



information  
and privacy  
commission  
new south wales

# IPC Public Interest Disclosures Internal Reporting Policy

October 2023



<b>Who is this information for?</b>	This policy has been developed to assist Information and Privacy Commission NSW (IPC) staff.
<b>Why is this information important to them?</b>	Some reports of wrongdoing may be classified as “public interest disclosures” under the <i>Public Interest Disclosures Act 2022</i> (PID Act). This policy specifically addresses those types of reports.

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## Scope

This policy has been developed to assist Information and Privacy Commission NSW (IPC) staff.

## Purpose and context of the policy

The IPC is committed to protecting IPC staff who report wrongdoing in the workplace.

Some reports of wrongdoing may be classified as “public interest disclosures” under the [Public Interest Disclosures Act 2022](#) (PID Act). This policy specifically addresses those types of reports.

Other reports of wrongdoing may not meet the definition of “public interest disclosures”, however the IPC supports and encourages such reports, as we do not condone or tolerate wrongdoing in the workplace.

In addition to this policy, staff should refer to the [IPC Code of Conduct](#), as this sets out the standards of conduct and behaviour we expect of all of our staff.

## Organisational commitment

The IPC will:

- keep the identity of the reporting staff member confidential, wherever possible and appropriate
- protect staff who make disclosures from any adverse action motivated by their report
- deal with reports thoroughly and impartially and, if some form of wrongdoing has been found, take appropriate action to rectify it
- keep staff who make reports informed of their progress and the outcome
- respect any decision to disclose wrongdoing outside the organisation – provided that disclosure outside the organisation is made in accordance with the provisions of the PID Act
- ensure IPC managers and supervisors understand the benefits of reporting wrongdoing, are familiar with this policy, and are aware of the needs of those who report wrongdoing
- provide adequate resources, both financial and human, to:
  - encourage reports of wrongdoing
  - protect and support those who make them
  - provide training for key personnel
  - investigate allegations
  - properly manage any workplace issues that the allegations identify or create
  - remedy any wrongdoing that is found
  - re-assess / review the policy each year to ensure it is still relevant and effective.

## Roles and responsibilities of staff

This policy applies to the staff of the IPC, who are:

- permanent employees, whether full-time or part-time
- temporary or casual employees
- consultants

- individual contractors working for the organisation
- interns on placement with the IPC.

Staff should be aware there are various IPC policies in addition to this one which apply to wrongdoing. Each staff member should make themselves familiar with these policies, to follow the correct procedure in dealing with such conduct.

These additional policies are:

1. [IPC Code of Conduct](#) and [DCS Code of Ethics and Conduct](#)
2. [Code of Ethics and Conduct for NSW Government Sector Employees](#)
3. [IPC Managing Workplace Issues Procedure](#)

If you become aware of a colleague who has made a disclosure, we encourage you to support the person and protect their confidentiality.

The IPC will not tolerate staff victimising or harassing a person who has made a disclosure.

### What should be reported?

You should report any wrongdoing you see within the IPC.

Reports about:

- corrupt conduct
- maladministration
- serious and substantial waste of public money
- government information contravention
- a local government pecuniary interest contravention
- privacy contravention

will be dealt with under the PID Act as a public interest disclosure and according to this policy.

Other wrongdoing or misconduct will be dealt with according to the relevant legislation and policy set out below.

#### Wrongdoing – PID reports

##### a) **Corrupt conduct: The dishonest or partial exercise of official functions by a public official**

For example:

- the improper use of knowledge, power or position for personal gain by revealing confidential tender information to a rival company in whom the official has a financial interest
- acting dishonestly or unfairly, or breaching public trust by accepting bribes to permit unlawful activity.

For more information about corrupt conduct, see the [NSW Ombudsman's guideline](#) on what can be reported.

##### b) **Maladministration: Conduct that involves action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory or based wholly or partly on improper motives.**

For example:

- refusing to grant someone a licence for reasons that are not related to the merits of their application, but are related to their race or gender
- neglecting to prosecute unlawful acts committed by members of a group with whom an employee has significant personal connections.

For more information about maladministration, see the [NSW Ombudsman's guideline](#) on what can be reported.

**c) Serious and substantial waste of public money: The uneconomical, inefficient or ineffective use of resources that could result in the loss or wastage of public resources.**

For example:

- failing to maintain significant public buildings so that they fall into disrepair
- failing to have proper audit and reporting systems in place to review expenditure on large public infrastructure programs.

