

Public Interest Disclosures Policy 2023

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Public Interest Disclosure Policy

1.1. Purpose

This Policy is the Public Service Commission (**PSC**) Public Interest Disclosure (**PID**) Policy for the purposes of the *Public Interest Disclosures Act 2022* (**PID Act**).

The PSC take reports of serious wrongdoing seriously. We are committed to building a 'speak up' culture where our staff and other public officials are encouraged to report any conduct that they reasonably believe involves wrongdoing.

The integrity of the PSC relies upon our staff, volunteers, contractors and subcontractors speaking up when they become aware of wrongdoing.

This Policy sets out:

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

This Policy also documents our commitment to building a speak up culture. Part of that 'speak up' culture is having in place a framework that facilitates public interest reporting of wrongdoing under the PID Act by:

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

This Policy should be read in conjunction with our Code of Ethics and Conduct, the Fraud and Corruption Control Policy, Section 83 Guidelines, Complaint Handling Policy, Gifts and Benefits Policy, and Grievance Resolution Policy.

1.2. Accessibility of this Policy

This Policy is available on the PSC's publicly available website as well as on the intranet. A copy of this Policy is also sent to all employees on their commencement.

1.3. Scope

1.3.1 What this Policy applies to

This Policy applies to reports which are or may be disclosures concerning **serious wrongdoing** that are protected under the PID Act. The Act refers to these disclosures as **public interest disclosures (PIDs)**.

Serious wrongdoing has a specific meaning in the PID Act and refers to corrupt conduct, government information contravention, local government pecuniary interest contravention, serious maladministration, privacy contravention and/or serious and substantial waste of public money. Practical examples of potential serious wrongdoing are included in this Policy.

1.3.2 What this Policy does not apply to

This Policy does not apply to complaints about behaviour which is **not** serious wrongdoing or does not meet the requirements for a PID under the PID Act.

For example, the following do not meet the requirements for a PID:

- Information relating only to a disagreement with a government Policy or decision concerning amounts, purposes or priorities of public expenditure
- Information concerning only a grievance about a matter relating to the employment or former employment of an individual which does not have significant implications beyond matters personally affecting the individual, or which relates to a disagreement with the taking or proposed taking of reasonable management action (unless the grievance arises from a decision concerning a previous voluntary PID or alleged detrimental action relating to a previous voluntary PID).

If you are a PSC staff member and wish to raise an internal grievance or complaint, please refer to our Grievance Resolution Policy.

If you are a public official or member of the public and wish to make a complaint about the PSC, please see [PSC's website for further information](#).

1.3.3 Who this Policy applies to

This Policy applies to, and for the benefit of, all **public officials** in NSW. You are a public official if you are:

- a person employed in or by the PSC or another 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*.

The Public Service Commissioner, Disclosures Coordinator, disclosure officers and managers within the PSC 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 the PSC may use this Policy if they want information on who they can report wrongdoing to within the PSC.

1.3.4 Who this Policy does not apply to

This Policy does not apply to:

- people who have received services from the PSC or another agency and want to make a complaint about those services
- people, such as contractors, who provide services to the PSC or another agency
- complaints made by any other individual who is not a public official.

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 2.8 of this Policy for more information).

However, you can still make a complaint to PSC. If you wish to make a complaint, see [PSC's website for further information](#).

1.3.5 Further information

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

- confidentially contact a disclosure officer or the Policy owner
- contact the PID Advice Team within the NSW Ombudsman by phone: (02) 9286 1000 or email: pidadvice@ombo.nsw.gov.au
- access the [NSW Ombudsman's PID guidelines](https://www.ombo.nsw.gov.au) which are available on its website at www.ombo.nsw.gov.au.

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.

Should you require assistance, please contact:

- Translating and Interpreter Service (TIS): 131 450
- If you are deaf, have a hearing impairment or speech impairment, use the National Relay service: Speak and Listen users phone 1300 555 727 then ask for 02 9286 1000. NRS Internet relay users connect then ask for 02 9286 1000.

