

17.2b Making a Public Interest Disclosure to the Law Enforcement Conduct Commission

This policy provides information for NSW public officials who want to make a public interest disclosure to the Law Enforcement Conduct Commission. The LECC can receive disclosures about any serious wrongdoing in the public sector, but our focus is on serious wrongdoing by members of the NSW Police Force, the NSW Crime Commission or in the Law Enforcement Conduct Commission. Serious wrongdoing is:

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

Document Control

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1 Definitions

Crime Commission	NSW Crime Commission
Deemed PID	A disclosure that does not meet the definition of a PID, but the Chair of the Complaints Action Panel decides that it should be treated as a voluntary PID.
Disclosure	A complaint or other misconduct information
Disclosure officer	Commission staff who have been responsible for receiving PIDs on behalf of the Commission.
Integrity Agency	The Commission is an integrity agency. The Commission and the other agencies listed in s 19 of the Act have special obligations under the PID Act.
LECC	Law Enforcement Conduct Commission
LECC Act	Law Enforcement Conduct Commission Act 2016 (NSW)
Mandatory PID	A PID that the PID maker is required by law to make to the Commission
NSWPF	NSW Police Force
PID	Public interest disclosure made in accordance with the <i>Public Interest Disclosures Act 2022</i> (NSW)
PID Act	Public Interest Disclosures Act 2022 (NSW)
PID Form	The Commission's External Public Interest Disclosures Assessment Form (Appendix 1)
PID maker	Person who makes a potential or actual PID
Serious wrongdoing	<ul style="list-style-type: none"> • corrupt conduct • serious maladministration • a government information contravention • a local government pecuniary interest contravention • a privacy contravention • a serious and substantial waste of public money
Voluntary PID	A report by the public official about suspected wrongdoing which the person has decided to make of their own accord and which meets the definitions of a PID
Witness PID	A PID that a person makes when answering Commission questions as a witness (whether voluntarily or under compulsion)

2 Overview and purpose of this policy

The Law Enforcement Conduct Commission (the LECC) takes reports of serious wrongdoing seriously. We are committed to building a ‘speak up’ culture where public officials are encouraged to report any conduct that they reasonably believe involves serious wrongdoing.

The [Public Interest Disclosure Act 2022](#) (PID Act) creates a special role for integrity agencies, including the LECC.

The integrity of the NSW public sector relies upon public sector staff, volunteers, contractors and subcontractors speaking up when they become aware of wrongdoing.

This policy sets out:

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

3 When will a report be a PID?

When a public official reports suspected or possible wrongdoing in the public sector, their report will be a PID if it has certain features which are set out in the PID Act.

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

1. **Voluntary PID:** Where a report has been made by the public official because they decided, of their own accord, to come forward and disclose what they know.
2. **Mandatory PID:** Where the public official has made a report about serious wrongdoing because they have a legal obligation to make that report, or because making that report is an ordinary aspect of their role or function in an agency.
3. **Witness PID:** Where a person discloses information during an investigation of serious wrongdoing following a request or requirement of the investigator or agency.

Each type of PID has different criteria to be met and offers different protections. This policy will mostly deal with voluntary PIDs.

Voluntary PIDs are the kind of PIDs most people have in mind when they think about public

interest reporting and ‘whistleblowing’.

They involve a public official making a report because they have information that they believe shows (or tends to show) serious wrongdoing, where they are not under a legal obligation to make that report and where it is not an ordinary part of their role to report such wrongdoing.

3.1 What is a voluntary PID?

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:

3.1.1 You are a public official

A public official is:

- a person employed in or by a NSW agency or otherwise in the service of an agency
- 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
- an individual in the service of the NSW Crown
- 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, under contract, subcontract or other arrangement, on behalf of an agency or exercises functions of an agency, and are involved in providing those services or exercising those functions
- a judicial officer
- a person employed under the [Members of Parliament Staff Act 2013](#)

A public official is not:

- a person who has received services from an agency and want to make a complaint about those services
- people, such as contractors, who provide services to an agency. For example, employees of a company that sold computer software to an agency.

3.1.2 It is made to a person who can receive voluntary PIDs

A report made using the LECC's [online complaint form](#) or sent to our contactus@lecc.nsw.gov.au email address is the best way to contact our disclosure officers. A PID can also be made to the Chief Executive Officer of the LECC. A list of disclosure officers can be found at Annexure A at the end of this document.

