the relevant council to ensure it is aware of its risk management obligations as the *responsible agency* under section 61 of the PID Act

OLG will:

- Notify the NSW Ombudsman about the allegation of a detrimental action offence being committed.
- Refer evidence of a detrimental action offence the Commissioner of Police, and ICAC
- Take appropriate disciplinary action against anyone that has been found to have taken detrimental action, where it has the power to do so.

## Reporting detrimental action

If you experience adverse treatment or detrimental action because of making a PID, you should report this immediately by sending an email to <u>investigations@olg.nsw.gov.au</u>. You can also speak with a OLG disclosure officer or report it to another integrity agency such as the ICAC. A list of integrity agencies is located at Annexure B.



# Review and dispute resolution

#### (a) Internal review

People who make a report (a voluntary PID) can seek internal review of the following decisions made by OLG:

- that the OLG is not required to deal with the report as a voluntary PID
- to stop dealing with the report as a voluntary PID. This could include dealing with the report as another kind of PID
- to not investigate the serious wrongdoing:
  - (i) in accordance with an applicable Act, law, procedure, or policy, or
  - (ii) by conducting an audit, inquiry, or assessment or by taking other action of an investigative nature, whether on a preliminary or formal basis, and not refer the report to another agency
- to stop investigating the serious wrongdoing without either completing the investigation or referring the report to another agency for investigation.

Applications for internal review should be referred to the Executive Director or Deputy Secretary of OLG as the OLG's Public Interest Disclosure Review Officers. The review request will be allocated to an appropriate officer within the OLG who was not involved in making the relevant decision that is the subject of the review request.

#### (b) Voluntary dispute resolution

If a dispute arises between the OLG and a reporter which is, or may be, a voluntary PID, the OLG may ask the NSW Ombudsman to conciliate the dispute. Conciliation is a voluntary process and may not be suitable for all disputes.

# Other obligations

#### **Record-keeping requirements**

OLG must keep full and accurate records with respect to all information received in connection with the PID Act to comply with its obligations under the *State Records Act 1998*. Records should have appropriate security applied and managed in accordance with DPHI's <u>Records and Information</u> <u>Management Policy</u>.



#### Annual Reporting to the NSW Ombudsman

Each year the OLG, through the OLG Disclosure Coordinator, provides an annual return to the NSW Ombudsman which includes:

- information about voluntary PIDs received by the OLG during each return period (annually 1 July to 30 June)
- action taken by the OLG to deal with voluntary PIDs during the return period
- how the OLG maintains a culture in the workplace where PIDs are encouraged.

#### Audit

A periodic audit will be undertaken to assess OLG's compliance with the provisions of the PID Act, this policy and associated procedures.

## Support and assistance for reporters and others

Council officials can access their council's Employee Assistance Program for confidential support.

Persons who have any questions about this policy or concerns about its application are encouraged to raise these with any OLG Disclosure Officer. Alternatively, enquiries or concerns can be sent to investigations@olg.nsw.gov.au.



# Policy metadata

#### Table 1. Policy metadata

Category	Description
Status	Final
Date of approval	31 July 2024
Approver	Deputy Secretary – Local Government
Group	NSW Office of Local Government
Division	Investigations
Policy owner	Director Investigations
Branch	Investigations
Document location	OLG Intranet and internet
Next review date	31 July 2027
Associated procedure	Nil
Any additional applicability	Nil
Superseded document	
Further information	investigations@olg.nsw.gov.au
Document Reference	A901717

# Version control

#### Table 2. Version Control

Version	Date issued	Change
1		Draft New policy to ensure compliance with PID Act 2022



## Appendix A - Roles and responsibilities

#### Departmental Chief Executive (Deputy Secretary, Local Government)

- receiving disclosures from Local Government authority public officials
- ensuring there is a system in place for assessing disclosures
- ensuring the OLG complies with the PID Act and this policy
- ensuring that the OLG has appropriate systems for:
  - overseeing internal compliance with the PID Act
  - supporting reporters who make voluntary PIDs
  - minimising the risk of detrimental action
  - complying with reporting obligations regarding allegations or findings of detrimental action
  - complying with yearly reporting obligations to the NSW Ombudsman.

#### **Executive Director, Local Government**

• undertake or otherwise arrange for a periodic audit will be undertaken to assess OLG's compliance with the provisions of the PID Act, this policy and associated procedures.

#### OLG Disclosure Coordinator (Director, Investigations)

- determination of whether a report is to be treated as a PID
- coordinating OLG's response to the reports of serious wrongdoing from public officials, including ensuring reports are appropriately acknowledged, assessed and where necessary referred or investigated.
- coordinating training and awareness requirements
- creating and maintaining accurate records
- ensuring the OLG's obligations of reporting to the Ombudsman and ICAC are completed.

#### OLG Disclosure Officers (OLG Directors, Managers and Investigation Team)

- receiving reports from public officials
- receiving reports when they are passed on to them by managers
- ensuring reports are dealt with appropriately, including by referring the matter to the OLG PID Co-ordinator or the Investigations team
- ensuring that any oral reports that have been received are accurately recorded in writing.



Annexure	B -	List	of	integrity	agencies
/					490110100

Integrity agency	What they investigate	Contact information
The NSW Ombudsman	Most kinds of serious maladministration by most	T <b>elephone</b> : 1800 451 524 between 9am to 3pm Monday to Friday
	agencies and public officials (but not NSW Police, judicial officers, or MPs)	In 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 In Writing: GPO Box 12, Sydney NSW 2001
		Email: governance@audit.nsw.gov.au
Independent Commission Against Corruption	Corrupt conduct	T <b>elephone</b> : 02 8281 5999 or toll free on 1800 463 909 (callers outside Sydney) between 9am and 3pm, Monday to Friday
		In Writing: GPO Box 500, Sydney NSW 2001 or faxing 02 9264 5364
		Email: <u>icac@icac.nsw.gov.au</u>
•		Telephone: 02 9228 3023
Independent Commission Against	by the ICAC or the ICAC officers	In Writing: PO Box 5341, Sydney NSW 2001
Corruption	Unicers	Email: <u>oiicac_executive@oiicac.nsw.gov.au</u>
The Law Enforcement		Telephone: 02 9321 6700 or 1800 657 079
Conduct Commission	by the NSW Police Force or the NSW Crime	In Writing: GPO Box 3880, Sydney NSW 2001
		Email: <u>contactus@lecc.nsw.gov.au</u>
The Inspector of the	by the LECC and LECC	Telephone: 02 9228 3023
Law Enforcement Conduct Commission		I <b>n Writing:</b> GPO Box 5341, Sydney NSW 2001
		Email: <u>oilecc_executive@oilecc.nsw.gov.au</u>



Office of the Local Government	Local government pecuniary interest contraventions	Email: <u>investigations@olg.nsw.gov.au</u> Email: <u>olg@olg.nsw.gov.au</u>
	Breaches of the Code of Conduct that require investigation	
	Serious maladministration	
	Serious and substantial waste of public money	
The Privacy	Privacy contraventions	Telephone: 1800 472 679
Commissioner		In Writing: GPO Box 7011, Sydney NSW 2001
		Email: ipcinfo@ipc.nsw.gov.au
The Information Commissioner	Government information	Telephone: 1800 472 679
	contraventions	In Writing: GPO Box 7011, Sydney NSW 2001
		Email: ipcinfo@ipc.nsw.gov.au