How to make a report of serious wrongdoing

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 internal grievances may also be PIDs, as long as they have the features of a PID. If an internal complaint or grievance is a report of serious wrongdoing, we will consider whether it is a PID. If it is a PID, we will deal with it as set out in this Policy, but we will also make sure we follow any other applicable internal policies.

It is important that we quickly recognise that we have received a PID. This is because once a PID is received, the person who has made the report is entitled to certain protections and we have certain decisions that we have to make on how we will deal with the PID and how we will protect and support the person who has made the report.

2.1. When will a report be a PID?

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

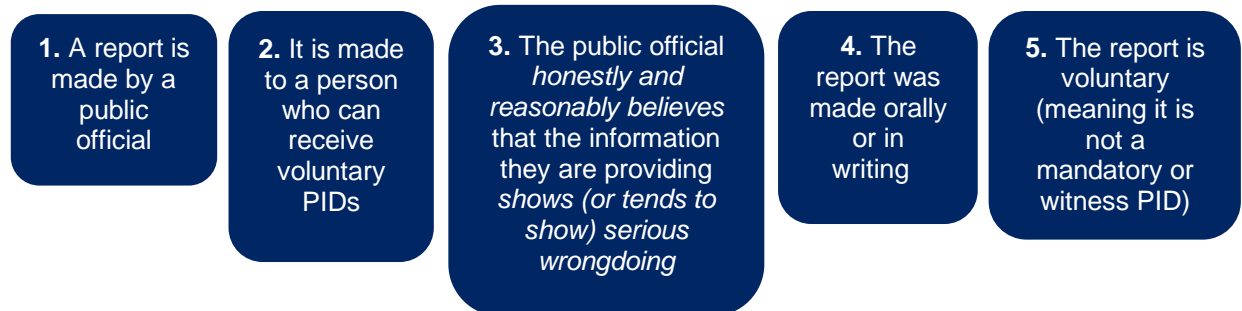
1. **Voluntary PID:** This is a PID where a report has been made by the public official because they decided, of their own accord, to come forward and disclose what they know.
2. **Mandatory PID:** This is a PID where the public official has made a report about serious wrongdoing because they have a legal obligation to make that report, or because making that report is an ordinary aspect of their role or function in an agency.
3. **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 we will deal with voluntary PIDs. People who make a mandatory PID or a witness PID are still entitled to protection – see [Protections](#).

Voluntary PIDs

Voluntary PIDs are the type of PID most people have in mind when they think about “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 all the following five features set out in sections 24 to 27 of the PID Act:



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. A mere allegation with no supporting information is unlikely to meet this test.

If we make an error and do 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 we have made an error by not identifying that you have made a voluntary PID, you should raise this error with a 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 we may seek to conciliate the matter. You may also contact the NSW Ombudsman. Further information on rights to internal review and conciliation can be found in section 6.2 of this Policy.

2.2. Who can make a voluntary PID?

Any public official can make a voluntary PID – see “Who this Policy applies to”. You are a public official if:

- you are employed by the PSC
- you are a contractor, subcontractor or volunteer who provides services, or exercises functions, on behalf of the PSC
- you work for an entity who is contracted by the PSC to provide services on behalf of the PSC – if you are undertaking that contracted work.

However, you are not a public official if you are a contactor or consultant engaged by PSC to provide services to assist the PSC with its work.

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 we may receive PIDs from public officials outside our 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. Appendix 2 of this Policy has a list of integrity agencies.

2.3. 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 in the PID Act). 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
 - an agency breaching procurement processes when engaging contractors
 - an agency implementing policies and procedures which are contrary to its governing legislation and result in misuse of powers
 - agency procedures which are unfairly discriminatory.
- *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 making a report, you do not need to state to us what category of serious wrongdoing you are reporting, or that you are reporting serious wrongdoing.

