

Public Interest Disclosures Policy

Version 4.0

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1 Objective

The NSW Crime Commission (the Commission) takes reports of wrongdoing seriously and is committed to building a ‘speak up’ culture¹ where staff are encouraged to report conduct that they reasonably believe involves wrongdoing to uphold the integrity of the agency and NSW Public Sector core values.

All NSW Government agencies are required to have a Public Interest Disclosure (PID) Policy under section 42 of the Public Interest Disclosures Act 2022 (PID Act) to support a speak up culture and have a framework in place that facilitates public interest reporting of wrongdoing.

The purpose of this policy is to establish:

- how the Commission will support and protect a PID maker if they come forward with a report of serious wrongdoing
- how the Commission will deal with the report and our other responsibilities under the PID Act
- who to contact if the PID maker makes a report
- how to make a report
- the protections which are available to a PID maker under the PID Act.

This policy should be read in conjunction with the Commission’s Code of Conduct, the *Bullying, and Unreasonable Behaviour Policy and Procedures* and the *Complaints Handling Policy and Procedures*.

This policy is not intended to be used for staff grievances, which should be raised through the *Work Related Grievance Handling Policy and Procedures*.

2 Scope/Application

The policy applies to all Commission staff (seen as public officials for the purposes of this policy and the PID Act) under the *Crime Commission Act 2012* (CC Act). The Commissioner, disclosure officers and managers have specific responsibilities under the PID Act.

This policy also provides information on how staff in these roles are to fulfil their responsibilities. Other public officials who work in and for the public sector, but who do not work for the Commission may use this policy if they want information on who they can report wrongdoing to within their agency.

2.1 Who does this policy NOT apply to?

This policy does not apply to:

- people who have received services from the Commission and want to make a complaint about those services
- people, such as contractors, who provide services to the Commission.

The above type of complaints may be made to the Commission via the Commission’s online complaint form on its website.

¹ NSW Ombudsman, Overview of the new Public Interest Disclosures Act 2022 Information Sheet, page 1.

3 How to make a report of serious wrongdoing

3.1 Reports, complaints and grievances

When a public official reports suspected or possible wrongdoing in the public sector, the report is considered 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.

Commission staff may make an internal complaint or grievance about serious wrongdoing to a Commission Disclosure Officer, who will conduct a preliminary assessment and forward the report to the Disclosures Coordinator for further assessment and management. If the Disclosures Coordinator determines the report is a PID, he/she will deal with it as set out in this policy, whilst also ensuring other relevant internal policies are followed.

The Commission endeavours to recognise receipt of a PID as quickly as possible so decisions can be made to protect and support the person who has made the report.

Information on staff responsibilities involved in the PID reporting process is found in section 3.6.

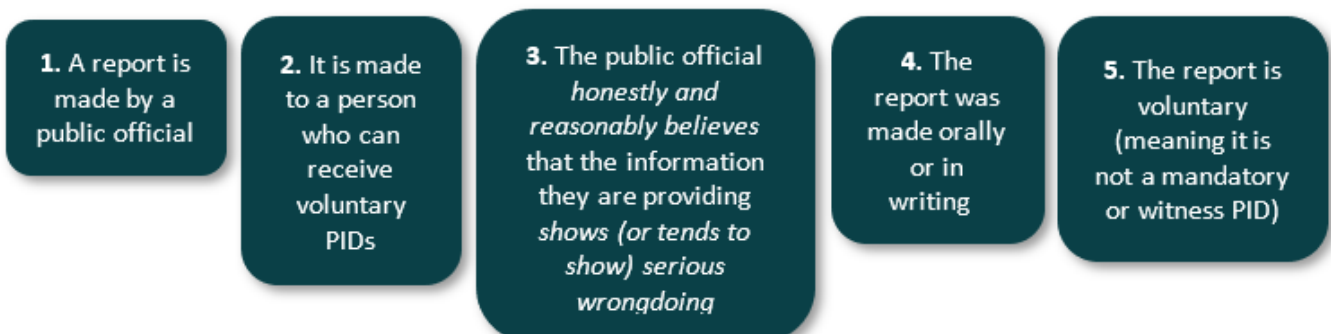
3.2 When will a report be a PID?

