

Public Interest Disclosure Policy for officers of the Commission

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1. Purpose

Section 42 of the [Public Interest Disclosures Act 2022](#) (“the PID Act”) requires the NSW Independent Commission Against Corruption (“the Commission”) to have a public interest disclosure (PID) policy.

This is the Commission’s policy for dealing with internal PIDs made by officers of the Commission. For the purposes of this policy, an officer of the Commission is:

- a Commissioner, or
- an Assistant Commissioner,
- a member of staff of the Commission, or
- a person otherwise in the service of the Commission.

This policy does not apply to people, such as contractors, who provide services to the Commission. For example, employees of a company that sells products to the Commission. This means that if a person is not a public official, this policy does not apply to their complaint (there are some circumstances where a complaint can be deemed to be a voluntary PID. See below for more information). However, people can still make a complaint about the Commission by reporting online through its website at www.icac.nsw.gov.au or making a complaint to the ICAC Inspector (www.oicac.nsw.gov.au) if the subject matter of the complaint involves a matter that comes within the ICAC Inspector’s functions as set out in Part 5A of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”).

The Commission has high standards of ethical and accountable conduct and does not tolerate wrongdoing by Commission officers. Commission officers who report wrongdoing are helping to promote integrity, accountability and good management within the Commission.

This policy is designed to complement normal communication channels between people managers and staff. Staff are encouraged to raise matters of concern at any time with their managers, but also have the option of making a report about a public interest disclosure issue in accordance with this policy and the PID Act.

This policy sets out:

- when a matter will be a PID
- how a Commission officer can make a report of serious wrongdoing
- how a report of serious wrongdoing made by a Commission officer will be dealt with
- the protections available under the PID Act
- what support is available
- relevant recordkeeping and reporting requirements.

This policy also documents the Commission’s commitment to building a speak up culture. Part of that speak up culture is having in place a framework that facilitates public interest reporting of wrongdoing. In NSW, that framework is the PID Act.

For further information about this policy, how public interest disclosures will be handled and the PID Act:

- confidentially contact a Commission disclosure officer
- contact the PID Advice Team within the NSW Ombudsman by telephone: (02) 9286 1000 or email: pidadvice@ombo.nsw.gov.au, or
- access the NSW Ombudsman’s PID guidelines which are available on its [website](#) at.

People requiring legal advice with respect to the PID Act or their obligations under the Act, should seek such advice independently.

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2. When will a matter be a PID?

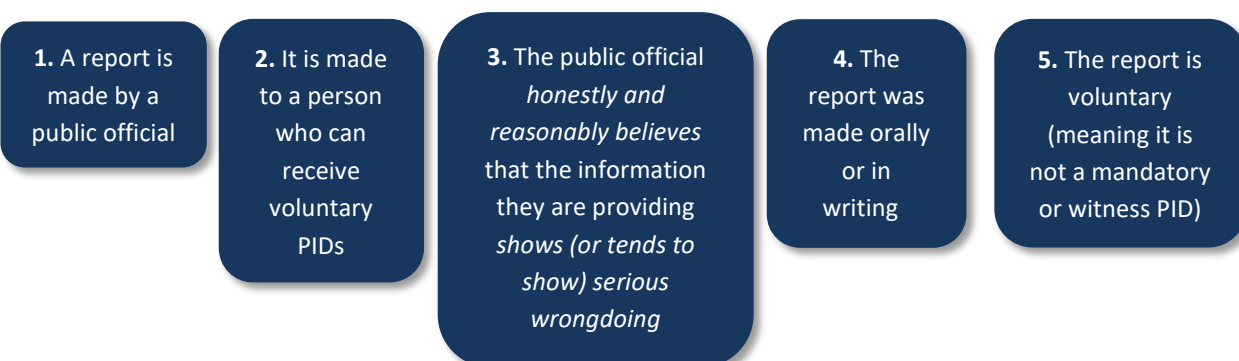
There are three types of PIDs in the PID Act. These are:

1. *Voluntary PIDs* (s 24 PID Act): This is a PID where a report has been made by a **public official** (such as a Commission officer), of their own accord, about a matter the person honestly and on reasonable grounds believes shows or tends to show “serious wrongdoing”.
2. *Mandatory PIDs* (s 23 PID Act): This is a PID where a **public official** has made a report about serious wrongdoing because they have a legal obligation to make that report, or because making that report is an ordinary aspect of their role or function in an agency.
3. *Witness PIDs* (s 22 PID Act): 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 Commission officers who make a voluntary PID and how the Commission will deal with those voluntary PIDs. People who make a mandatory PID or a witness PID are also entitled to protection. More information about protections is available later in this policy.

More information about mandatory and witness PIDs is available in the NSW Ombudsman’s guidelines, [Dealing with mandatory PIDs](#) and [Dealing with witness PIDs](#).

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:



A PID maker is not expected to prove that what is reported actually happened or is serious wrongdoing. They *do* have to honestly believe, on reasonable grounds, that the information they are reporting shows or tends to show “serious wrongdoing”.

Even though it is not necessary to prove the serious wrongdoing happened, or to provide evidence, a mere allegation with no supporting information is unlikely to meet this test.

A disclosure will not be a voluntary PID if it relates only to a disagreement with a government policy, including:

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

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A disclosure also will not be a voluntary PID if the information disclosed concerns only a grievance about a matter relating to the employment or former employment of an individual (unless the grievance arises from a decision by an agency in dealing with a previous voluntary PID or alleged detrimental action relating to a previous PID), and either:

- does not have significant implications beyond matters personally affecting or tending to personally affect the individual, or
- relates to a disagreement with the taking or proposed taking of reasonable management action.

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

If an officer makes a report and believes the Commission has made an error by not identifying that they have made a voluntary PID, the officer should raise this with a Commission disclosure officer or their contact officer for the report. In certain circumstances, set out below, the officer may be able to apply to the Commission for an internal review or the Commission may request the NSW Ombudsman deal with any dispute. Further information on rights to internal review and voluntary dispute resolution is found in section 13 of this policy.

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 s 13 of the PID Act as:

- **corrupt conduct** (as defined in the ICAC Act)
- **serious maladministration** (conduct, other than conduct of a trivial nature, of an agency or a public official relating to a matter of administration that is unlawful, or unreasonable, unjust, oppressive or improperly discriminatory, or based wholly or partly on improper motives)
- **a government information contravention** (a failure, other than a trivial failure, by an agency or public official to exercise functions in accordance with the *Government Information (Information Commissioner) Act 2009*, or the *Government Information (Public Access) Act 2009*, or the *State Records Act 1998*)
- **a local government pecuniary interest contravention** (a contravention of an obligation imposed in connection with a pecuniary interest by the *Local Government Act 1993* or a code of conduct adopted by a council under that Act)
- **a privacy contravention** (a failure, other than a trivial failure, by an agency or public official to exercise functions in accordance with the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*)
- **a serious and substantial waste of public money.**

When making a report, a Commission officer does not need to state what category of serious wrongdoing they are reporting or that they are reporting serious wrongdoing.

4. How to make a report of serious wrongdoing

A voluntary PID can be made to a Commission disclosure officer. It can be made in writing and sent to the disclosure officer’s email address or delivered to the disclosure officer. A written report may also be sent to a Commission disclosure officer using the Commission’s general email address: icac@icac.nsw.gov.au, or posted to the Commission at GPO Box 500, Sydney NSW 2001.

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A report may also be made orally to a Commission disclosure officer, either in person, by telephone (either (02) 8281 5999 or the extension number of a disclosure officer as published in the Commission’s telephone directory) or virtually.

If a disclosure is made orally then, in accordance with s 53 of the PID Act, the person to whom the disclosure is made must make a written record of the disclosure.

A report can be made anonymously. 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 the officer making the report chooses 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) the officer has disclosed if the Commission cannot contact them for further information.