2.4. 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 the PSC

You can make a report inside the PSC to:

- the Public Service Commissioner
- the Disclosures Coordinator
- a disclosure officer for the PSC (see list in Appendix 1) or
- 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.

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, a disclosure officer or the Commissioner (as appropriate).

Making a report to a recipient outside of the PSC

You can also make a report to a public official in another NSW Government agency or an integrity agency. These include:

- the head of another agency
- an integrity agency (see list in Appendix 2)
- a disclosure officer for another agency — see that agency's PID policy on their public website for ways to contact their disclosure officers
- 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 of the PSC, it is possible that your disclosure will be referred back to the PSC 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 the PSC:
 - notification that the PSC 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 the PSC's 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.

2.5. 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. The person receiving the report should make a comprehensive record of the report, ask you to sign the record, and keep a copy of this record.
- **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 PID. 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 the PSC to investigate the matter/s you have disclosed or provide feedback to you about the outcome if the PSC cannot contact you for more information.

2.6. What should I include in my report?

You should provide as much information as possible so the PSC 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.

2.7. 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 or not. It is important for the PSC to understand what is or may be occurring.

The PSC 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, or referred appropriately.

2.8. Deeming that a report is a voluntary PID

The Commissioner 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 Commissioner 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 Commissioner's discretion . For more information about the deeming power, see the NSW Ombudsman's guideline '[Deeming that a disclosure is a voluntary PID](#)'.

Protections

3.1. How is the maker of a voluntary PID protected?

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

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

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

The PSC will also assess your support needs and appropriate support strategies will be implemented.

The maker 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 includes bullying, harassment, intimidation or dismissal.

Once the PSC becomes aware that a voluntary PID by a person employed or otherwise associated with the PSC that concerns serious wrongdoing relating to the PSC has been made, the PSC 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 under the PID Act 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 reporter 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 of a PID 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.

3.2. 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 reporters 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. | | |

3.3. Reporting detrimental action

If you experience adverse treatment or detrimental action in relation to a PID, such as bullying or harassment, you should report this immediately. You can report any experience of adverse treatment or detrimental action directly to the PSC or to an integrity agency (see list at Appendix 2). If you wish to report adverse treatment or detrimental action to the PSC, please contact the Commissioner, the Disclosure Coordinator, or a disclosure officer.

If you feel that detrimental action is not being dealt with effectively you should contact the NSW Ombudsman or the ICAC – depending on the type of wrongdoing reported.

See also section 1.3.5 for further information and resources and section 3.5 for general support.

3.4. 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. Where it is practical and appropriate and unless otherwise agreed to by the person the subject of a report, the identity of any person the subject of a report, the fact of the allegations and any investigation, will be kept confidential.

If you are the subject of a report, at an appropriate time and before any adverse findings, you will be:

- advised of the details of the allegation made against you
- 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.

The PSC will assess the support needs of the person the subject of the report and appropriate support strategies will be implemented.

3.5. General support

The PSC will make sure that any PSC staff who have reported wrongdoing, regardless of whether the report is a PID, are 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. Reporters can also contact the [Employee Assistance Program](#).

3.6. Sanctions for making false or misleading disclosures

It is a criminal offence under the PID Act to wilfully make a false or misleading statement to, or mislead or attempt to mislead, the agency or person to whom a PID or

purported disclosure is made or information provided. It may also be a breach of the Code of Conduct and result in disciplinary action. The PSC will not support staff or any other public officials who wilfully make false or misleading reports.

Roles and responsibilities

Certain people within the PSC have responsibilities under the PID Act.

4.1. Public Service Commissioner

The Public Service Commissioner is responsible for:

- fostering a workplace reporting culture where reporting is encouraged,
- receiving disclosures from public officials as a disclosure officer,
- ensuring the PSC complies with the PID Act and this Policy.