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

- **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.
- **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.
- **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 the Commission will deal with voluntary PIDs. Voluntary PIDs involve a public official making a report because they have information that they believe shows (or tends to show) serious wrongdoing, where they are not under a legal obligation to make that report and where it is not an ordinary part of their role to report such wrongdoing.

A report is a voluntary PID if it has the following five features, which are set out in sections 24 to 27 of the PID Act.



If the report has all five features, it is a **voluntary PID**.

Staff can find more information about mandatory and witness PIDs in the Ombudsman's guidelines [Dealing with mandatory PIDs](#) and [Dealing with witness PIDs](#). Staff who make a mandatory PID or a

witness PID are entitled to protection. More information about protections is available in section 4 of this policy.

Commission staff are not expected to prove what they reported actually happened or is serious wrongdoing but do have to honestly believe, on reasonable grounds, that the information they are reporting shows or tends to show serious wrongdoing. An allegation with no supporting information is unlikely to meet this test.

If the Commission makes an error and does not identify that a staff member has made a voluntary PID, that staff member will still be entitled to the protections under the PID Act.

If a staff member makes a report and believes that the Commission has made an error by not identifying that the report is a voluntary PID, the staff member should raise this with a nominated Commission Disclosure Officer. If a staff member is still not satisfied with this outcome, they can seek an internal review or contact the [NSW Ombudsman](#).

3.3 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 here). Serious wrongdoing is defined in the PID Act as:

- *Corrupt conduct* such as a public official accepting a bribe.
- *Serious maladministration* such as an agency systemically failing to comply with proper recruitment processes when hiring staff.
- *A government information contravention* such as destroying, concealing or altering records to prevent them from being released under a Government Information Public Access application.
- *A local government pecuniary interest contravention* such as a senior council staff member recommending a family member for a council contract and not declaring the relationship.
- *A privacy contravention* such as unlawfully accessing a person's personal information on an agency's database.
- *A serious and substantial waste of public money* such as an agency not following a competitive tendering process when contracting with entities to undertake government work.

When making a report, staff do not need to state to the Commission what category of serious wrongdoing is being reported or whether they are reporting serious wrongdoing.

3.4 Who can make a voluntary PID?

Any public official can make a voluntary PID — see section 2 of this policy. For the purposes of this policy, a public official refers to:

- Staff employed by the Commission.
- A contractor, subcontractor or volunteer who provides services, or exercises functions, on behalf of the Commission.
- A person who works for an entity such as a non-government organisation who is contracted by the Commission to provide services or exercise functions on behalf of the Commission.

A public official can make a PID about serious wrongdoing relating to *any* agency, not just the Commission. This means that the Commission may receive PIDs from public officials outside the agency. It also means that staff can make a PID to any agency, including an integrity agency such as the Independent Commission Against Corruption and the NSW Ombudsman. Section 6 of this policy provides a list of integrity agencies.

3.5 Who can I make a PID to?

For a report to be a voluntary PID, it must be made to certain public officials. At the Commission, these public officials are:

- Commissioner (Commissioner can receive reports and is Principal Officer)
- Governance Audit & Risk Manager (Disclosures Coordinator)
- Assistant Commissioner Legal (Disclosures Officer)
- Chief Operating Officer (Disclosures Officer)
- Executive Strategy & Policy Officer (Disclosures Officer)
- **Any Commission Manager or supervisor ***

***A Manager or supervisor** is any person who directly, or indirectly, supervises another staff member. Commission staff may have more than one Manager or supervisor and may choose to report wrongdoing to a Manager or supervisor that they may not directly report to. **This means that all Managers and supervisors under this policy (and the PID Act) are obligated to make sure reports of wrongdoing are communicated to one of the listed above disclosures officers.** Managers and supervisors may accompany a PID maker to a Disclosure Officer to make a report.

3.6 Responsibilities of Staff

The below staff have specific responsibilities under this policy. A detailed list of roles and responsibilities of key agency staff under the PID Act is found in the [NSW Ombudsman's factsheet 'Roles and Responsibilities'](#).