For more information about serious and substantial waste, see the [NSW Ombudsman's guideline](#) on what can be reported.

**d) Government information contravention : A failure to properly fulfil functions under the *Government Information (Public Access) Act 2009 (GIPA Act)*.**

For example:

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

For more information about government information contravention, see the [NSW Ombudsman's guideline](#) on what can be reported.

**e) Local Government pecuniary interest contravention : A failure to comply with requirements under the *Local Government Act 1993* relating to the management of pecuniary interests.**

For example:

- a senior council staff member recommending a family member for a council contract and not declaring the relationship
- a councillor participating in consideration of a development application for a property they or their family have an interest in.

**f) Privacy contravention : A failure to properly fulfil functions under the *Privacy and Personal Information Protection Act 1998 (PPIP Act)*, or *Health Records and Information Privacy Act 2002 (HRIP Act)*.**

For example:

- corrupt disclosure or use of personal information
- supplying personal information unlawfully
- using intimidation or false representation to require someone to give consent under the HRIP Act

For more information on privacy contraventions see: [Fact sheet – Offences under NSW Privacy Laws](#)

### Other wrongdoing

This could include:

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

These types of issues should be reported to a supervisor, in line with the [IPC Managing Workplace Issues Procedure](#)

### When will a report be “protected”?

For a report to be considered a “public interest” disclosure, it has to meet all of the requirements under the PID Act. These requirements are:

- the person making the disclosure must honestly believe on reasonable grounds that the information shows or tends to show wrongdoing.
- the report has to be made to one or more of the following:
  - (i) a position nominated in this policy – see section 10 below
  - (ii) the Information Commissioner (as the CEO of the IPC)
  - (ii) one of the investigating authorities nominated in the PID Act – see section 12 below.

Reports by staff will **not** be considered to be protected if they:

- mainly question the merits of government policy
- are made with the sole or substantial motive of avoiding dismissal or other disciplinary action.

### How you can make a report?

You can report wrongdoing verbally or in writing. You are encouraged to make a report in writing as this can help avoid any confusion or misinterpretation.

If you make a report verbally, the person receiving the report must make a comprehensive record of the disclosure and ask you to sign this record. You should keep a copy of this record.

If you are concerned about being seen making a report, ask to meet in a discreet location away from the workplace.

### Can a report be anonymous?

There will be some situations where you may not want to identify yourself when you make a report. These reports will still be dealt with by the IPC, but it may be best if you identify yourself. This allows us to provide you with any necessary protection and support, as well as feedback on the outcome of any investigation into the allegations.

It is important to realise that an anonymous disclosure may not prevent you from being identified by your colleagues or others. If we do not know who made the report, it is very difficult for us to prevent any reprisal action against you.

## Maintaining confidentiality

The IPC is committed to keeping your identity, and the fact you have reported wrongdoing, confidential. This may help prevent any action being taken against you.

However, there may be situations where this may not be possible or appropriate. We will discuss with you whether it is possible to keep your report confidential.

If confidentiality cannot be maintained, we will develop a plan to support and protect you from risks of reprisal. You will be involved in developing this plan.

You should only discuss your report of wrongdoing with those who are dealing with it.

## Who can receive a report within the IPC?

You are encouraged to report general wrongdoing to your supervisor. The PID Act specifies that a person identified within the agency's public interest disclosure policy is a person with responsibility for receiving public interest disclosures on behalf of the agency. For the IPC this means this policy and any supporting procedures. In the absence of a public interest disclosure policy, the PID Act allows for any manager of a public official associated with the agency to receive a voluntary public interest disclosure, even if the manager is not designated as a 'disclosure officer' for the agency. It is the manager's responsibility (not the person making the disclosure) to ensure that the disclosure ends up with the appropriate disclosure officer who is able to properly deal with it.

Since the IPC does have a public interest disclosure policy, for the purposes of this policy, any supervisor who receives a report that they believe may be a public interest disclosure should refer the staff member making the report to one of the positions listed below. The following positions are the appropriate staff within the IPC who should receive a public interest disclosure.

### a) The Information Commissioner (the Principal Officer)

You can report wrongdoing directly to the Information Commissioner (IC). The IC is responsible for:

- deciding if your report is a public interest disclosure
- determining what needs to be done next, including referring it to other authorities
- deciding what needs to be done to correct the problem that has been identified.