Who can a report be made to?

A Commission officer can make a report to any of the following Commission disclosure officers:

- the Chief Executive Officer
- their manager – this is the person who directly, or indirectly, supervises them. It can also be the person to whom they directly, or indirectly, report. An officer may have more than one manager
- Principal, Governance and Risk
- the Manager People, Governance and Security
- an Executive Director
- a Commissioner.

Making a report to a recipient outside of the Commission

If an officer chooses to make a disclosure to another agency (as defined in the PID Act, for example, to the ICAC Inspector), their disclosure may be referred back to the Commission so that appropriate action can be taken.

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

Disclosures to MPs or journalists are different from other reports. Under s 28 of the PID Act, a Commission officer can only disclose a report of wrongdoing as a voluntary PID to an MP or journalist in the following circumstances:

- the disclosure is substantially true, and
- the officer has made substantially the same disclosure (described here as a “previous disclosure”) to someone who can receive disclosures, and
- they did not make the previous disclosure anonymously, and
- they did not give a written waiver of their right to receive information relating to their previous disclosure, and
- **either**, within six months from making the previous disclosure, they did not receive from the Commission notice of its decision to investigate the serious wrongdoing, a description of the results of the investigation and details of corrective action taken, proposed or recommended, **or**, they have been notified by the Commission of its decision neither to investigate or refer the disclosure or that it has decided to cease investigating without completing the investigation or referring the disclosure.

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

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What to include in the report

The officer should provide as much information as possible so the Commission can deal with the report effectively. The type of information they should include is:

- date, time and location of key events
- names of person(s) involved in the suspected serious wrongdoing and how they are involved
- the officer's relationship with the person(s) involved
- details of the serious wrongdoing
- how the officer became aware of the serious wrongdoing
- possible witnesses or anyone else who can provide supporting information.

It is an offence to wilfully make a false statement or mislead or attempt to mislead when making a disclosure (s 84 PID Act).

What if the Commission officer is not sure if their report is a PID?

Commission officers should report all wrongdoing they become aware of 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 an officer's report is handled appropriately under the PID Act, or if it is not a PID, in line with its other procedures. Even if the report is not a PID, it may fall within another one of the Commission's policies for dealing with reports, allegations or complaints, such as Policy 64 – "Unsatisfactory performance, misconduct and serious offences".

Deeming that a report is a voluntary PID

The Chief Executive Officer (or 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 (see s 29 of the PID Act).

Such a determination may be made on the initiative of the Chief Executive Officer (or delegate) or at the request of the maker of the disclosure but must not be made unless the Chief Executive Officer (or delegate) believes the disclosure shows or tends to show serious wrongdoing.

By deeming that a report is a voluntary PID, it ensures that Commission officers making reports are provided with protections under the PID Act.

If a report does not meet all the requirements of a voluntary PID, the officer can refer their matter to the Commission's Chief Executive Officer (or delegate) to request that they consider deeming the report to be a voluntary PID.

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

Who to talk to about questions or concerns

Further information to address any questions or concerns may be obtained from the officer's manager, another Commission manager such as the Manager People, Governance and Security, an Executive Director, the Chief Executive Officer or a Commissioner.

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5. How will the Commission deal with the report?

Receipt of a report and keeping the person who made it informed

When a disclosure officer in the Commission receives a report that is a voluntary PID, or looks like it may be a voluntary PID, the disclosure officer will refer the report to the Executive Director Legal. If the report concerns the Executive Director Legal, the disclosure officer will refer the matter to the Chief Commissioner to nominate another person who will deal with the disclosure.

The Commission officer who made the disclosure will receive an acknowledgement from the Executive Director Legal (or such other person as appointed by the Chief Commissioner). This acknowledgement will:

- state that the report will be assessed to identify whether it is a PID
- state that the PID Act applies to how the Commission deals with a PID
- provide information on how the officer can access this PID policy via the Commission's website or intranet
- identify the person who will be the contact person for the officer in relation to the disclosure (usually the Executive Director, Legal) and
- provide contact details for that person (as noted above, this will usually be the Executive Director, Legal).