3.6.1 Staff reporting wrongdoing

Staff reporting wrongdoing have a responsibility to:

- provide clear, accurate and factual information
- provide all supporting documents or other evidence at the time of making the report or as early as possible
- assist any staff member or person dealing with the report, including supplying information on request and cooperating with any investigation
- raise any concerns they have about potential reprisal or ongoing workplace conflict at the time of making the report
- notify the Disclosures Coordinator or principal officer immediately if they believe they are being subjected to reprisal as a result of reporting wrongdoing
- treat any staff member or person dealing with a report of wrongdoing with courtesy and respect
- Only discuss the matter with authorised people and not alert anyone who is the subject of a report that a report has been made
- be honest in all communications with the Disclosures Coordinator in relation to their report.

3.6.2 Managers and Supervisors

Managers and supervisors play an important role in maintaining a healthy workplace reporting culture and managing the immediate workplace of those involved in or affected by the Commission's internal reporting process.

Managers and supervisors have a responsibility to:

- ensure they and their staff are aware of the authority's internal reporting policy and their roles within that policy
- maintain a work environment where staff are comfortable and confident about reporting wrongdoing
- encourage staff to report known or suspected wrongdoing if they are aware of or suspect it occurring within the authority
- support staff who have reported known or suspected wrongdoing
- identify reports made to them in the course of their work which could be PIDs and pass these reports onto a Disclosures Officer
- implement local management strategies, in consultation with the Disclosures Coordinator, to minimise the risk of reprisal being taken against a reporter or related workplace conflict
- notify the Disclosures Coordinator or principal officer immediately if they believe a staff member is being subjected to reprisal as a result of reporting wrongdoing
- keep the identity of a reporter and anyone who is the subject of a report confidential, where this is practical and appropriate (s.22).

3.6.3 Disclosures Officers

Disclosures officers are frontline points of contact within the Commission internal reporting system who can provide advice, receive reports of wrongdoing and assist staff to make reports. Disclosures officers have a responsibility to:

- receive reports of wrongdoing, both verbally and in writing
- deal with all reports of wrongdoing professionally, fairly and impartially
- document in writing any reports received verbally, and have the document signed and dated by the reporter
- make arrangements to ensure reporters can make reports privately and discreetly when requested, if necessary away from the workplace
- discuss with the reporter any concerns they may have about reprisal or workplace conflict
- carry out a preliminary assessment and forward reports to the Disclosures Coordinator or Principal Officer for further assessment
- keep the identity of a reporter and anyone who is the subject of a report confidential, where this is practical and appropriate.

3.6.4 The Disclosures Coordinator

The Disclosures Coordinator has a central role in the Commission's internal reporting system. The Disclosures Coordinator is responsible for receiving, assessing and managing reports, and is the primary point of contact in the Commission for the reporter. The position nominated as Coordinator should not conflict with the responsibilities of the individual's substantive role, for example People & Culture or lawyer. The Disclosures Coordinator has a responsibility to:

- receive reports of wrongdoing directly from the reporter (see relevant responsibilities of disclosures officers above)
- deal with all reports of wrongdoing professionally, fairly and impartially
- acknowledge reports and provide progress updates and feedback to reporter
- provide/coordinate support for those involved, including
- assess reports to determine whether or not a report should be treated as a PID
- assess and manage the risk of reprisal and workplace conflict related to or likely to arise out of a report of wrongdoing.
- coordinate the authority's response to the report
- coordinate the authority's compliance with PID Act

3.6.5 Principal Officer (Commissioner)

The Commissioner is the Principal Officer under the PID Act. The Principal Officer has a responsibility to:

- establish and maintain a working environment that encourages staff to report wrong doing and supports them when they do
- receive reports directly from the reporter (see relevant responsibilities of disclosures officers above)
- ensure that all reports of wrongdoing are dealt with professionally, fairly and impartially
- assess any reports they receive to determine whether or not the report should be treated as a PID and how it will be dealt with (see relevant responsibilities of disclosures coordinator above)
- keep the identity of a reporter and anyone who is the subject of a report confidential, where this is practical and appropriate
- ensure effective management of the workplace, particularly where there is a risk of reprisal
- make decisions following any investigation, or appointing an appropriate decision-maker
- take appropriate remedial action where wrongdoing is substantiated or systemic problems are identified and ensure such action is adequately resourced

