



Natural
Resources
Commission

PUBLIC INTEREST DISCLOSURES POLICY

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Table of Contents

1	About this policy	1
2	Definitions	1
3	Key responsibilities	2
4	Risk management	4
5	Protections for persons making public interest disclosures	4
5.1	What are the protections?	4
5.2	When do the protections apply?	5
5.3	Further support for the public official making the disclosure	6
6	Fairness	6
7	How to report wrongdoing or making a disclosure	6
7.1	Internal reporting in the Commission	6
7.2	External reporting	6
7.3	Investigating Authorities	6
7.4	Members of Parliament or journalists	7
8	Commission's reports to the Ombudsman	7
9	Contact details for investigating authorities	8
10	Related Commission policies and plans	8
11	Document control	8

1 About this policy

The *Public Interest Disclosure Act 1994* (the Act) is designed to deal with disclosures about serious matters involving public administration. The Commission is committed to the objectives of the Act and supports public interest disclosures (PID) made by the Commission's public officials (Definition in **Section 2**).

The NSW Parliament has passed new Public Interest Disclosures Act 2022. The new Act received assent on 13 April 2022 and will come into force up to 18 months after assent. Agencies continue to be subject to the PID Act 1994 until the new PID Act 2022 comes into force. The Commission will again review this policy in October 2023 when the new Act will come into force.

The purpose of this policy is to:

- encourage disclosure of corrupt conduct, maladministration, serious and substantial waste of public money, government information contravention, and local government pecuniary interest contravention
- inform the Commission's public officials of their rights and responsibilities related to PID.

The Commission takes all reasonable steps to provide protection to a public official who makes PID, from any detrimental action in reprisal for the making the disclosure. The Commission deals with PID reports impartially and takes appropriate action to rectify any wrongdoing found.

This policy is complemented by the **Public Interest Disclosures Procedure** (D17/0749).

2 Definitions

Corrupt conduct, as defined in the *Independent Commission Against Corruption Act 1988* (the ICAC Act), includes the dishonest or partial exercise of official functions by a public official. It also includes conduct such as:

- taking or offering bribes
- dishonestly using influence
- blackmail, fraud, theft
- election bribery
- collusive tendering
- defrauding the public revenue.

For a full definition, refer to the ICAC Act.

Maladministration is defined in the Act as conduct that is based on improper motives; or is unreasonable, unjust or oppressive; or is negligent.

Government information contravention is defined in the Act as a failure to exercise functions in accordance with the *Government Information (Public Access) Act 2009* (the GIPA Act).

Public authority is defined in the Act as any public authority whose conduct or activities may be investigated by an investigating authority (such as ICAC, the NSW Ombudsman, the Auditor-General, the Information Commissioner or a local government investigating authority) and includes (without limitation) a Division of the Government Service, a state owned

corporation and any subsidiary of a state owned corporation, a local government authority, the police force, the Police Integrity Commission, the Inspector of the Police Integrity Commission and the Departments of Parliament. Government departments and agencies and local councils are public authorities.

Public official is defined in the Act as:

- an individual who is an employee of or otherwise in the service of a public authority, and includes (without limitation) each of the following:
 - a public service employee
 - a member of Parliament, but not for the purposes of a disclosure made by the member
 - a person employed by either or both of the President of the Legislative Council or the Speaker of the Legislative Assembly
 - any other individual having public official functions or acting in a public official capacity whose conduct and activities may be investigated by an investigating authority
 - an individual in the service of the Crown, or
- a person employed under the *Members of Parliament Staff Act 2013*
- an individual who is engaged by a public authority under a contract to provide services to or on behalf of the public authority
- if a corporation is engaged by a public authority under a contract to provide services to or on behalf of the public authority, an employee or officer of the corporation who provides or is to provide the contracted services or any part of those services.

For the purpose of the Act, individual or corporation (including its employees) engaged by the Commission belongs to the Commission.

3 Key responsibilities

Commission

Under the Act, the Commission must have a policy for receiving, assessing and dealing with PID.

Commissioner

The Commissioner is the Principal Officer for the purpose of the Act, and is responsible for:

- ensuring the Commission has a policy for receiving, assessing and dealing with PID
- ensuring the Commission staff are aware of the policy for making PID and of the protections provided by the Act
- ensuring compliance with the policy and Commission's obligations under the Act
- designating at least one public official of the Commission as the authorised officer or the PID Officer to receive PID on behalf of the Commission
- providing annual and six-monthly reports to the NSW Ombudsman, as required under the Act (See **Section 8**)
- reporting actual or suspected corrupt conduct to ICAC, and to police in the case of potential criminal offences.