If the report is a voluntary PID, the Executive Director Legal (or such other person as appointed by the Chief Commissioner) will, in accordance with s 59 of the PID Act, as soon as reasonably practicable after the matter becomes applicable:

- Advise the officer that Division 2 of Part 5 of the PID Act applies.
- Advise the officer how the Commission is dealing with, or proposes dealing with, the disclosure.
- If the Commission has decided to neither investigate the relevant serious wrongdoing, nor to refer it, advise the officer of the reason for that decision.
- If the Commission decides to cease investigating the relevant serious wrongdoing, without either completing the investigation or referring the disclosure, advise the officer of the reasons for that decision.
- If the Commission refers the disclosure to another agency, provide the officer with details of the referral.

If the Commission decides to investigate the serious wrongdoing, it will provide the officer with updates on the investigation at least every three months. This may be done by way of email, telephone or meeting (including via an audio visual link). During this time, if the officer would like more frequent updates, they should contact their nominated contact person.

If the Commission investigates the serious wrongdoing, it will provide the officer who made the report with the following information once the investigation is complete:

- a description of the results of the investigation — that is, the Commission will tell the officer whether it found that serious wrongdoing took place
- information about any corrective action as a result of the investigation — this means the Commission will tell the officer what action it took in relation to the person who engaged in the serious wrongdoing and/or what the Commission has put in place to address that serious wrongdoing.

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Corrective action could include taking disciplinary action against someone or changing the practices, policies and procedures that the Commission has in place which led to the serious wrongdoing.

There may be some details about both the findings made as a result of the investigation and the corrective action taken that cannot be revealed to the officer. The Commission will always balance the right of a person who makes a report to know the outcome of that report, with other legal obligations it has.

If an officer has made an anonymous report, in many cases, the Commission may not be able to provide this information to them.

As required by s 55(3) of the PID Act, if the Commission decides to neither investigate the relevant serious wrongdoing, nor refer the disclosure or decides to cease investigating the relevant serious wrongdoing without either completing the investigation or referring the disclosure, the Commission will, as soon as reasonably practicable, provide written reasons explaining the decision to the Ombudsman.

Dealing with voluntary PIDs

Generally, reports of serious wrongdoing will be referred to the Executive Director Legal to deal with in accordance with Commission Policy 64 – “Unsatisfactory performance, misconduct and serious offences”.

The ICAC Inspector will also be informed of any report of serious wrongdoing concerning a Commission officer.

In accordance with Policy 64, the officer to whom a disclosure is made will usually provide written details of the disclosure to the Executive Director Legal, who will advise the Chief Commissioner. In circumstances where the disclosure concerns the Executive Director Legal, the officer to whom the disclosure is made will provide written details to the Chief Commissioner.

The Executive Director Legal, will generally be the central coordinating point for all PIDs made by Commission officers, will be the contact officer for dealing with the disclosure, coordinate any subsequent investigation, ensure follow up action is initiated and provide feedback to the person making the original disclosure. If the disclosure concerns the Executive Director Legal the Chief Commissioner will determine who should undertake these roles.

If the disclosure concerns a Commissioner, the Executive Director Legal will inform the ICAC Inspector. The ICAC Inspector will then determine how the matter should be dealt with.

In most cases, the Commission will conduct an investigation pursuant to Policy 64 to make findings about whether the serious wrongdoing disclosed in the report occurred, who was involved, who was responsible, and whether the people involved, or the agency engaged, in serious wrongdoing. There may be circumstances where the Commission believes an investigation is not warranted, for example, if the conduct has previously been investigated.

If the Commission decides to refer the matter to another agency (such as the ICAC Inspector), the Commission will discuss the referral with the other agency and provide the officer who reported the matter with details of the referral and a contact person within the other agency.

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If the Commission decides not to investigate a report, not refer the matter to another agency, or to cease an investigation without completing it or referring it to another agency, it must let the officer who made the report know the reasons for this and notify the NSW Ombudsman (see s 55(3) of the PID Act).

