

Public Interest Disclosures Policy

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Public interest disclosures policy

Message from our Secretary

Leaders play a critical role in championing and nurturing a safe and supportive workplace and enabling a strong 'speak up' culture where all our people feel comfortable and safe to raise concerns and report wrongdoing without fear of negative consequences.

As the Secretary, I am committed to maintaining a high standard of ethical and accountable conduct to ensure the integrity of our department and the work we deliver for the people of NSW.

This policy emphasises the importance of providing support to and protections for employees who report serious wrongdoing in accordance with the requirements of the *Public Interest Disclosures Act 2022* (PID Act). This includes:

- creating a climate of trust, where employees are comfortable and feel supported to report wrongdoing
- keeping the identity of the employee disclosing the serious wrongdoing confidential, where this is possible and appropriate
- protecting employees from any detrimental action resulting from making a report of serious wrongdoing
- dealing with reports of serious wrongdoing in a prompt, thorough and impartial way, and take appropriate action if some form of serious wrongdoing has been found
- keeping employees who make reports of serious wrongdoing informed of their progress and the outcome
- encouraging employees to report serious wrongdoing within the department but respect any decision to disclose serious wrongdoing outside the department in accordance with the provisions of the PID Act
- ensuring people leaders at all levels understand the benefits and accountability of reporting serious wrongdoing, are familiar with this policy, and are aware of the needs and concerns of those who report serious wrongdoing
- reviewing the policy and internal reporting framework periodically to ensure it is relevant and effective.

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

- there is an internal reporting policy
- employees are aware of the contents of the policy and the protections under the PID Act for people who make a public interest disclosure
- the department complies with this policy and the authority's obligations under the PID Act
- the policy delegates the senior people leader at every permanently manned worksite, identified disclosure officers, and the PID Coordinator as being responsible for receiving public interest disclosures.

I hold myself accountable to my obligations and I look to you to also hold yourself accountable to performing your work to the highest ethical standards.

I strongly encourage you to familiarise yourself with this policy, understand your responsibility and protections under the PID Act and framework. If you witness serious wrongdoing or behaviour that you feel requires reporting, I urge you to contact your leader, a disclosure officer or to contact me directly.

For more information on this policy, please email Professional Standards.

Kiersten Fishburn

Secretary

Purpose

All agencies in NSW are required to have a Public Interest Disclosures (PID) Policy under section 42 of the *Public Interest Disclosures Act 2022* (PID Act).

The Department of Planning and Environment (the department) encourages reports of serious wrongdoing and is committed to high standards of ethical behaviour and accountable conduct. This PID Policy (the Policy) emphasises the importance of providing support to reporters and provides how the department will manage complaints in a consistent and fair manner in accordance with the requirements of the PID Act.

This policy sets out:

- how the department will support and manage reports of serious wrongdoing
- how the department will meet the responsibilities under the PID Act
- how to make a report of serious wrongdoing and where to seek advice about that report
- the protections which are available to all reporters under the PID Act

Who does this policy apply to?

This policy applies to PID reporters; a person must be a public official of the department in order to make a PID report. A public official includes:

- a person employed in an ongoing, temporary, or casual role in the department
- 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
- 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 on behalf of an agency or exercises functions of an agency, who is involved in providing those services or exercising those functions¹.

Who does this policy not apply to?

This policy does not apply to people who have received services from the department and want to make a complaint about those services. If a complaint is service-related, complainants should lodge concerns directly to the Complaints Team.

¹ See s14 of *PID Act* for full definition of 'public official'.

1. Making a report of serious wrongdoing

(a) Reports, complaints, and grievances

When a report of serious wrongdoing is made, the department will conduct an assessment to determine if the report meets the criteria under the PID Act to be deemed a PID. Written confirmation of the PID status will be communicated by the department's PID Co-ordinator after a formal assessment of the report has been undertaken.

Should the report be determined not to be a PID, the reporter will be advised of the most appropriate pathway to deal with their concern.

(b) When is a report a PID?

There are three types of PIDs

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

A voluntary PID must have all the following five features: -

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

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

A disclosure also does not comply with this section if the information disclosed relates only to a disagreement with a government policy, including:

- (a) a government decision concerning amounts, purposes, or priorities of public expenditure, or
- (b) a policy of the governing body of a local government authority.

- (c) concerns only a grievance about a matter relating to the employment or former employment of an individual, and either,
- (i) does not have significant implications beyond matters personally affecting or tending to personally affect the individual, or
 - (ii) relates to a disagreement with the taking or proposed taking of reasonable management action.