The IC must ensure there are systems in place in the IPC to support and protect staff who report wrongdoing.

They are also responsible for referring actual or suspected corrupt conduct to the Independent Commission Against Corruption.

### b) The Privacy Commissioner

The Privacy Commissioner (PC) is an integrity agency for the purposes of the PID Act and disclosures concerning serious privacy contraventions should be made to the Privacy Commissioner. The PC is responsible for:

- deciding if your report is a public interest disclosure
- determining what needs to be done next, including referring it to other authorities
- deciding what needs to be done to correct the problem that has been identified.

### c) Disclosure coordinator

The disclosure coordinator receives, assesses, forwards and/or deals with reports made in accordance with this policy.

The disclosure coordinator at the IPC is the Director, Legal Counsel and Regulatory Advice.

**d) Any manager of a public official associated with the agency**

A manager to whom a voluntary public interest disclosure is made, and who is not a head of an agency or a disclosure officer for an agency, must, as soon as reasonably practicable, communicate the disclosure to a disclosure officer for an agency with which either the agency head, manager or the public official who made the disclosure is associated.

**How the IPC will deal with reports made**

When a report is made an initial assessment will be applied to consider if the complaint meets the requirements of the PID Act. Matters where the reporter claims it may be a public interest disclosure may not meet the preliminary threshold assessment against the PID Act.

In circumstances where the complaint does not meet the threshold requirements of the PID Act there may still be pathways open to the Information Commissioner to consider and deal with the complaint.

If an agency does decide not to investigate or refer a PID for investigation, it must provide the Ombudsman with a written explanation of that decision. If an investigation into a voluntary PID finds serious wrongdoing, agencies are required to inform disclosers of the corrective action they propose to take and to specify in their PID policy procedures for taking corrective action in response to findings of serious wrongdoing.

The IPC has developed:

- [IPC Public Interest Disclosures Internal Reporting Policy](#) (this policy)
- Checklist and Information Sheet – this outlines the process for dealing with disclosures and includes a flow chart and decision tree.

The IPC has also published resources to assist a person in making a complaint to the Information Commissioner to understand the process and procedures the Information Commissioner will apply in considering their complaint, as well as the information that may be of assistance in assessing the complaint. See [Public Interest Disclosures](#) and [Information Access Resources for citizens](#).

**Who can receive a report outside of IPC?**

Staff are encouraged to report wrongdoing within the IPC but internal reporting is not your only option. If you follow the guidance below, your report can still be a public interest disclosure.

You can choose to make your report to an external investigating authority. You can do this first, or at any stage after your initial internal report. If your report is about the Information Commissioner, you should make it to an investigating authority.

You can also choose to make a report to a member of Parliament or a journalist, but only in limited circumstances.

**a) Investigating authorities**

The PID Act lists a number of investigating authorities in NSW that you can report wrongdoing to, and the categories of wrongdoing each authority can deal with.

These are:

- the Auditor-General – for serious and substantial waste
- the Independent Commission Against Corruption (ICAC) – for corrupt conduct
- the Ombudsman – for maladministration
- the Law Enforcement Conduct Commission (LECC) – for police or Crime Commission corrupt conduct, maladministration or serious and substantial waste
- the LECC Inspector – for disclosures about the LECC or its staff



- the local government investigating authority (Office of Local Government)— for corrupt conduct, maladministration, serious and substantial waste, government information contravention, or local government pecuniary interests in local government agencies, councillors and staff of local government agencies
- the ICAC Inspector – for disclosures about the ICAC or its staff
- the Information Commissioner – for disclosures about a government information contravention.
- The Privacy Commissioner – for disclosures concerning privacy contraventions
- the Secretary of the Department of Planning, Industry and Environment when exercising functions under the following provisions of the Local Government Act 1993—
  - (i) Chapter 13, Part 5, Division 1,
  - (ii) Chapter 14, Part 1, Division 3,
  - (iii) Chapter 14, Part 3, Division 1,
  - (iv) section 734A,

You should contact the relevant authority for advice about how to make a disclosure to them. Contact details for each investigating authority are provided at the end of this policy.

You should be aware that it is very likely the investigating authority will discuss a report about the IPC with the IPC.