You can also make a PID about any serious wrongdoing in the NSW public sector to:

- the head of another public service agency
- another integrity agency – there is a list of integrity agencies at Annexure B of this policy
- a disclosure officer for another agency - ways to contact disclosure officers for other agencies is located in an agency's PID policy which can be found on their public website
- a Minister or a member of a Minister's staff - but the report must be made in writing.

3.1.3 The information you provide shows serious wrongdoing

Serious wrongdoing is defined in the PID Act as:

- *corrupt conduct* – this has the same meaning as in the [ICAC Act](#) and includes acts of violence, illegal drug dealing, dishonest conduct and the misuse of information
- *serious maladministration* – such as an agency systemically failing to comply with proper recruitment processes when hiring staff
- *a government information contravention* – such as destroying, concealing or altering records to prevent them from being released under a Government Information Public Access application
- *a local government pecuniary interest contravention* – such as a senior council staff member recommending a family member for a council contract and not declaring the relationship
- *a privacy contravention* – such as unlawfully accessing a person's personal information on an agency's database
- *a serious and substantial waste of public money* – such as an agency not following a competitive tendering process when contracting with entities to undertake government work.

You do not need tell the LECC what category of serious wrongdoing you are reporting or even say that you are reporting serious wrongdoing. You do need to honestly and reasonably believe that the information shows (or tends to show) serious wrongdoing.

3.1.4 The report was made orally or in writing

You can make a PID by:

- Making a complaint to our [online complaint form](#); or,
- Sending an email to contactus@lecc.nsw.gov.au; or,
- Sending the complaint to GPO Box 3880, Sydney NSW 2001.

If you can't make a complaint in writing you can call us for help on (02) 9321 6700.

3.1.5 The report is voluntary (meaning it is not a mandatory or witness PID)

A report of serious wrongdoing by a NSW police officer or administrative employee to the LECC is a voluntary PID.

A mandatory PID is one that a public official is required to make under a law or statutory obligation.

A witness PID would be a disclosure made during an investigation. Within the LECC, this would usually arise in the course of an integrity investigation.

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

You should report all wrongdoing that you become aware of, regardless of whether you think it is serious wrongdoing. It is important for the LECC to understand what is or may be occurring.

We are then responsible for making sure your report is handled appropriately under the PID Act, or if it is not a PID, in line with our other procedures.

Even if your report is not a PID, we have other ways of making sure that your allegations and complaints are considered.

3.3 Deeming a report to be a voluntary PID

Even if your disclosure does not meet all requirements to be a PID, the LECC's CEO can decide to treat your disclosure as a voluntary PID. This is known as the 'deeming power'.

By deeming that a report is a voluntary PID, it ensures that reporters are provided with protections under the PID Act. If you think that we should treat your disclosure as a PID, please tell us why.

4 Protections

4.1 How is the maker of a voluntary PID protected?

When you make a voluntary PID you receive special protections under the PID Act.

We are committed to taking all reasonable steps to protect you from detriment as a result of having made a PID. We are also committed to maintaining your confidentiality as much as possible while the PID is being dealt with.

We will not tolerate any type of detrimental action being taken against you because you 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:

4.1.1 Protection from detrimental action

A person cannot take detrimental action against another person because they have made a voluntary PID or are considering making a PID. Detrimental action includes bullying, harassment, intimidation or dismissal.

It is a criminal offence for someone to take detrimental action against a person because they have made or may make a voluntary PID. It is punishable by a maximum penalty of 200 penalty units or imprisonment for five years or both.

A person may seek compensation where unlawful detrimental action has been taken against them.

A person can apply for a court order (injunction) where detrimental action is threatened or has occurred (for example, an order to prevent dismissal or to require reinstatement).

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.

4.1.2 Immunity from civil and criminal liability

Some public officials are subject to a duty of confidentiality that prevents them disclosing certain information that they obtain or become aware of at work. Sometimes, 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.

4.1.3 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.