(c) Who can make a voluntary PID?

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

(d) What is serious wrongdoing?

Reports must be of one or more of the following categories of *serious wrongdoing*² to be considered a PID:

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

(e) Who to make a voluntary PID to?

For a report to be a voluntary PID, it must be made to certain public officials, and may be made orally or in writing.

Reporters can make a report:

- to the Secretary
- to a disclosure officer for the department
- to their manager
- anonymously through the internal whispli portal
- via the Professional Standards PID reporting email
- by phoning a member of the Professional Standards team

² Section 13, PID Act

Making a report to a recipient outside of the department

Reports can also be made to certain public officials of another agency (i.e., not the department), or an integrity agency. These include:

- the *head of another agency* — this means the head of any public service agency
- an *integrity agency* — refer Annexure A
- a *disclosure officer for another agency*
- a *Minister or a member of a Minister's staff*, but the report *must be made in writing*.

If a reporter chooses to make a disclosure outside of the department, it is possible that disclosure will be referred to the department to be assessed and for appropriate action to be taken.

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

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

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

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

Investigation period means:

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

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

(f) Deeming that a report is a voluntary PID

The Secretary or their delegate can, in certain circumstances, determine that a report is a voluntary PID even if the report does not otherwise have all the features of a voluntary PID.

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

(g) Who to talk to with questions or concerns

The Professional Standards team or a PID Disclosure Officer can provide further information so that any concerns can be addressed.

An anonymous report can be made here. The query will be received by the Professional Standards team who can reply within the system.

2. Protections

(a) How is the reporter of a PID protected?

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

Table 1 Protections for PID reporters

Protection provided by the PID Act	Voluntary PID	Mandatory PID	Witness PID
Detrimental action – it is an offence to take detrimental action against any person based on a suspicion, belief, or awareness that a person has made, may have made, or may make a PID	✓	✓	✓
Right to compensation – A person can initiate proceedings and seek compensation for injury, damage or loss suffered because of detrimental action being taken against them.	✓	✓	✓
Right to seek preventive injunction – An injunction can be sought to prevent the commission or possible commission of a detrimental action offence against a person	✓	✓	✓
Ability to seek remedial injunction – If a person has suffered unlawful detrimental action, an injunction can be applied for to remedy that offence (for example, to reinstate the person's employment)	✓	✓	✓
Confidentiality – Information that may identify a person as the maker of a voluntary PID cannot be disclosed by the public official or an agency except in specific circumstances.	✓	✗ *	✗ *
Note (*)			

However, where possible and provided it does not hinder an investigation, it is best practice for agencies to maintain confidentiality of a maker's identity whether it is a mandatory or witness PID, or some other type of complaint.			
Protection from civil and criminal liability – A person will not incur civil or criminal liability in relation to making a disclosure. This means that legal action cannot be taken against a person for: <ul style="list-style-type: none"> • Breaching a duty of secrecy or confidentiality, or • Breaching another restriction or disclosure 	✓	✓	✓
Protection from liability for own past conduct – if a person discloses their own wrongdoing or misconduct while they are making a PID, they are <i>not</i> protected from liability for their own past conduct. However, the Attorney General may give the maker of a PID a <i>conditional</i> or <i>unconditional</i> undertaking that the disclosure of their own conduct will not be used against them.	Can only be provided by the Attorney General	Can only be provided by the Attorney General	Can only be provided by the Attorney General

The reporter of a PID is protected in the following ways:

- *Protection from detrimental action*
 - A person cannot take detrimental action against another person because they have made a voluntary PID or are considering making a PID. Detrimental action may include injury, damage or loss, property damage, reputational damage, intimidation, bullying or harassment, unfavourable treatment in relation to another person's job, discrimination, prejudice or adverse treatment, disciplinary proceedings or disciplinary action, or any other type of disadvantage.
 - Investigators of serious wrongdoing are also protected from detrimental action and can apply for an injunction to prevent the commission or possible commission of a detrimental action offence.
 - An order requiring a person to do an act or thing to remedy conduct that constitutes a detrimental action offence. This can include:
 - a formal apology to the person who suffered detrimental action, or
 - reinstating someone to the same or similar role if their employment has been terminated.
 - It is a criminal offence for someone to take detrimental action against a person because they have made or may make a voluntary PID. It is punishable by a maximum penalty of 200 penalty units or imprisonment for five years, or both.
 - A person may seek compensation where unlawful detrimental action has been taken against them.
 - A person can apply for a court order (injunction) where detrimental action is threatened or has occurred (for example, an order to require a formal apology, prevent dismissal or to require reinstatement).