In certain circumstances, the Commission may appoint an external investigator to investigate the matter. This may occur where there is a lack of available suitable resources within the Commission or a potential conflict of interest in Commission officers undertaking the investigation. Should this occur, the officer who made the report will be advised by the Executive Director Legal (or other person appointed by the Chief Commissioner) and provided with the details of the person appointed and who will maintain contact with the officer concerning progress with dealing with the PID.

Report not a voluntary PID

If the report is not a voluntary PID, the Commission will let the officer know that the PID Act does not apply to the report and how it will deal with the concerns raised in the report.

Even if the report is not a voluntary PID, it will still need to be dealt with in a manner consistent with the internal grievance handling process or through an alternate process.

If the officer is not happy with this assessment or otherwise disagree with it, they can raise it with the person who has communicated the outcome with them or a disclosure officer, request an internal review or request that the matter be conciliated. The Commission can, but does not have to, request the NSW Ombudsman to conciliate the matter.

Cease dealing with report as voluntary PID

The Commission may stop dealing with a voluntary PID because it is not actually a voluntary PID (meaning it does not have all the features of a PID).

If the Commission decides to stop dealing with the matter as a voluntary PID, the officer who made the report will be informed of this decision and the reasons for the decision by the Executive Director Legal or other person appointed by the Chief Commissioner to deal with the matter.

6. Protections

How is the maker of a voluntary PID protected?

Special protections apply under the PID Act for Commission officers who make voluntary PIDs.

The Commission is committed to taking all reasonable steps to protect Commission officers from detriment as a result of having made a PID. The Commission is also committed to maintaining their confidentiality as much as possible while the PID is being managed.

The Commission will not tolerate any type of detrimental action being taken against an officer 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*
 - Under s 33 of the PID Act, 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

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is punishable by a maximum penalty of 200 penalty units or imprisonment for five years or both.

- A person may seek damages where unlawful detrimental action has been taken against them (s 35 PID Act).
- The Supreme Court may grant an injunction where detrimental action is threatened or has occurred (for example, an order to prevent dismissal or to require reinstatement) (s 37 PID Act).

- **Confidentiality**

The Commission understands that people who make voluntary PIDs may want their identity and the fact that they have made a report to be confidential.

Under the PID Act, information tending to identify a person as the maker of a voluntary PID (known as identifying information) is not to be disclosed by a public official or an agency.

Section 64 of the PID Act provides that information tending to identify a person making a voluntary PID is not to be disclosed unless:

- a) the person consents in writing to the disclosure of their identity, or
- b) it is generally known that the person has made the voluntary PID as a result of the person's voluntary self-identification as the maker, or
- c) after consulting the person, it is reasonably necessary to disclose identifying information to protect a person from detriment, or
- d) it is necessary for the identifying information be disclosed to a person whose interests are affected by the disclosure, or
- e) the identifying information has previously been published, or
- f) the identifying information is disclosed to a medical practitioner or psychologist for the purposes of the practitioner or psychologist providing medical or psychiatric care, treatment or counselling to the person disclosing the information, or
- g) the identifying information is disclosed for the purposes of proceedings before a court or tribunal, or
- h) the disclosure of the identifying information is necessary to deal with the disclosure effectively, or
- i) it is otherwise in the public interest to disclose the identifying information.

The Commission has systems in place to keep identifying information confidential. It will do all that it practically can to not unnecessarily disclose information from which the maker of the report can be identified.

Under s 111 of the ICAC Act it is, subject to limited exceptions set out in that section, a criminal offence for a Commission officer to directly or indirectly, except for the purposes of the ICAC Act or otherwise in connection with the exercise of the person's functions under the ICAC Act, to make a record of any information or divulge or communicate to any person any information acquired by the person by reason of, or in the course of, the exercise of the person's functions under the ICAC Act.