We will make every effort to assist and cooperate with the investigating authority to ensure the matter is dealt with appropriately and there is a satisfactory outcome. We will also provide appropriate support and assistance to staff who report wrongdoing to an investigating authority. Under the PID Act, disclosures made to the 'wrong' agency will still attract protection.

#### **b) Members of Parliament or journalists**

To have the protections of the PID Act, staff reporting wrongdoing to a Member of Parliament (MP) or a journalist must have already made substantially the same report to one of the following:

- the Information Commissioner
- the Privacy Commissioner
- a person nominated in this policy
- an investigating authority in accordance with the PID Act (see a. above)

Also, the IPC must have either:

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

Most importantly – to be protected under the PID Act – if you report wrongdoing to an MP or a journalist you will need to be able to prove that you have reasonable grounds for believing that the disclosure is substantially true and that the report is in fact substantially true.

If you report wrongdoing to a person or an organisation that is not listed above, you will not be protected under the PID Act. This may mean you will be in breach of legal obligations or the IPC's code of conduct.

For more information about reporting wrongdoing outside the IPC contact the NSW Ombudsman's Public Interest Disclosures Unit. Their contact details are provided at the end of this policy.

## Feedback to staff who report wrongdoing

Staff who report wrongdoing will be told what is happening in response to their report.

### When you make a report, you will be given:

- an acknowledgement that your disclosure has been received
- the timeframe for when you will receive further updates
- the name and contact details of the people who can tell you what is happening.

This information will be given to you within **two** working days from the date you make your report.

### After a decision is made about how your report will be dealt with, you will be given:

- information about the action that will be taken in response to your report
- likely timeframes for any investigation
- information about the resources available within IPC to handle any concerns you may have
- information about external agencies and services you can access for support.

This information will be given to you within **ten** working days from the date you make your report.

### During any investigation, you will be given:

- information on the ongoing nature of the investigation
- information about the progress of the investigation and reasons for any delay
- advance warning if your identity is to be disclosed.

### At the end of any investigation, you will be given:

- enough information to show that adequate and appropriate action was taken and/or is proposed to be taken in response to your disclosure and any systemic issue brought to light
- advice about whether you will be involved as a witness in any further matters, such as disciplinary or criminal proceedings.

## Protection against reprisal

The IPC will not tolerate any reprisal action against staff who report wrongdoing.

Penalties can be imposed under the PID Act on anyone who takes detrimental action, against the person who reported wrongdoing if the PID was deemed to be a contributing factor to the detrimental action.

The criminal penalties that can be imposed include imprisonment or fines. Detrimental action is also misconduct that justifies disciplinary action. People who take detrimental action against someone who has made a disclosure can also be required to pay damages for any loss suffered by that person.

Detrimental action includes:

- injury, damage or loss caused to the person
- damage caused to the person's property
- damage caused to the person's reputation
- intimidation, bullying or harassment
- discrimination, disadvantage or adverse treatment in relation to employment
- dismissal from, or prejudice in, employment
- disciplinary proceedings.

### a) Responding to reprisals

The IPC will act to protect staff who report wrongdoing from reprisals.

If you believe that detrimental action has been or is being taken against you or someone else who has reported wrongdoing, you should tell your supervisor, or other staff nominated in this policy.

All supervisors must report any suspicions of reprisal action, or any reports that are made to them.

If the supervisor or nominated staff member becomes aware of reprisal action they will:

- ensure a senior and experienced member of staff, who has not been involved in dealing with the initial disclosure, will investigate the suspected reprisal
- give the results of that investigation to the Information Commissioner for a decision
- if it has been established that reprisal action is occurring, take all steps possible to stop that activity and protect the member of staff who made the disclosure
- take appropriate disciplinary or criminal action against anyone proven to have taken or threatened any action in reprisal for making a disclosure.

If you report reprisal action, you will be kept informed of the progress of any investigation and the outcome.

If you have reported wrongdoing and feel that any reprisal action is not being dealt with effectively, contact the Ombudsman or the ICAC – depending on the type of wrongdoing you reported. Contact details for all these investigating authorities are included at the end of this policy.

### b) Protection against legal action

If you make a disclosure in accordance with the PID Act, you will not be subject to any liability and no action, claim or demand can be taken against you for making the disclosure.

You will not have breached any confidentiality or secrecy obligations and you will have the defence of absolute privilege in defamation.