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

- *Immunity from civil and criminal liability*

Some public officials are often subject to a duty of confidentiality that prevents them disclosing certain information that they obtain or become aware of at work. Sometimes, in order to make a PID, public officials will need to breach or disregard such confidentiality duties. If that happens, a public official cannot be disciplined, sued, or criminally charged for breaching confidentiality.

- *Confidentiality*

Public officials and agencies must not disclose information tending to identify a person as the maker of a voluntary PID unless doing so is permitted by the PID Act. *Note:* this protection is not available to reporters of Witness PIDs or Mandatory PIDs.

- *Protection from liability for own past conduct*

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

3. Reporting detrimental action

If you experience adverse treatment or detrimental action because of making a PID, you should report this immediately. You can report any experience of adverse treatment or detrimental action directly to a disclosure officer or the Professional Standards team within the department, or to an integrity agency. A list of integrity agencies is located at Annexure A.

4. General support

The department is serious about supporting reporters which is the foundation of the PID Act. The Professional Standards team upon receipt of a report of alleged wrongdoing will conduct a risk assessment and speak with the reporter to ensure the reporter is appropriately supported.

The Employee Assistance Program is available to all employees involved in the PID process. The EAP is a short-term, solutions-focused counselling service provided by TELUS Health. For more information on the EAP, please visit the EAP Compass page [here](#).

5. Roles and responsibilities

People within the department have specific responsibilities under the PID Act.

(a) The Secretary is responsible for:

- fostering a workplace culture where reporting is encouraged
- receiving disclosures from public officials
- ensuring there is a system in place for assessing disclosures
- ensuring the department complies with this policy and the PID Act
- ensuring that the department has appropriate systems for:

- overseeing internal compliance with the PID Act
- supporting reporters who make voluntary PIDs, including by minimising the risk of detrimental action
- implementing corrective action if serious wrongdoing is found to have occurred
- complying with reporting obligations regarding allegations or findings of detrimental action
- complying with yearly reporting obligations to the NSW Ombudsman

(b) Public Interest Disclosure Coordinator is responsible for:

- determination of whether a report is to be treated as a PID
- coordinating the department's response to the report, including ensuring the agency decides how to deal with the disclosure. This may include investigating the matters in the report. Investigating could include following a procedure, or conducting an assessment or other action of an investigative nature, whether on a preliminary or formal basis
- seeking delegates approval to conduct a misconduct investigation
- ensuring the requirements and responsibilities as set out in the Management of Wrongdoing Incident procedure are followed in respect of PIDs
- coordinating training and awareness requirements
- creating and maintaining accurate records
- ensuring the department's obligations of reporting to the Ombudsman and ICAC are completed.

This role is performed by the Director Ethics within the Governance Division.

(c) 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, including by referring the matter to the Professional Standards team
- ensuring that any oral reports that have been received are accurately recorded in writing.

(d) Managers are responsible for:

- receiving reports from public officials who report to them or whom they supervise
- passing on reports they receive to a disclosure officer or the Professional Standards team

(e) All employees are responsible for:

- reporting suspected serious wrongdoing or other misconduct
- using their best endeavours to assist in an investigation of serious wrongdoing if asked to do so by a person dealing with a PID on behalf of the department
- treating any person dealing with, or investigating reports of, serious wrongdoing with respect

- ensuring no detrimental action is taken against any person who has made, may in the future make, or is suspected of having made, a PID.

6. Confidentiality and detrimental action

(a) Confidentiality

The department understands that reporters of voluntary PIDs may want their identity and the fact that they have made a report to be confidential. The department will take the steps to maintain confidentiality:

- limit the number of people who are aware of the reporter's identity or information that could identify them
- seek the reporters consent if we must disclose the reporter's identity
- remind any person who does know the identity of the reporter that they have a legal obligation to keep their identity confidential
- restrict access to emails, files or other documentation that contain information about the identity of the maker.
- advise the reporter to contact the Professional Standards investigator they consider detrimental action is or may be taken against them.
- provide information to the reporter about the importance of maintaining confidentiality and advising them not to discuss their report with other employees.