If confidentiality cannot be maintained, or is unlikely to be maintained, the Commission will:

- advise the person that their identity may become known
- provide additional support to the person who has made the PID

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- remind persons who become aware of the identifying information of the consequences for failing to maintain confidentiality and that engaging in detrimental action is a criminal offence and may also be a disciplinary matter.
- *Immunity from civil and criminal liability*
Section 40 of the PID Act provides certain protections to makers of a PID from civil liability, including liability for breaching a duty of secrecy or confidentiality or another restriction on disclosure applicable to the person (whether or not imposed by an Act) and from criminal liability, including liability for breaching a law or code of conduct imposing a duty of confidentiality or other restriction in relation to the disclosure of information and from disciplinary action.
- *Protection from liability for own past conduct*
Under s 41 of the PID Act, the NSW Attorney General can give the maker of a PID an undertaking that a disclosure of their own past conduct will not be used against them if a person discloses their own wrongdoing or misconduct while making a report. This undertaking can only be given on application by an “integrity agency” to the Attorney General.

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 (s 23 PID Act).
- *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 (s 22 PID Act).

Protections for makers of mandatory and witness PIDs are detailed in the table below.

Protection	Mandatory PID	Witness PID
Detrimental action — It is an offence to take detrimental action against a person based on the suspicion, belief or awareness that a person has made, may have made or may make a PID.	✓	✓
Right to compensation — A person can initiate proceedings and seek compensation for injury, damage or loss suffered as a result of detrimental action being taken against them.	✓	✓
Ability to seek injunction — An injunction can be sought to prevent the commission or possible commission of a detrimental action offence against a	✓	✓

person. For example, an order to prevent dismissal or to require reinstatement.		
<p>Immunity from civil and criminal liability — a person will not incur civil or criminal liability if the person breaches a duty of confidentiality while making a disclosure. This means that legal action cannot be taken against a person for:</p> <ul style="list-style-type: none"> • breaching a duty of secrecy or confidentiality, or • breaching another restriction on disclosure. 	✓	✓

7. Detrimental action

It is an offence under s 33 of the PID Act to take detrimental action against a person in relation to a PID.

If a Commission officer believes they have been made subject to detrimental action with respect to a PID, they should report the matter to the Executive Director Legal or other person nominated by the Chief Commissioner as the coordinating point for dealing with the disclosure.

Section 32 of the PID Act provides that detrimental action in relation to a person 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,
- unfavourable treatment in relation to the person’s career, profession, employment or trade,
- discrimination, prejudice or adverse treatment, whether in relation to employment or otherwise,
- disciplinary proceedings or disciplinary action.

Detrimental action does not involve:

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

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.

8. Risk management

Where the Commission is aware of a disclosure relating to the Commission, s 61(2) of the PID Act requires the Commission to take steps to assess and minimise the risk of detrimental action, other than reasonable management action, being taken against a person as a result of the disclosure being made, including:

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- the maker of the disclosure, and
- a public official whose serious wrongdoing the disclosure is about.

Section 62 of the PID Act provides that a person who suffers injury, damage or loss as a result of the failure of an agency to comply with its obligations under s 61(2) may recover damages for the injury, damage or loss in a court of competent jurisdiction.

The Commission will assess and take steps to mitigate detrimental action from being taken against the maker of a voluntary PID, the person whose conduct is the subject of a PID, investigators and witnesses.

The Commission will take steps to assess and minimise the risk of detrimental action by:

- undertaking a risk assessment and risk management plan
- explaining how it will communicate with the maker to identify risks
- discussing protection options with the maker which may include remote working or approved leave for the duration of the investigation
- outlining what further support will be provided.

These steps will be undertaken by the Executive Director Legal or other person nominated by the Chief Commissioner.

9. Reporting detrimental action

If a Commission officer experiences adverse treatment or detrimental action by the Commission or another Commission officer in connection with their PID, they should report this immediately to their PID contact officer. A report may be made orally (including by telephone) or in writing, including via email.