The Commissioner is also responsible for ensuring the PSC has appropriate systems in place for:

- overseeing internal compliance with the PID Act
- assessing disclosures
- supporting public officials who make voluntary PIDs, including by taking steps to assess and minimise the risk of detrimental action
- implementing corrective action if serious wrongdoing is found to have occurred or systemic problems are identified
- complying with reporting obligations regarding allegations or findings of detrimental action
- referring actual or suspected corrupt conduct to the Independent Commission Against Corruption (ICAC)
- referring any PID about another authority or the public official of another authority to the other authority or to another agency, such as an integrity agency while retaining the discretion to exercise relevant functions under the *Government Sector Employment Act 2013* because of the issues that the PID raises
- complying with yearly reporting obligations to the NSW Ombudsman.

4.2. PSC Public Interest Disclosures Coordinator

The Chief Risk Officer is the PSC's **Public Interest Disclosures Coordinator**. If the Chief Risk Officer is unavailable, or is subject to a conflict of interest, then PIDs should be made to an alternative disclosure officer.

The Disclosures Coordinator is the primary point of contact in the PSC for public officials wishing to make a PID and is responsible for:

- making arrangements to ensure reports can be made privately and discreetly when requested

- overseeing the management and investigation of any PID (unless it pertains to the Disclosures Coordinator's own conduct or the Disclosure Coordinator has an actual or perceived conflict of interest, in which case the Public Service Commissioner does this)
- where necessary, providing or coordinating support to staff involved in the reporting or investigation process, including protecting the interests of anyone who is the subject of a report
- providing information to Legal Services for the purposes of PID reporting in accordance with the PID Act and this Policy.
- reporting directly to the PSC's Audit and Risk Committee when fulfilling Chief Risk Officer duties.

4.3. Disclosure officers

The Commissioner, Disclosures Coordinator and PSC's Management Board members are each disclosure officers for the purposes of the PID Act.

Disclosure officers are responsible for:

- receiving reports from public officials
- receiving reports when they are passed on to them by managers
- ensuring reports are dealt with appropriately
- ensuring that any oral reports that have been received are recorded in writing
- providing information to Legal Services for the purposes of PID reporting in accordance with the PID Act and this Policy.

4.4. Managers (including Senior Leaders and Senior Managers)

The responsibilities of Managers include:

- ensuring that all public officials for whom they have responsibility are aware of their roles and responsibilities under this Policy and the PID Act
- receiving reports from persons that report to them or that they supervise
- passing on reports they receive to a disclosure officer.

4.5. All PSC employees

All PSC employees must:

-
- report suspected serious wrongdoing or other misconduct
 - use their best endeavours to assist in an investigation of serious wrongdoing if asked to do so by a person dealing with a voluntary PID on behalf of the PSC, including supplying information on request and cooperating with any investigation
 - treat any person making a PID or dealing with or investigating reports of serious wrongdoing with respect
 - not take detrimental action against any person who has made, may in the future make, or is suspected of having made, a PID
 - report any suspicions of detrimental action against a public official to the Disclosures Coordinator or the Public Service Commissioner
 - maintain the confidentiality of public officials they know or suspect to have made PIDs.

4.6. Policy owner

The policy owner is responsible for:

- providing legal advice on the interpretation and application of this Policy
- reviewing and updating this policy as required
- developing and maintaining any procedures and documentation necessary to ensure that compliance with the policy is practicable
- in consultation with Strategic Communications and People & Engagement, leading communication to staff on the policy and training, including mandatory training for disclosure officers, managers and staff
- ensuring PSC template contract documents comply with the requirements of the PID Act
- management of the provision of legal advice concerning PIDs, including compliance with applicable legislation and policy requirements
- reporting on implementation of the Policy.

How the PSC will deal with voluntary PIDs

5.1. How the PSC will acknowledge that we have received a report and keep you informed

When a PSC disclosure officer 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 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 PSC deals with the report
- provide clear information on how you can access this PID Policy
- provide you with details of a contact officer and available supports
- advise you about the importance of maintaining confidentiality, that your report will be treated confidentially and request that you keep your report confidential while it is being managed.