4.1.4 Protection from liability for own past conduct

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

4.2 Protections for people who make mandatory and witness PIDs

Apart from PIDs that are made voluntarily by public officials, there are other types of reports that are recognised as PIDs under the PID Act:

- A mandatory PID: This is a PID where the public official has made the report about serious wrongdoing because they have a legal obligation to make that report, or because making that report is an ordinary aspect of their role or function in an agency.
- A witness PID: This is a PID where a person discloses information during an investigation of serious wrongdoing following a request or requirement of the investigator.

4.3 Reporting detrimental action

If you experience adverse treatment or detrimental action, such as bullying or harassment, you should report this to us immediately.

5 What will the LECC do after it receives my disclosure?

The LECC will assess your disclosure and decide if it meets the requirements for a public interest disclosure under the PID Act. We aim to complete this assessment within 28 days.

If required, a LECC staff member may contact you to find out some more information about your disclosure and any risks that you think you might be facing.

5.1 What will the LECC do if it decides my disclosure is a public interest disclosure?

If we decide that your disclosure is a PID, a LECC staff member will write to you (if you have provided contact details) to:

- confirm that we have determined your disclosure is a public interest disclosure under

the PID Act;

- provide you with the name and contact details of a person at the LECC who you can contact if you have any questions or concerns (the LECC contact person), and
- provide you with a copy of this policy.

There are several ways that the LECC can deal with a PID. We can:

- refer your disclosure to the NSW Police Force or the NSW Crime Commission;
- refer your disclosure to another integrity agency that is better placed to handle your disclosure
- investigate your disclosure ourselves; or,
- take no further action in relation to your disclosure.

We will write and tell you what we have decided.

If you wish, we can also help to connect you with support within your own agency.

5.2 Referring a PID to the NSW Police Force or the NSW Crime Commission to investigate?

The law says that, most of the time, the New South Wales Police Force or the NSW Crime Commission should manage complaints made about their staff. However, the LECC makes sure these agencies deal with misconduct appropriately.

The LECC may decide that the best way for your disclosure to be investigated is to refer your disclosure to the NSW Police Force or the NSW Crime Commission for them to investigate.

Before we make a referral, we will assess and take steps to mitigate any identified risks of 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.

We will develop this plan by considering the information that you have provided to us in your original complaint and in any conversations that we have with you afterwards. We also rely on our knowledge of the systems and processes of the NSW Police Force or NSW Crime Commission.

Generally, the LECC will not refer your disclosure to the NSW Police or the NSW Crime Commission unless you have given us your consent. You can do this when you first make your disclosure. If not, we will contact you before we make that decision.

If your disclosure is referred to the NSW Police Force, the LECC does not control which part of

the NSW Police Force undertakes that investigation. However, we can recommend that your disclosure should be investigated by a particular person or Command. Making this recommendation is part of our risk assessment and referral process.

In exceptional circumstances, where there is a strong public interest in ensuring that a disclosure is investigated, we may refer your PID to the NSW Police or NSW Crime Commission, even if you have not given us your consent. If this is the case, we will write to you first and explain why we think it is necessary to refer the PID. You will have the protections of the PID Act.

If we refer your complaint to the NSW Police Force or the NSW Crime Commission, they will tell you about the outcome of the investigation and any corrective action that they have taken.

5.3 If we investigate your disclosure

If we decide to investigate the serious wrongdoing, we will provide you with updates on the investigation at least every three months. During this time, if you would like more frequent updates, you should contact the LECC's nominated contact person.

If we investigate the serious wrongdoing, we will provide you with the following information once the investigation is complete:

- a description of the results of the investigation — that is, we will tell you whether we found that serious wrongdoing took place.
- information about any corrective action as a result of the investigation/s — this means we will tell you what action we took in relation to the person who engaged in the serious wrongdoing or if the serious wrongdoing was by our agency, what we have put in place to address that serious wrongdoing.

Corrective action could include taking disciplinary action against someone or changing the practices, policies and procedures that we have 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 you. We will always balance the right of a person who makes a report to know the outcome of that report, with other legal obligations we have.

If you have made an anonymous report, in many cases we may not be able to provide this information to you.

5.4 Protecting your confidentiality and risk assessments

We understand 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.