10. Dealing with reports of detrimental action

If the Commission forms the opinion that there is evidence of detrimental action, the Commission will:

- take all steps possible to stop the action and protect the person(s)
- in accordance with s 34 of the PID Act, refer any evidence of a detrimental action offence to the Commissioner of Police
- notify the ICAC Inspector
- refer the alleged offence to the NSW Director of Public Prosecutions (DPP) by providing a brief of evidence to the DPP or, if the alleged offence relates to the DPP, refer it to the Attorney General
- notify the NSW Ombudsman about the allegation of a detrimental action offence being committed (s 34(4) of the PID Act).

Referrals to the Commissioner of Police or the DPP or Attorney General will be made by the Executive Director Legal (or other person appointed by the Chief Commissioner).

The Executive Director Legal (or other person appointed by the Chief Commissioner) will notify the person involved if such action is taken and provide updates on progress.

11. General support

Unless another person is nominated, the Executive Director Legal will usually be the Commission officer's contact person for the report and will take steps to provide the person

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who made the report with information as to progress with the matter and to protect their interests.

A Commission officer who requires additional support may contact the Manager People, Governance and Security.

Wellbeing support may also be provided through the Commission's Employee Assistance Program, which can be accessed through the Commission's intranet.

12. Roles and responsibilities of Commission staff

The Chief Executive Officer

The Chief Executive Officer is responsible for:

- fostering a workplace culture where reporting is encouraged
- receiving disclosures from Commission officers
- ensuring there is a system in place for assessing disclosures
- ensuring the Commission complies with this policy and the PID Act
- exercising the power to deem a matter to be a PID
- ensuring that the Commission has appropriate systems for:
 - overseeing internal compliance with the PID Act
 - supporting Commission officers 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.

The Chief Commissioner

Under Commission Policy 64, allegations of misconduct involving a Commission officer are reported to the Chief Commissioner. In such cases, the Chief Commissioner decides:

- whether to deal with the matter as a disciplinary matter or take other action
- appoint a suitable person to conduct an investigation
- consider the investigation report and determine whether misconduct has occurred and, if so, what action to take.

Disclosure officers

Disclosure officers are responsible for:

- receiving reports from Commission officers
- making a written record of any oral PIDs
- ensuring reports are dealt with appropriately.

Executive Director Legal

The Executive Director Legal will usually coordinate action with respect to any internal PID and act as the Commission's contact with the person who has made the disclosure. If the disclosure concerns the Executive Director Legal, then the Chief Commissioner will nominate another person to coordinate action and act as the contact person.

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All Commission officers

All Commission officers must:

- report suspected serious wrongdoing or other misconduct
- use their best endeavours to assist in an investigation of serious wrongdoing if asked to do so by a person dealing with a voluntary PID on behalf of the Commission
- treat any person dealing with or investigating reports of serious wrongdoing with respect.

Commission officers must not take detrimental action against any person who has made, may in the future make, or is suspected of having made, a PID.

Steps the Commission will take if an investigation finds that serious wrongdoing has occurred

If, after an investigation, it is found that serious wrongdoing or other misconduct has occurred, the Commission will take the most appropriate action to address that wrongdoing or misconduct. This is also known as corrective action.

Section 66(4) of the PID Act provides that corrective action includes:

- making a formal apology
- improving internal policies to adequately prevent and respond to similar instances of wrongdoing
- providing additional education and training to staff where required
- taking employment action against persons involved in the wrongdoing
- paying compensation to people who have been affected by serious wrongdoing or other misconduct.

Under Policy 64, where misconduct is found to have occurred, the Commission may take the following employment action:

- caution
- reprimand
- fine
- reduction in salary
- demotion to a lower graded position
- to be allowed to resign
- direction to resign
- dismissal, or in the case of an officer on probation, annulment.

Under Policy 64, the findings of the investigation are provided to the Chief Commissioner. The Chief Commissioner will determine whether the allegation(s) of serious wrongdoing are made out and, if so, what action will be taken. If the investigation report includes recommendations relating to the Commission's policies, procedures or practices – which are accepted by the Chief Commissioner – the Chief Commissioner will determine who will take responsibility for implementing such recommendations.

