



Public  
Service  
Commission

# Public Interest Disclosures Policy

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## 1 Public Interest Disclosures Policy

### 1.1 Purpose

This policy is about reporting wrongdoing by NSW public authorities and public officials. It sets out who you can report wrongdoing to in the Public Service Commission (**PSC**) and how reports of serious wrongdoing will be dealt with by the PSC.

### 1.2 Scope

This policy principally concerns reports which are or may be disclosures that are protected under the *Public Interest Disclosures Act 1994* (PID Act). The Act refers to these disclosures as **public interest disclosures (PIDs)**.

The policy applies to the PSC's employees and to other **public officials**. However, some parts of the policy are relevant only to the PSC's employees and when this is the case the policy says so.

The policy complements normal communication channels between supervisors and staff and staff are encouraged to raise matters of concern at any time with their supervisors.

This policy does not apply to staff grievances. In the case of PSC staff, these should be raised through the PSC's [Grievance Resolution Policy](#).

### 1.3 Organisational commitment

The PSC does not tolerate **corrupt conduct, maladministration, serious and substantial waste of public money or government information contravention**. It is committed to the objectives of the PID Act. It supports public officials making PIDs and recognises and values the contribution PIDs can make to improving administrative and management practices.

The PSC will take all reasonable steps to protect public officials from **reprisal action** being taken against them for making a PID to the PSC.

The PSC will deal thoroughly and impartially with reports of wrongdoing whether they are PIDs or not. Where a report concerns the PSC, it will take appropriate and reasonable action to address any wrongdoing found.

Where the report is a PID that concerns another **public authority** the Public Service Commissioner will (as required by the PID Act) refer it to that authority or to an investigating authority.

### 1.4 Key responsibilities

#### 1.4.1 PSC staff

PSC staff:

- report incidences of corrupt conduct, maladministration, serious and substantial waste of public money, and government information contravention in accordance with the PID Act and this policy

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- support public officials who make PIDs, including by abstaining from any activity that is or could be perceived to be reprisal action
- if requested, assist those in dealing with PIDs, including supplying information on request and cooperating with any investigation
- maintain the confidentiality of public officials they know or suspect to have made PIDs.

## 1.4.2 PSC executives

The PSC's executives:

- ensure that all public officials for whom they have responsibility are aware of their roles and responsibilities under this policy and the PID Act
- support public officials who make PIDs to the PSC and take all reasonable steps to protect them from reprisal action
- report any suspicions of reprisal action against a public official to the PSC's Public Interest Disclosures Coordinator or the Public Service Commissioner
- maintain the confidentiality of public officials known or suspected to have made PIDs
- act fairly in relation to any person who is the subject of a PID that is under consideration or investigation.

## 1.4.3 PSC Public Interest Disclosures Coordinator

The PSC's Assistant Commissioner, Performance and Analytics Division, is the PSC's Public Interest Disclosures Coordinator. The **Disclosures Coordinator** can receive and assess reports of wrongdoing (although to be a PID a report about another authority or a public official of another authority has to be made to the Public Service Commissioner).

The Disclosures Coordinator:

- is the primary point of contact in the PSC for reporters makes arrangements to ensure reports can be made privately and discreetly when requested, if necessary away from the PSC
- oversees the management and investigation of any PID (unless it pertains to the Disclosures Coordinator's own conduct, in which case the Public Service Commissioner does this)
- where necessary, provides or coordinates support to staff involved in the reporting or investigating process, including protecting the interests of anyone who is the subject of a report
- provides six-monthly reports to the NSW Ombudsman in accordance with the PID Act.

## 1.4.4 Public Service Commissioner

The Public Service Commissioner has ultimate responsibility for maintaining the PSC's workplace reporting culture and its system for reporting wrongdoing and for ensuring that the PSC complies with the PID Act.

The Commissioner:

- ensures there are strategies in place to support reporters, protect them from reprisal action and manage any workplace conflict related to a PID
- make decisions following any investigation or appoint an appropriate decision-maker
- ensures that appropriate action is taken where an allegation of wrongdoing is substantiated or systemic problems are identified

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- refers actual or suspected corrupt conduct to the Independent Commission Against Corruption (ICAC)
- refers any suspected **reprisal offence** to the Commissioner of Police or the ICAC
- refers any PID about another authority or the public official of another authority to the other authority or to an investigating authority while retaining the discretion to exercise relevant functions under the *Government Sector Employment Act 2013* because of the issues that the PID raises.