If the report is a voluntary PID, the PSC will inform you as soon as possible how we intend to deal with the report. This may include:

- that we are investigating the serious wrongdoing (or will appoint an external investigator to investigate) and the process for the investigation
- that we will refer the report to a different agency (if appropriate) to deal with the voluntary PID, and the details of that referral
- if we decide not to investigate the report and to not refer it to another agency for it to be investigated, the reasons for this decision. We will also notify the NSW Ombudsman of this decision.

We will also provide information about protection against detrimental action under the PID Act and how we will engage with you to establish whether you are at risk of detrimental action.

If we decide to investigate the serious wrongdoing, we will provide you 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 officer who was nominated when you made the report.

If we investigate the serious wrongdoing, we will provide you with the following information once the investigation is complete:

- a description of the results of the investigation - that is, we will tell you whether we found that serious wrongdoing took place.
- information about any corrective action taken as a result of the investigation/s - this means we will tell you what action we took in relation to the person who engaged in the serious wrongdoing or if the serious wrongdoing was by our agency and what we have put in place to address that serious wrongdoing. Corrective action could include taking disciplinary action against someone or changing the practices, policies and procedures that we have in place which led to the serious wrongdoing.
- Advice about whether you may be needed as a witness in, for example, disciplinary or criminal proceedings.

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. We will always balance the right of a person who makes a report to know the outcome of that report, with other legal obligations we have.

If you have made an anonymous report, in many cases we may not be able to provide this information to you.

5.2. How the PSC will deal with voluntary PIDs

Once a report that may be a voluntary PID is received, the PSC 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, we will ensure that we comply with the requirements in the PID Act.

Procedures following receipt of a report

A manager or disclosure officer receiving a report will promptly notify the Commissioner, Disclosures Coordinator or another disclosures officer of the report (as appropriate).

The Commissioner or Disclosures Coordinator will then allocate management of the report to a disclosures officer.

The disclosures officer allocated management of the report will:

- Consult with People & Engagement and Legal Services in relation to appropriate management of the report in accordance with the PID Act and this Policy, and any other applicable laws, policies or processes
- Arrange for a written acknowledgment to be sent to the person making the report addressing the matters listed above at section 5.1
- If the report is made orally, work with the reporter on a written record of the report and ask the reporter to sign the record
- Make a recommendation to the Commissioner or Disclosures Coordinator as to whether or not the report is a PID and if so, how the report is to be dealt with, and submit any necessary correspondence for approval.

Report not a voluntary PID

If you make a report which is not a voluntary PID, we will let you know that the PID Act does not apply to the report, the reasons why, and how we will deal with the concerns raised in the report.

Even if the report is not a voluntary PID, it will still need to be dealt with in a manner consistent with applicable law, policy or process. Depending on the circumstances, this may include the procedures for dealing with misconduct under section 69 of the *Government Sector Employment Act 2013* and Part 8 of the *Government Sector Employment (General) Rules 2014*, the Code of Ethics and Conduct, the Grievance Resolution Policy or Complaint Handling Policy or another policy or process.

If you are not happy with the assessment that your report is not a voluntary PID or otherwise disagree with the assessment, you can raise it with the person who has communicated the outcome with you or a disclosure officer. You can also request an internal review by the Commissioner or the Disclosure Coordinator, or request that the matter be conciliated. The PSC can, but does not have to, request the NSW Ombudsman to conciliate the matter.

Cease dealing with report as a voluntary PID

The PSC may stop dealing with a voluntary PID because it is not actually a voluntary PID (meaning it does not have all the features of a voluntary PID). The PSC will notify the maker of a report in writing if we do so, will provide written reasons for that decision.

Where the report is a voluntary PID concerning another agency

If the report is a voluntary PID concerning another agency, the Commissioner will refer the PID to an appropriate agency as required by the PID Act.