Public Interest Disclosures Officer

The Director Corporate Services is the designated PID Officer of the Commission, and is responsible for:

- dealing with PID impartially
- complying with the confidentiality obligations described in this policy
- supporting public officials who make disclosures and take all reasonable steps to protect them from victimisation, harassment or any other form of reprisal
- ensuring officers who are the subject of a disclosure are treated fairly and reasonably
- assessing each disclosure to determine whether the disclosure appears to be a PID within the meaning of the Act
- determining the appropriate action to be taken in relation to the disclosure
- if considered appropriate, carrying out or coordinating any internal investigation arising out of a disclosure
- reporting on the findings of any investigation and determining any further action.

In case the disclosure is about the Director Corporate Services, the Commissioner will manage the disclosure.

Directors

All Directors are responsible for:

- ensuring that all public officials, for whom they have responsibility, are aware of this policy
- supporting public officials who make disclosures, and taking all reasonable steps to protect them from victimisation, harassment or any other form of reprisal
- reporting to the PID Officer any suspicions of reprisal action against a public official
- maintaining the confidentiality of public officials known or suspected to have made disclosures
- acting fairly in relation to any officer who is the subject of a disclosure which is under consideration or investigation.

Commission's public officials

All public officials are responsible for:

- reporting incidences of corrupt conduct, maladministration, serious and substantial waste of public money, government information contravention and local government pecuniary interest contravention in accordance with the Act
- supporting those who have made disclosures, including abstaining from any activity that is or could be perceived to be victimisation or harassment of those who make disclosures
- maintaining the confidentiality of public officials they know or suspect to have made disclosures.

4 Risk management

Implementing this policy will help the Commission in reducing the following risks:

- misuse of position or authority
- corrupt behaviour
- maladministration
- serious and substantial waste of public money
- government information contravention
- damage to the reputation of the Commission
- detrimental effect on morale and performance
- reprisal action against a public official who has made a disclosure.

5 Protections for persons making public interest disclosures

5.1 What are the protections?

Protection against reprisals

Under the Act, it is an offence to take detrimental action that is substantially in reprisal for a public official making a disclosure, with a penalty of fines and up to two years imprisonment.

The Commission takes all reasonable steps to provide protection to public officials who make disclosures from any detrimental action taken against them substantially in reprisal for making a disclosure.

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 means action causing, comprising or involving any of the following:

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

If a public official believes that detrimental action has been or is being taken against them or someone else who has reported wrongdoing in reprisal for making a report, they should tell their Director or the PID Officer immediately.

All Directors must report to the PID Officer any suspicions they hold that detrimental action in reprisal is occurring against a public official who has reported a wrongdoing.

The Commission ensures that any evidence of detrimental action against a public official that is substantially in reprisal for that person making a disclosure is referred to the Commissioner of Police, ICAC, or if the evidence relates to the NSW Police Force to the Police Integrity Commission.

Public officials who report reprisal action are kept informed of the progress of any investigation and the outcome.

Public official who has reported wrongdoing and feels that any reprisal action is not being dealt with effectively, should contact the NSW Ombudsman or the ICAC, depending on the type of wrongdoing reported. Refer to Contact Details of Investigating Authorities at the end of this policy for more information.

Protection against legal action

A public official, who makes a disclosure in accordance with the Act, will not be subject to any liability and no action, claim or demand can be taken for making the disclosure. No confidentiality or secrecy obligations will have been breached and the defence of absolute privilege in defamation will be available.

Confidentiality

The identity of a public official, who reports wrongdoing in accordance with the Act, will be kept confidential except where disclosure is permitted by the Act.

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

- the person consents in writing to the disclosure of that information, or it is generally known that the person has voluntarily identified themselves
- it is essential, having regard to the principles of natural justice, that the identifying information be disclosed to a person whom the information provided by the disclosure may concern
- the Commissioner is of the opinion that disclosure of the identifying information is necessary to investigate the matter effectively or it is otherwise in the public interest to do so.

The public official who made the disclosure will be informed if it becomes necessary to disclose their identity in accordance with the above.

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

Under the GIPA Act, information is exempt from release if it might identify or tend to identify a person who has made a disclosure.

A public official, who makes a disclosure, must maintain confidentiality of their disclosure. In the acknowledgement of receipt of a disclosure, the Commission will notify the public official of the need to maintain confidentiality.

5.2 When do the protections apply?

Under the Act, a disclosure will be protected if it is:

- made by a public official
- made to the Commissioner or a person nominated by the Commissioner as the PID Officer
- a disclosure of information that the person making the disclosure honestly believes, on reasonable grounds, shows or tends to show corrupt conduct, maladministration, serious and substantial waste of public money or government information contravention by the Commission or any of its officers.

There is an assumption that the public official making the disclosure has an honest belief, in the absence of evidence to the contrary.

It is a criminal offence under the Act for a public official to wilfully make a false statement, mislead, or attempt to mislead an investigating authority, public authority or public official when making a disclosure to them.