## 1.4.5 Policy owner

It is the responsibility of the policy owner to develop and maintain any procedures and documentation necessary to ensure that compliance with the policy is practicable, as well as to report on implementation of the policy.

## 1.5 Key considerations

### 1.5.1 What should PSC staff report?

PSC staff should report any wrongdoing they see within the PSC. Reports about four categories of serious wrongdoing – corrupt conduct, maladministration, serious and substantial waste of public money and government information contravention – will be dealt with as PIDs in accordance with this policy.

### 1.5.2 When will a report be protected?

The PSC will support anyone who reports wrongdoing within the public sector. However, for a report to have the protections of a PID it needs to meet all of the requirements of Part 2 of the PID Act, including that:

- The reporter must be a public official.
- The reporter must **honestly believe** on **reasonable grounds** that the information reported **shows or tends to show** corrupt conduct, maladministration, serious and substantial waste of public money, or a government information contravention.
- The report must be made to one or more of the following:
  - the Public Disclosures Coordinator (unless it is about another authority or a public official of another authority)
  - the Public Service Commissioner
  - one of the **investigating authorities** nominated in the PID Act.

### 1.5.3 What report will not be a PID?

A report will not be a PID unless it is about corrupt conduct, maladministration, serious and substantial waste of public money or government information contravention.

A report will also not be a PID if:

- it principally involves questioning the merits of government policy, or
- it is made with the sole or substantial motive of avoiding dismissal or other disciplinary action (other than reprisal action for making a PID).

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Reports of wrongdoing that are not PIDs will be addressed through other appropriate procedures such as the PSC's grievance procedures, harassment and bullying processes or occupational health and safety processes. Examples include:

- workplace disputes
- harassment, bullying or unlawful discrimination
- reprisal action against a person who has reported wrongdoing
- practices that endanger the health or safety of staff or the public.

The PSC will consider each matter and make every attempt to protect the staff member making the report from any form of reprisal.

## **1.5.4 How to make a report**

A report of wrongdoing can be made orally or in writing. However, reporters are encouraged to make reports in writing, as this can help to avoid any confusion or misinterpretation, and to use the reporting form that is at the end of this policy.

If a report is made orally, the person receiving the report should make a comprehensive record of the report, ask the person making the report to sign the record, and keep a copy of this record.

If a reporter is concerned about being seen making a report, the reporter can ask to make the report in a discreet location away from the PSC.

## **1.5.5 Can a report be anonymous?**

Anonymous reports will be dealt with by the PSC but it is best if a reporter identifies themselves to the person to whom the report is made. This will help the PSC to provide the reporter with any necessary protection and support, including from the risk of reprisal action by someone who suspects that the reporter made a PID. It also helps the PSC to give feedback to the reporter about the outcome of any investigation into the allegations concerned.

## **1.5.6 Maintaining confidentiality**

A person to whom a PID is made or referred must not disclose information that might identify or tend to identify the person who has made the PID unless:

- the person consents in writing to the disclosure, or it is generally known that the person has made the PID as a result of the person voluntarily identifying themselves as the person or persons who made it, or
- it is essential, having regard to the principles of natural justice, that the information be disclosed to a person whom the information may concern, or
- the Public Service Commissioner is of the opinion that disclosure is necessary to investigate the matter effectively or otherwise in the public interest.

The reporter will be told if it becomes necessary to disclose their identity for one of these reasons.

A reporter should maintain the confidentiality of their report. In acknowledging receipt of a PID, the PSC will notify the public official of the need to do this.

Any person in the PSC who breaches these confidentiality obligations may be subject to disciplinary action.

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## 1.5.7 Who in the PSC can receive a report?

PSC staff are encouraged to report general wrongdoing to their supervisor. However, if they want to make a PID it needs to be made to the Disclosures Coordinator or the Public Service Commissioner or, if the report is about another authority or a public official of another authority, to the Commissioner.