Where the report is a voluntary PID concerning the PSC

If the report is a voluntary PID concerning the PSC we will consider whether to conduct, or engage an external party to 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 we believe an investigation is not warranted — for example, if the conduct has previously been investigated.

There may also be circumstances where we decide 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, we will discuss the referral with the other agency, and we will provide you with details of the referral and a contact person within the other agency.

If we decide not to investigate a report and to not refer the matter to another agency, we must let you know the reasons for this and notify the NSW Ombudsman.

Procedures if we decide to investigate

The disclosures officer allocated management of the report will carry out the following in consultation with People & Engagement and Legal Services:

- 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
- Prepare an investigation plan for Commissioner or Disclosures Coordinator approval
- Arrange for an internal or external investigation to be undertaken in accordance with the investigation plan 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

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- Where permitted by law, 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
 - At the end of any investigation, provide a report of the investigation to the Commissioner or Deputy Commissioner for review and determination as to appropriate action.

5.3. How the PSC will protect the confidentiality of the maker of a voluntary PID

We understand 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 reporter 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 has made the voluntary PID because they have voluntarily identified themselves as the person who made it
- when the public official or the PSC 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.

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

The PSC will put in place steps to keep the identifying information of the reporter and the fact that a report has been made confidential. It may not be possible for us to maintain complete confidentiality while we progress the investigation, but we will do all that we practically can to not unnecessarily disclose information from which the maker of the report can be identified. We will do this by:

- advising the maker of a report about the importance of maintaining confidentiality, that their report will be treated confidentially and requesting that they keep their report confidential while it is being managed
- limiting the number of people who are aware of the reporter's identity or information that could identify them
- ensuring that only authorised persons have access to emails, files or other documentation that contain information about the identity of the reporter
- undertaking an assessment to determine if anyone is aware of the reporter's identity and:
 - reminding those persons to keep the reporter's identity confidential
 - determining if those persons have a motive to cause detrimental action to be taken against the reporter or impede the progress of the investigation
- if we must disclose information that may identify the reporter, not disclosing the actual identify of the reporter unless the reporter consents.

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

If confidentiality cannot be maintained, the PSC will take action which may include:

- advising the person whose identity may become known
- updating the risk assessment and risk management plan for the PID
- implementing strategies to minimise the risk of detrimental action
- providing additional supports to the person who has made the PID

- reminding persons who become aware of the identifying information of the consequences for failing to maintain confidentiality and that engaging in detrimental action is a criminal offence and may also be a disciplinary matter.

5.4. How the PSC will assess and minimise the risk of detrimental action

We 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.

We 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. Steps may include:

- explaining to the reporter that a risk assessment will be undertaken
- creating a risk management plan (including reassessing the risk throughout the entirety of the matter)
- providing details of the role that will be responsible for undertaking a risk assessment
- explaining the approvals for risk assessment and the risk management plan, that is, the role of the person who has final approval
- explaining how the agency will communicate with the reporter to identify risks
- listing the protections that will be offered, that is, the agency will discuss protection options with the reporter which may including remote working or approved leave for the duration of the investigation
- outlining what supports will be provided.

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:

- injury, damage or loss
- property damage
- reputational damage

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- 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.

Detrimental action does **not** include:

- lawful action taken by a person or body to investigate serious wrongdoing or other misconduct
- the lawful reporting or publication of a finding of serious wrongdoing or other misconduct
- the lawful making of adverse comment, resulting from investigative action
- the prosecution of a person for a criminal offence
- 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.

5.5. How the PSC will deal with allegations of a detrimental action offence

If the PSC becomes aware of an allegation that a detrimental action offence has occurred or may occur, we 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 (**LECC**) (whichever is applicable)
- notify the NSW Ombudsman about the allegation of a detrimental action offence being committed as required under the PID Act.