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

- where the reporter consents in writing to the disclosure
- where it is generally known that the reporter is the maker of the voluntary PID because they have informed others about the report
- when the department reasonably considers it necessary to disclose the information to protect a person from detrimental action
- where it is necessary the information be disclosed to a person whose interests are affected by the disclosure
- where the information has previously been lawfully published
- when the information is disclosed to a medical practitioner or psychologist for the purposes of providing medical or psychiatric care, treatment, or counselling to the reporter
- when the information is disclosed for the purposes of proceedings before a court or tribunal
- when the disclosure of the information is necessary to deal with the disclosure effectively
- if it is otherwise in the public interest to disclose the identifying information

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

(b) Dealing with allegations of detrimental action

If the department becomes aware of an allegation that detrimental action has been taken or may be taken, the department will, through the PID Coordinator, take certain steps to ensure the department manages those reports in accordance with the PID Act.

The steps that will be taken include:

- take all steps possible to stop the action and protect the reporter(s)
- take appropriate disciplinary action against anyone that has been found to have 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 (whichever is applicable)
- notify the NSW Ombudsman about the allegation of a detrimental action offence being committed.

(c) Action if an investigation finds that serious wrongdoing has occurred

Where it is determined an allegation of wrongdoing requires an investigation to establish whether misconduct may or may not have occurred, the matter will be managed in accordance with the Misconduct Policy.

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 employees where required
- taking employment action against persons involved in the wrongdoing (such as termination of employment, relocation, a caution, or reprimand)
- payment of compensation to people who have been affected by serious wrongdoing or other misconduct.

7. Review and dispute resolution

(a) Internal review

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

- that the department is not required to deal with the report as a voluntary PID
- to stop dealing with the report as a voluntary PID. This could include dealing with the report as another kind of PID
- to not investigate the serious wrongdoing:
 - (i) in accordance with an applicable Act, law, procedure, or policy, or
 - (ii) by conducting an audit, inquiry, or assessment or by taking other action of an investigative nature, whether on a preliminary or formal basis, and not refer the report to another agency and not refer the report to another agency
- to stop investigating the serious wrongdoing without either completing the investigation or referring the report to another agency for investigation.
- an example of what constitutes an investigation is set out in section 5(b) above

Applications for internal review should be referred to the Executive Director Governance as the department's Public Interest Disclosure Review Officer. The review request will be allocated to an officer within the Governance Division unrelated to the initial report and investigation process.

(b) Voluntary dispute resolution

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

8. Other obligations

(a) Record-keeping requirements

The department must keep full and accurate records with respect to all information received in connection with the PID Act in order to comply with its obligations under the *State Records Act 1998*. Records should have appropriate security applied and managed in accordance with the Records and Information Management Policy.

(b) Annual Reporting to the NSW Ombudsman

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

- information about voluntary PIDs received by the department during each return period (annually 1 July to 30 June)

- action taken by the department to deal with voluntary PIDs during the return period
- how the department maintains a culture in the workplace where PIDs are encouraged

(c) Compliance with the PID Act and this policy

Periodic audit of PID records will be conducted by the Executive Director Governance to ensure compliance with the provisions of the PID Act including the processes undertaken in administering PID.

Policy metadata

Table 1. Policy metadata

Category	Description
Status	Final Approved
Date of approval	29 September 2023
Approver	General Counsel - Deputy Secretary - Governance and Legal
Group	Governance and Legal
Division	Governance
Policy owner	Executive Director Governance
Branch	Ethics
Document location	DPE Intranet and internet
Next review date	29 September 2026
Associated procedure	Nil
Any additional applicability	Nil
Superseded document	Public interest disclosures policy (approved May 2022)
Further information	pidtraining@dpie.nsw.gov.au
Document Reference	DOC23/867798

Version control

Table 2. Version Control

Version	Date issued	Change
1	29 September 2023	Re-write due to new Legislation requirements

Annexure A – 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 In Writing: Level 24, 580 George Street, Sydney NSW 2000 Email: info@ombo.nsw.gov.au
The Auditor-General	Serious and substantial waste of public money by auditable agencies	Telephone: 02 9275 7100 In Writing: GPO Box 12, Sydney NSW 2001 Email: governance@audit.nsw.gov.au
Independent Commission Against Corruption	Corrupt conduct	Telephone: 02 8281 5999 or toll free on 1800 463 909 (callers outside Sydney) between 9am and 3pm, Monday to Friday In Writing: GPO Box 500, Sydney NSW 2001 or faxing 02 9264 5364 Email: 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 In 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 In 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 In 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 In Writing: GPO Box 7011, Sydney NSW 2001 Email: ipcinfo@ipc.nsw.gov.au
The Information Commissioner	Government information contraventions	Telephone: 1800 472 679 In Writing: GPO Box 7011, Sydney NSW 2001 Email: ipcinfo@ipc.nsw.gov.au