The Executive Director Legal (or other person nominated by the Chief Commissioner as the coordinating point for dealing with the disclosure) will provide written notification to the Commission officer who made the disclosure as to the corrective action to be taken by the Commission and whether any recommendations arising from the investigation relating to the Commission's policies, procedures or practices will be implemented.

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13. Review and dispute resolution

Internal review

Under s 60 of the PID Act, a person who makes a voluntary PID can seek internal review of the following decisions made by the Commission:

- The Commission is not required to deal with the disclosure as a voluntary PID.
- To stop dealing with the disclosure because the Commission decided it was not a voluntary PID.
- To not investigate the serious wrongdoing nor refer the disclosure to another agency.
- To cease investigating the serious wrongdoing without either completing the investigation or referring the disclosure to another agency for investigation.

An application for review may be made to the Chief Commissioner or Chief Executive Officer. As required by s 60 of the PID Act, any application must be in writing and be made within 28 days of the person who made the disclosure being informed of the Commission's decision.

The application should state the reasons why the Commission officer considers the Commission's decision should not have been made. They may also submit any other relevant material with their application.

The Chief Commissioner or Chief Executive Officer will appoint a person ("the reviewer") to conduct a review. The reviewer must be someone who was not substantially involved in making the decision or dealing with the disclosure.

The reviewer may decide:

- to confirm the Commission's decision, or
- the disclosure is to be dealt with, or to continue to be dealt with, as a voluntary PID by the Commission.

The Commission aims to complete any review within six weeks of the internal review being sought.

Once the reviewer has completed the review, the reviewer will advise the applicant of the reviewer's decision.

If the reviewer decides the disclosure is to be dealt with, or to continue to be dealt with, as a voluntary PID by the Commission, the Commission is required, under s 60(6) of the PID Act, to give effect to that decision.

Voluntary dispute resolution

Section 74 of the PID Act provides that if a dispute arises under the PID Act or a PID policy in connection with a disclosure that is or may be a voluntary PID, an agency that is dealing with the disclosure **may** request the NSW Ombudsman deal with the dispute. A dispute may include whether the disclosure is in fact a voluntary PID or conduct or proposed conduct that constitutes or may constitute a detrimental action offence relating to the disclosure.

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14. Other Commission obligations

Recordkeeping requirements

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

All information in relation to any disclosure is securely stored by the Commission in accordance with its Information Security Policy and its Records Management Program Policy and Procedures.

Reporting of voluntary PIDs and the Commission's annual return to the NSW Ombudsman

Section 78 of the PID Act sets out the information the Commission must provide to the NSW Ombudsman in relation to each period ending 30 June. The information to be provided is:

- information about voluntary PIDs received by the Commission during the period
- action taken by the Commission to deal with voluntary PIDs during the period
- measures taken by the Commission to promote a culture in which PIDs are encouraged.

This information will be collated and prepared by the Commission's Manager Assessments and the Manager People, Governance and Security. The Executive Director Legal is responsible for providing the Manager Assessments with information concerning PIDs made by Commission officers for the purpose of completing the return.

Ensuring compliance with the PID Act and this policy

The Chief Executive Officer is responsible for overseeing this policy and for reviewing it every three years or sooner if there are changes to the PID Act or the Commission's other policies that impact on this policy.

The Chief Executive Officer may conduct audits to ensure compliance with this policy. Reports concerning compliance will be provided to the Commission's Audit and Risk Committee. They may also be provided to the ICAC Inspector.

15. Accessibility of this policy

As required by s 47 of the PID Act, this policy is available on the Commission's public website and the Commission's intranet.

A copy of the policy is also provided to all staff of the Commission on their commencement.

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16. Document control and review

This policy is to be reviewed in accordance with the *Commission's Policy and Compliance Monitoring Register*, or as directed by the Chief Executive Officer or Chief Commissioner.

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