5.6. What the PSC 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, the PSC 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) in accordance with the *Government Sector Employment Act 2013* (including section 69 and Part 8 of the *Government Sector Employment (General) Rules 2014*)
- payment of compensation to people who have been affected by serious wrongdoing or other misconduct.

Review and dispute resolution

6.1. Internal review

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

- that the PSC is not required to deal with the report as a voluntary PID
- to stop dealing with the report because the PSC 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.

The PSC 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 to the Disclosures Coordinator in writing within 28 days of being informed of our decision. The application should state the reasons why you consider the decision should not have been made. You may also submit any other relevant material with your application. A review will be conducted promptly and you will be notified of the outcome.

6.2. Voluntary dispute resolution

If a dispute arises between the PSC and a person who has made a report which is, or may be, a voluntary PID, the PSC may request the NSW Ombudsman to conciliate the dispute. Conciliation is a voluntary process and will only be suitable for disputes where the PSC and the reporter of the report are willing to resolve the dispute.

Other agency obligations

7.1. Record-keeping requirements

The PSC must keep full and accurate records with respect to all information received in connection with the PID Act to ensure the PSC complies with its obligations under the *State Records Act 1998*.

PSC staff creating records must apply appropriate sensitivity (DLM) security and access levels to all communications regarding reports made in accordance with the PID Act.

7.2. Reporting of voluntary PIDs and PSC's annual return to the Ombudsman

Each year we provide an annual return to the NSW Ombudsman which includes:

- information about voluntary PIDs received by the PSC during each return period (yearly with the start date being 1 July)
- action taken by the PSC to deal with voluntary PIDs during the return period
- how the PSC promoted a culture in the workplace where PIDs are encouraged.

Legal Services keeps a record of this information in consultation with the Disclosures Coordinator and other PSC disclosures officers and reports it to the NSW Ombudsman.

7.3. How PSC will ensure compliance with the PID Act and this Policy

The Public Service Commissioner is responsible for overseeing the PSC's compliance with the PID Act. This includes oversight of regular reports to the PSC's Audit and Risk Committee and Advisory Board in relation to PIDs received by the PSC, reports to the PSC's Audit and Risk Committee in relation to the PSC's compliance with the PID Act and this Policy, and legislative compliance assurance.

The policy owner will review the Policy every three years to ensure it is meeting its purpose, or more frequently in the event of legislative change.

Non-compliance with the Policy will be addressed through staff awareness and, where appropriate, action under the PSC Code of Ethics and Conduct and Fraud and Corruption Control Policy.

7.4. Document information

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|----------------------------------|------------------------|
| Policy owner | General Counsel |
| This version endorsed by | PSC Management Board |
| Date endorsed | 13/09/2023 |
| Date effective | 1/10/2023 |
| Due for review | 1/08/2026 |
| Review to be conducted by | General Counsel |

| Version no. | Endorsed date | Description of change |
|--------------------|----------------------|---|
| 1.0 | 1 October 2023 | <p>New Policy for the purposes of <i>Public Interest Disclosures Act 2022</i>. Policy is based on the NSW Ombudsman, <i>Developing your Public Interest Disclosure policy</i>, Model Public Interest Disclosure Policy, July 2023.</p> <p>This Policy applies to all PIDs received from commencement of the <i>PID Act 2022</i> on 1 October 2023.</p> <p>PSC Public Interest Disclosure Policy v 3.0 18 February 2021 applies in respect of any PID received prior to 1 October 2023 which is governed by the <i>Public Interest Disclosures Act 1994</i>.</p> |

Appendix 1: Contact details and disclosure officers for the PSC

NSW Public Service Commission

GPO Box 3988
Sydney NSW 2001

Level 4
255 George Street
Sydney NSW 2000

Phone: (02) 9272 6000

Disclosure officers

Public Service Commissioner

Deputy Commissioner (Chief Risk Officer)

Director, Finance, Governance and Risk

Associate Director, People and Engagement

Appendix 2: 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