### **Support for those reporting wrongdoing**

The IPC will make sure that staff who have reported wrongdoing, regardless of whether they have made a public interest disclosure, 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.

IPC Managers will support those who report wrongdoing. They are responsible for initiating and coordinating support, particularly to those who are suffering any form of reprisal.

All supervisors must notify the Information Commissioner if they believe a staff member is suffering any detriment as a result of disclosing wrongdoing.

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

All staff must be aware that it is a criminal offence under the PID Act to wilfully make a false or misleading statement when reporting wrongdoing.

### **Support for the subject of a report**

The IPC will ensure that staff who are reported for wrongdoing are treated fairly and reasonably.

If you are the subject of a report, you will be:

- treated fairly and impartially
- told your rights and obligations under our policies and procedures
- kept informed during any investigation
- given the opportunity to respond to any allegation made against you
- told the result of any investigation.

### **PID Policy review**

This policy will be reviewed every twelve months.

(For any advice or guidance about this review, contact the NSW IPC disclosure co-ordinator, the Director, Legal Counsel and Regulatory Advice.

### **More information**

More information around public interest disclosures is available on our website. Staff can also access advice and guidance from the Information Commissioner and from the NSW Ombudsman's website at [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au).

### **Resources**

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

**For disclosures about corrupt conduct:**

Independent Commission Against Corruption (ICAC)  
Phone: (02) 8281 5999  
Toll free: 1800 463 909  
NRS Speak and Listen telephone 1300 555 727 and ask for 02 8281 5999  
Facsimile: (02) 9264 5364  
Email: [icac@icac.nsw.gov.au](mailto:icac@icac.nsw.gov.au)  
Web: [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au)  
Address: Level 7, 255 Elizabeth Street, Sydney NSW 2000

**For disclosures about serious and substantial waste:**

Auditor-General of the NSW Audit Office  
Phone: (02) 9275 7100  
Email: [mail@audit.nsw.gov.au](mailto:mail@audit.nsw.gov.au)  
Web: [www.audit.nsw.gov.au](http://www.audit.nsw.gov.au)  
Address: Level 19, Darling Park Tower 2 201 Sussex Street, Sydney NSW 2000 Australia

**For disclosures about NSW Police or Crime Commission:**

Law Enforcement Conduct Commission (LECC)  
Phone: (02) 9321 6700  
Toll free: 1800 657 079  
Facsimile: (02) 9321 6799  
Email: [contactus@lecc.nsw.gov.au](mailto:contactus@lecc.nsw.gov.au)  
Web: [www.lecc.nsw.gov.au](http://www.lecc.nsw.gov.au)  
Address: Level 3, 111 Elizabeth Street, Sydney NSW 2000

**For disclosures about breaches of the PPIP Act:**

Privacy Commissioner  
Toll free: 1800 472 679  
Facsimile: (02) 6446 9518  
National Relay Service 133 677  
Email: [ipcinfo@ipc.nsw.gov.au](mailto:ipcinfo@ipc.nsw.gov.au)  
Web: [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)  
Address: Level 15, 2-24 Rawson Place, Haymarket NSW 2000

**For disclosures about maladministration:**

NSW Ombudsman  
Phone: (02) 9286 1000  
Toll free (outside Sydney metro): 1800 451 524  
NRS Speak and Listen users phone 1300 555 727 then ask for 02 9286 1000.  
Email: [nswombo@ombo.nsw.gov.au](mailto:nswombo@ombo.nsw.gov.au)  
Web: [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)  
Address: Level 24, 580 George Street, Sydney NSW 2000

**For disclosures about councillors and local government agencies:**

Office of Local Government  
Phone: (02) 4428 4100  
Facsimile: (02) 4428 4199  
Email: [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au)  
Web: [www.olg.nsw.gov.au](http://www.olg.nsw.gov.au)  
Address: 5 O'Keefe Avenue, Nowra, NSW 2541

**For disclosures about breaches of the GIPA Act:**

Information Commissioner  
Toll free: 1800 472 679  
Facsimile: (02) 6446 9518  
National Relay Service 133 677  
Email: [ipcinfo@ipc.nsw.gov.au](mailto:ipcinfo@ipc.nsw.gov.au)  
Web: [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)  
Address: Level 15, 2-24 Rawson Place, Haymarket NSW 2000

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