3.7 Making a report to a recipient outside of the Commission

Commission staff may also make a report to a public official in another agency or an integrity agency. These include:

- The head of another agency.
- An integrity agency — a list of integrity agencies is located at section 6 of this policy.
- A Disclosures Officer for another agency — ways to contact disclosure officers for other agencies is located in an agency's PID policy which can be found on their public website.
- A Minister or a member of a Minister's staff but the report must be made in writing.

If Commission staff choose to make a disclosure outside of the Commission, it is possible that their disclosure will be referred back to the Commission so that appropriate action can be taken.

3.8 Making a report to a Member of Parliament or journalist

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

- Staff 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.
- Staff did not make the previous disclosure anonymously.
- Staff did not give a written waiver of their right to receive information relating to their previous disclosure.
- Staff did not receive the following from the Commission:
 - Notification that the Commission 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 Commission’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 from date of disclosure if the staff member applied for an internal review of the Commission’s decision within six months of making the disclosure.

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

3.9 What form should a voluntary PID take?

Staff can make a voluntary PID:

- *In writing* — this could be an email or letter to a person who can receive voluntary PIDs.
- *Orally* — have a private discussion with a person who can receive voluntary PIDs. This can be face-to-face, via telephone or virtually.
- *Anonymously* — write an email or letter or call a person who can receive PIDs to make a report without providing a name. 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 staff choose to remain anonymous, they will still be protected under the PID Act. It may be difficult, however, for the Commission to investigate the matter(s) disclosed if the Commission cannot contact the individual for further information.

3.10 What should be included in a PID report?

Staff should provide as much information as possible so the Commission can deal with the PID report effectively. The type of information staff 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

- The relationship with the person(s) involved
 - An explanation of the matter being reported
 - How they became aware of the matter
 - Possible witnesses
 - Other information that supports the report.
-

3.11 What if I am not sure if my report is a PID?

Staff should report all wrongdoing when they become aware of it regardless of whether they think it is serious wrongdoing. It is important for the Commission to understand what is or may be occurring.

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

3.12 Deeming that a report is a voluntary PID

The Commission 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 a staff member makes a report that has not met all the requirements of a voluntary PID, they can refer the matter to a PID Officer to request the PID Officer consider deeming the report to be a voluntary PID.

A decision to deem a report to be a voluntary PID is at the discretion of the PID Officer. For more information about the deeming power, see the Ombudsman's guideline ['Deeming that a disclosure is a voluntary PID'](#).

4 Protections

4.1 How is the maker of a voluntary PID protected?

When someone makes a voluntary PID, that person receives special protections under the PID Act. The Commission is committed to taking all reasonable steps to protect a PID maker from detriment as a result of having made a report. The Commission is also committed to maintaining confidentiality as much as possible while the PID is being dealt with.

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

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

- Protection from detrimental action
 - A person cannot take detrimental action against another person because they have made a voluntary PID or are considering making a PID. Detrimental action includes bullying, harassment, intimidation, or dismissal.
 - Once the Commission becomes aware that a voluntary PID by a person employed or otherwise associated with the Commission that concerns serious wrongdoing relating

to the Commission has been made, the Commission will undertake a risk assessment and take steps to mitigate the risk of detrimental action occurring against the person who made the voluntary PID.

- It is a criminal offence for someone to take detrimental action against a person because they have made or may make a voluntary PID. It is punishable by a maximum penalty of 200 penalty units or imprisonment for five years, or both.
- A person may seek compensation where unlawful detrimental action has been taken against them.
- A person can apply for a court order (injunction) where detrimental action is threatened or has occurred (for example, an order to prevent dismissal or to require reinstatement).

Note that a person who makes a PID can still be subject to reasonable management action (such as ordinary performance reviews and performance management). Provided such action is not taken because of the PID, it is not detrimental action under the PID Act.