Anyone in the PSC who receives a report that they believe may be intended to be a PID should refer the reporter to the Disclosures Coordinator or the Commissioner (as appropriate).

## 1.5.8 Who outside the PSC can receive a report?

PSC staff are not limited to internal reporting of corrupt conduct, maladministration, serious and substantial waste of public money or government information contravention.

They can choose to make a PID to the relevant investigating authority. (Any report about the Public Service Commissioner should be made to an investigating authority.) Reporters should be aware that it is likely the investigating authority will need to discuss the case with the PSC. The PSC would make every effort to assist and cooperate with the investigating authority to ensure and to provide appropriate support and assistance to the reporter.

Another option is to make a PID to a member of Parliament or a journalist but only if the reporter is able to prove that they have reasonable grounds for believing that the disclosure is substantially true and that it is in fact substantially true. In addition, the reporter must have already made substantially the same report to:

- the Public Service Commissioner
- the Disclosures Coordinator or
- an investigating authority in accordance with the PID Act,

who must have done one of the following:

- decided not to investigate the matter
- decided to investigate it, but not completed the investigation within six months of the original report
- investigated the matter but not recommended any action as a result
- not told the person who made the report, within six months of the report being made, whether the matter will be investigated.

## 1.5.9 Managing PIDs

After a report is received, the following will happen:

- If the report is made orally, the person to whom it is made will work with the reporter on a written record of it and ask the reporter to sign the record.
- If the report was made to the Disclosures Coordinator, the Coordinator will inform the Public Service Commissioner of the report and vice versa.
- Within 5 working days (or 2, where possible), the reporter will be sent a written acknowledgement of the PID and a copy of this policy. The acknowledgement will remind the reporter that they should maintain the confidentiality of the PID, and give a timeframe for further updates and the name and contact details of the person who can provide updates.
- The person to whom the report was made will consider whether or not it is a PID.
- The Commissioner and Disclosures Coordinator will decide how the PID is to be dealt with.
- Within 10 days of receipt of the PID, the reporter will be told:



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- What action will be taken in response to the PID
- The likely timeframes for any investigation
- What resources are available to handle any concerns you may have
- Information about external agencies and services you can access for support.
- The Disclosures Coordinator will assess any risks to the reporter from the making of the PID and, in consultation with the reporter, put in place strategies to deal with those risks.
- If the report is a PID about another authority or a public official of another authority the Commissioner will refer the PID to the other authority or to an investigating authority.
- If procedural fairness requires it, anyone who is the subject of the PID will be informed of the substance of the claims against them and given a reasonable opportunity to respond.
- The Disclosures Coordinator will keep the reporter informed as to any action taken or proposed to be taken in respect of the PID.
- The person designated to undertake the investigation will, as quickly as possible, prepare a confidential report on the investigation and submit it to the Commissioner.
- The result of any decisions and/or further action in relation to the disclosure will be made known to the public official who made the disclosure as quickly as possible and within the six months required by the Act.

If a decision is taken not to investigate the matter or refer it to an investigating authority the public official who made the disclosure will be notified of that decision.

## 1.5.10 Feedback to reporters

During any investigation, the reporter will be given:

- information on the ongoing nature of the investigation
- information about progress in the investigation and reasons for any delay
- advice and an opportunity to talk about whether the reporter's identity needs to be disclosed for the purposes of investigating the matter.

At the end of any investigation, the reporter will be given:

- enough information to show that adequate and appropriate action was taken and/or is proposed to be taken in response to the PID and any problem that was identified
- advice about whether the reporter may be needed as a witness in, for example, disciplinary or criminal proceedings.

## 1.5.11 Protection against reprisals

The PSC will not tolerate any reprisal action. A person guilty of a reprisal offence faces penalties of imprisonment and/or fines and can also be required to pay damages for any loss suffered by that person against whom they took action.

PSC staff who suspect reprisal action has occurred or have been told about suspected reprisal action should immediately tell their supervisor, the Disclosures Coordinator or the Public Service Commissioner. The Disclosure Coordinator will:

- ensure a senior and experienced PSC staff member who has not been involved in dealing with the PID investigates the suspected reprisal action
- give the results of that investigation to the Public Service Commissioner for a decision
- if it has been established that reprisal action is occurring, take all steps possible to stop it and protect the person against whom it has been taken

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- take appropriate disciplinary action or report the matter to the appropriate authority to consider criminal action against anyone proven to have taken or threatened any action in reprisal for making a disclosure.