Protection is not available for disclosures which principally question the merits of government policy, and are made solely or substantially with the motive of avoiding dismissal or other disciplinary action.

5.3 Further support for the public official making the disclosure

If any public official who discloses wrongdoing about the Commission or its officers believes that they need further support, the PID Officer should be contacted.

6 Fairness

The Commission is committed to ensuring that a person, who is the subject of a disclosure of wrongdoing, is treated fairly and reasonably.

7 How to report wrongdoing or making a disclosure

7.1 Internal reporting in the Commission

Internal disclosure can be made to the Commissioner or the PID Officer.

Any Director who receives a report that they believe may be a PID, must refer the public official making the disclosure to the PID Officer, who is authorised by the Commission to receive a disclosure. This will ensure the person making the report will be protected under the Act.

The steps on how to report, receive, and manage disclosures of fraud or corruption is in the Commission's **Public Interest Disclosures Procedure**.

7.2 External reporting

A disclosure can also be made to an "investigating authority." This can be done first or at any stage after the initial disclosure to the Commission. If the disclosure is about the Commissioner, then it should be made to an investigating authority at the outset.

Disclosures can also be made to a Member of Parliament or a journalist, but only in limited circumstances, explained in the sections below.

7.3 Investigating Authorities

Under the Act, some of the investigating authorities that public officials can make disclosures to, and the categories of wrongdoing each authority can deal with, are:

- the Auditor-General — for serious and substantial waste of public money
- the ICAC — for corrupt conduct
- the NSW Ombudsman — for maladministration
- the Chief Executive, Office of Local Government – for corrupt conduct, maladministration, serious and substantial waste of local government money,

government information contravention and local government pecuniary interest contravention

- the ICAC Inspector — for disclosures about the ICAC, its staff or the staff of the ICAC Inspector
- the Information Commissioner — concerning a failure to exercise functions properly in accordance with the GIPA Act.

The relevant authority should be contacted for advice about how to make a disclosure to it.

Public officials should be aware that it is very likely the investigating authority will discuss the case with the Commission. The Commission will assist and cooperate with the investigating authority and will provide appropriate support and assistance to the Commission's public officials who report wrongdoing to an investigating authority.

7.4 Members of Parliament or journalists

To have the protections of the Act, public officials reporting wrongdoing to a Member of Parliament or a journalist:

- Must have already made substantially the same disclosure either to:
 - the Commissioner or the Commission's PID Officer or
 - a public authority or an officer of a public authority or
 - an investigating authority.
- And the Commission, public authority, or an investigating authority that received the disclosure must have either:
 - decided not to investigate the matter or
 - decided to investigate the matter but not completed the investigation within six months of the original report or
 - investigated the matter but not recommended any action as a result or
 - not notified the person who made the report, within six months of the report being made, whether the matter is to be investigated.

The public official must have reasonable grounds for believing the disclosure is substantially true and must be able to prove the disclosure is in fact substantially true.

A disclosure to a person or an organisation, not listed above or not listed in the Act, will not be protected under the Act.

8 Commission's reports to the Ombudsman

An annual report on the Commission's obligations under the Act is to be prepared and a copy provided to the NSW Ombudsman.

In addition, six-monthly reports are to be provided to the NSW Ombudsman. The reporting period is six months ending on 30 June and 31 December in any year, and the report is to be provided within 30 days after the end of the six-month period.

Reports are to provide statistical information on compliance with the Commission's obligations under the Act.

9 Contact details for investigating authorities

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

For corrupt conduct:

Independent Commission Against Corruption
Phone: 02 8281 5999
Email: icac@icac.nsw.gov.au
Address: Level 21, 133 Castlereagh Street,
Sydney NSW 2000

For maladministration:

NSW Ombudsman
Phone: 02 9286 1000
Email: nswombo@ombo.nsw.gov.au
Address: Level 24, 580 George Street,
Sydney NSW 2000

For local government:

Office of Local Government
Phone: 02 4428 4100
Email: olg@olg.nsw.gov.au
Address: 5 O'Keefe Avenue, Nowra, NSW
2541

For serious and substantial waste:

Auditor-General of the NSW Audit Office
Phone: 02 9275 7100
Email: mail@audit.nsw.gov.au
Address: Level 15, 1 Margaret Street, Sydney
NSW 2000

For breaches of the GIPA Act:

Toll free: 1800 472 679
Email: ipcinfo@ipc.nsw.gov.au
Address: Level 11, 1 Castlereagh Street,
Sydney NSW 2000

10 Related Commission policies and plans

- Code of ethics and conduct
- Fraud control plan
- Procurement policy and guidelines
- Enterprise agreement
- Risk management policy and framework
- Grievance policy
- Policy for managing external complaints and allegations
- Statement of business ethics

11 Document control

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