- Immunity from civil and criminal liability

Commission staff are subject to a duty of confidentiality under section 80 of the CC Act that prevents disclosure of operationally sensitive information and intelligence that may affect investigation outcomes. However, if staff make a PID, the PID Act overrides obligations to the CC Act. If this happens, staff cannot be disciplined or criminally charged for breaching section 80 confidentiality.

- Confidentiality

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

- Protection from liability for own past conduct

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

4.2 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.

4.3 Supporting PID makers

The Commission acknowledges that making a PID report may often be stressful. To fulfill its work health and safety obligations and common law duty of care towards its employees, the Commission will provide access to appropriate wellbeing programs and follow up support to any staff member who has made a PID report, in accordance with this policy and relevant People & Culture policies.

5 Feedback

Staff may also contact the PID Advice Team within the NSW Ombudsman by phone: (02) 9286 1000 or email: pidadvice@ombo.nsw.gov.au, or access the NSW Ombudsman's PID guidelines which are available on its website.

If staff require legal advice with respect to the PID Act or obligations under the PID Act, they may seek independent legal advice.

6 Resources

Staff may seek advice and guidance from the Commission's Disclosures Coordinator and the NSW Ombudsman's website at www.ombo.nsw.gov.au.

The contact details for external investigating authorities that staff can make a public interest disclosure to or seek advice from are listed below.

Independent Commission Against Corruption (ICAC)

Phone: 02 8281 5999

Toll free: 1800 463 909

Tel. typewriter (TTY): 02 8281 5773

Facsimile: 02 9264 5364

Email: icac@icac.nsw.gov.au

Web: www.icac.nsw.gov.au

Address: Level 21, 133 Castlereagh Street, Sydney NSW 2000

NSW Ombudsman

Phone: 02 9286 1000

Toll free (outside Sydney metro): 1800 451 524

Tel. typewriter (TTY): 02 9264 8050

Facsimile: 02 9283 2911

Email: nswombo@ombo.nsw.gov.au

Web: www.ombo.nsw.gov.au

Address: Level 24, 580 George Street, Sydney NSW 2000

Auditor-General of the NSW Audit Office

Phone: 02 9275 7100

Facsimile: 02 9275 7200

Email: mail@audit.nsw.gov.au

Web: www.audit.nsw.gov.au

Address: Level 15, 1 Margaret Street, Sydney NSW 2000

Office of Local Government

Phone: 02 4428 4100

Tel. typewriter (TTY): 02 4428 4209

Facsimile: 02 4428 4199

Email: dlg@dlg.nsw.gov.au

Web: www.dlg.nsw.gov.au

Address: 5 O'Keefe Avenue, Nowra, NSW 2541

Information Commissioner

Toll free: 1800 472 679

Facsimile: 02 8114 3756

Email: ipcinfo@ipc.nsw.gov.au

Web: www.ipc.nsw.gov.au

Law Enforcement Conduct Commission (LECC)

Phone: 02 9321 6700

Toll free: 1800 657 079

Facsimile: 02 9321 6799

Address: Level 11, 1 Castlereagh Street,
Sydney NSW 2000

Email: contactus@lecc.nsw.gov.au

Web: www.lecc.nsw.gov.au/

Address: Level 3, 111 Elizabeth Street,
Sydney NSW 2000

Version Control

Version	Effective Date	Update Comments	Author
1.0	1 October 2011	Initial Version	Commissioner
2.0	29 June 2012	Update	Commissioner
2.1	10 July 2012	Update	Commissioner
2.2	7 March 2013	Update	Legal Unit
2.3	20 May 2013	Update	Legal Unit
2.4	27 August 2013	update	Legal Unit
3.0	17 August 2017	Update	Governance Unit
4.0	5 October 2023	Revised to align with new PID Act 2023	Audit, Risk & People Team

Publication Information

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Supersedes	3.0
Acknowledgements	NSW Ombudsman related policies and other documents

Key Information	Details
Related Documents	<i>Bullying, Harassment and Discrimination Policy and Procedures</i> <i>Work Related Grievance Handling Policy and Procedures</i> <i>Complaints Handling Policy and Procedures</i>