The Public Service Commissioner may also issue directions to PSC staff aimed at protecting a particular reporter or person suspected of being a reporter against reprisal actions. The Commissioner would issue a direction only with the agreement of the person or people concerned. The Disclosures Coordinator would make it clear to other PSC staff that this action was taken in consultation with those concerned and that it was not a punishment.

Any reporter who feels that reprisal action is not being dealt with effectively should contact the Ombudsman or the ICAC – depending on the type of wrongdoing reported. Contact details for all these investigating authorities are included at the end of this policy [yet to be included].

## **1.5.12 Support for PSC reporters**

The PSC will make sure that any PSC staff who has reported wrongdoing, regardless of whether the report is a PID, is provided with access to any professional support they may need as a result of the reporting process – such as stress management, counselling services, legal or career advice.

Any supervisors who believe that a PSC staff member is suffering any reprisal action must notify the Disclosures Coordinator.

## **1.5.13 Sanctions for making false or misleading disclosures**

It is a criminal offence under the PID Act to wilfully make a false or misleading statement when reporting wrongdoing. It may also be a breach an agency's code of conduct and result in disciplinary action. The PSC will not support staff who wilfully make false or misleading reports.

## **1.5.14 The rights of persons the subject of a report**

The PSC is committed to ensuring staff who are the subject of a report of wrongdoing are treated fairly and reasonably. This includes keeping the identity of any person the subject of a report confidential, where this is practical and appropriate.

If you are the subject of the report, you will be advised of the allegations made against you at an appropriate time and before any adverse findings. At this time you will be:

- advised of the details of the allegation
- advised of your rights and obligations under the relevant related policies and procedures
- kept informed about the progress of any investigation
- given a reasonable opportunity to respond to any allegation made against you
- told the outcome of any investigation, including any decision made about whether or not further action will be taken against you.

Where the reported allegations against the subject officer are clearly wrong, or have been investigated and unsubstantiated, the subject officer will be supported by the PSC. The fact of the allegations and any investigation will be kept confidential unless otherwise agreed to by the subject officer.

## **1.5.15 More information**

More information about making and dealing with PIDs is available at the NSW Ombudsman's website at [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au) .

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## 1.5.16 Contact details

[to be inserted]

## 1.6 Definitions

### 1.6.1 Corrupt conduct

This is defined in the *Independent Commission Against Corruption Act 1988*. For information about what constitutes corrupt conduct, see the NSW Ombudsman's guideline on what can be reported.

### 1.6.2 Disclosures Coordinator

This is the PSC's Public Interest Disclosures Coordinator, currently the Assistant Commissioner, Performance and Analytics Division.

### 1.6.3 Government information contravention

This is a failure to exercise functions in accordance with any provision of the *Government Information (Public Access) Act 2009*. For example, this could include:

- destroying, concealing or altering records to prevent them from being released
- knowingly making decisions that are contrary to the legislation
- directing another person to make a decision that is contrary to the legislation.

### 1.6.4 Honest belief

An assertion by a public official of what the official believes in connection with a disclosure is, in the absence of evidence to the contrary, evidence of the belief asserted and that the belief is an honest belief. The assertion need not be express and can be inferred from the nature or content of the disclosure.

### 1.6.5 ICAC

This is the Independent Commission Against Corruption.

### 1.6.6 Investigating authorities

The investigating authorities are (see section 4 of the PID Act):

- the Auditor-General — disclosures about serious and substantial waste
- the Independent Commission Against Corruption (ICAC) — disclosures about corrupt conduct
- the Ombudsman — disclosures about maladministration
- the LECC — disclosures about police misconduct
- the LECC Inspector — disclosures about the LECC or its staff
- the Chief Executive of the Office of Local Government — disclosures about local government agencies
- the ICAC Inspector — disclosures about the ICAC or its staff
- the Information Commissioner — disclosures about a government information contravention
- the Inspector of the Crime Commission — disclosures about the Crime Commission or its staff.

### 1.6.7 LECC

This is the Law Enforcement Conduct Commission.

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## 1.6.8 Maladministration

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

- making a decision and/or taking action that is unlawful
- refusing to grant someone a licence for reasons that are not related to the merits of their application.

## 1.6.9 PID

This is a disclosure that meets the requirements of Part 2 of the PID Act.

## 1.6.10 PID Act

This is the *Public Interest Disclosures Act 1994*.

## 1.6.11 Public authority

This is as any public authority whose conduct or activities may be investigated by an investigating and includes (without limitation) a Public Service agency, a State owned corporation and any subsidiary of one, a local government authority, the Police Force, the LECC, the Inspector of the LECC, the Department of Parliamentary Services, the Department of the Legislative Assembly and the Department of the Legislative Council.

## 1.6.12 Public official

This is:

- an individual who is an employee of, or otherwise in the service of, a public authority, and includes (without limitation) each of the following:
  - a Public Service employee
  - a member of Parliament (except for the purposes of a disclosure made by the member)
  - a person employed by either or both of the President of the Legislative Council or the Speaker of the Legislative Assembly
  - any other individual having public official functions or acting in a public official capacity whose conduct and activities may be investigated by an investigating authority
  - an individual in the service of the Crown
- a person employed under the *Members of Parliament Staff Act 2013*
- an individual who is engaged by a public authority under a contract to provide services to or on behalf of the public authority or
- if a corporation is engaged by a public authority under a contract to provide services to or on behalf of the public authority, an employee or officer of the corporation who provides or is to provide the contracted services or any part of those services.

## 1.6.13 Reasonable grounds

This means that, from an objective viewpoint, the basis for the reporter's belief is reasonable and not based on personal animosity or prejudice. In other words, a reasonable person in the same circumstances would believe that the matter alleged had occurred.

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## **1.6.14 Reprisal action**

This means action taken against a person substantially in reprisal for the person making a PID that is action causing, comprising or involving any of the following:

- injury, damage or loss
- intimidation or harassment
- discrimination, disadvantage or adverse treatment in relation to employment dismissal from, or prejudice in, employment
- disciplinary proceedings.

## **1.6.15 Reprisal offence**

This is the offence under the PID Act of taking reprisal action.

## **1.6.16 Serious and substantial waste of public money**

This is the uneconomical, inefficient or ineffective use of resources that could result in the loss or wastage of public resources. It could include:

- not following a competitive tendering process for a large scale contract
- having bad or no processes in place for a system involving large amounts of public funds.

## **1.6.17 Shows or tends to show**

This means that there must be sufficient information to indicate that the wrongdoing has happened or is happening. This may include:

- direct observation of the wrongdoing
- corroborative observation by others
- evidence such as accounts that do not balance, missing items of value or contradictory records.

There should be no easily thought of alternative explanations for the conduct or activities observed. The disclosure cannot be based on a mere allegation or suspicion unsupported by any facts, circumstances or evidence. However, it is not necessary for the reporter to provide sufficient information to conclusively establish or prove that the wrongdoing occurred to particular standard of proof (such as 'on the balance of probabilities').

## **1.7 Relevant legislation**

*Government Information (Public Access) Act 2009*

*Government Sector Employment Act 2013*

*Independent Commission Against Corruption Act 1988*

*Ombudsman Act 1974*

*Public Interest Disclosures Act 1994*

*Public Finance and Audit Act 1983*

# Public Interest Disclosures Policy

## 1.8 Policy owner

Policy owning unit	General Counsel
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## Approval and date effective

This version endorsed by	PSC Executive
Date endorsed	05 April 2018
Date effective	05 April 2018

## Revision history

Version no.	Endorsed date	Description of change
1.1	30 Sep 2016	Amended to current PSC structure and updated the definition of corrupt conduct
1.2	05 April 2018	Amended to current PSC structure and updated to new policy template; Amended title of policy; Updated internal cross-references within the policy and procedures; Updated the purpose of the policy to align with the NSW Ombudsman Internal Reporting Policy; Updated the key responsibilities to align with the Ombudsman's Model Internal Reporting Policy; Amended "policy statement" to "organisational commitment"; Inclusion of section on the rights of persons the subject of a report, as required by NSW Ombudsman guidelines and Model Internal Reporting Policy.