The LECC may disclose a PID maker's identity if:

- the PID maker consents in writing to the disclosure of that information, or
- it is generally known that the person has made the PID because the person has voluntarily identified themselves as the PID maker (eg to colleagues and/or the media), or
- after consulting the person, the public official or agency reasonably considers it necessary to disclose the identifying information to protect a person from detrimental action, or
- it is necessary to disclose the identifying information to a person whose interests are affected by the disclosure, or
- the identifying information has already been lawfully published, or
- disclosure of the identifying information is necessary to investigate the matter effectively, or
- the LECC considers that it is in the public interest to disclose the information.

6 How we deal with allegations of detrimental action

If we become aware of an allegation that a detrimental action offence has occurred or may occur, we will:

- take all steps possible to stop the action and protect the person(s)
- consider investigating the allegations of detrimental action
- if we form the opinion that a detrimental action offence has been committed, provide a brief of evidence to the Director of Public Prosecutions
- notify the NSW Ombudsman about the allegation of a detrimental action offence being committed.

7 Right of review if the LECC changes its decision on a voluntary PID

The LECC may change its mind on how to respond to a voluntary PID.

After gathering more information, we may decide that a disclosure is not in fact a voluntary PID. In that case, we will tell you in writing.

If you do not agree with our decision, you have a right to seek an internal review. This must be done within 28 days of our decision. The application should state the reasons why you consider our decision should not have been made. You may also submit any other relevant material with your application.

The internal review will be undertaken by someone who was not substantially involved in making the initial decision.

You may also be able to make a complaint to the Office of the Inspector of the LECC (the LECC Inspector) if you believe that one of LECC's officers has engaged in serious maladministration or misconduct, or the LECC itself has engaged in serious maladministration, in the way the LECC has handled your public interest disclosure.

Please note that the LECC Inspector does not have the power to decide whether the LECC should or should not investigate a disclosure.

For more information see the LECC Inspector's website: www.oilecc.nsw.gov.au.

8 Reporting obligations

The PID Act sets out a number of obligations to report on actions to the NSW Ombudsman.

What	When	Why	How
Voluntary PIDs received in the financial year two categories: (a.) voluntary public interest disclosures relating to the agency, (b.) other voluntary public interest disclosures	by 30 July	Section 78(4) and cl 6 of the Regulation	

<p>For voluntary PIDs:</p> <ul style="list-style-type: none"> (a.) how the agency received the disclosure, including the date on which the agency received the disclosure, (b.) whether the disclosure was a purported public interest disclosure, (c.) the nature of the serious wrongdoing the disclosure was about, (d.) if applicable – the relationship between the maker of the disclosure and the public official whose serious wrongdoing the disclosure was about, (e.) whether the serious wrongdoing involved 1 public official or more than 1 public official, (f.) action taken by the agency to deal with the disclosure, including the date on which the agency ceased to deal with the disclosure, (g.) if the agency investigated the serious wrongdoing – a description of the results of the investigation, (h.) if applicable – the corrective action taken, proposed to be taken or recommended to be taken by the agency. 	By 30 July	Section 78 and clause 5 of the Regs	
<p>For purported public interest disclosures (ie made to the LECC, purports to be voluntary and said to be a PID) that were <u>not</u> in fact public interest disclosures:</p> <ul style="list-style-type: none"> (a.) the number of the disclosures 	By 30 July	Section 78 and clause 5 of the Regs	

<p>received by the agency during the return period,</p> <p>(b.) the number of the disclosures that were made by public officials,</p> <p>(c.) the reasons the agency did not deal with, or ceased dealing with, each of the disclosures as a public interest disclosure.</p>			
<p>A voluntary PID relating to the LECC that:</p> <ul style="list-style-type: none"> • the LECC did not investigate or refer (ie NFA) • began investigating but deciding to stop before the investigation is complete, and did not refer it elsewhere for investigation <p>Provide written reasons to the Ombudsman as required by the Ombudsman's Guidelines</p>	<p>As soon as practicable</p>	<p>Section 55(3)</p>	<p>As part of the closure of the Assessment or Integrity Investigation process</p>

9 Advice and further information

The Public Interest Disclosures Unit of the NSW Ombudsman provides resources and information on implementation of the PID Act.

Annexure A – Disclosure Officers

The following people are disclosure officers for the LECC:

- Chief Executive Officer
- Manager Human Resources,
- Executive Director Operations
- Director Covert Services
- Director Oversight
- Director Integrity
- Director Electronic Collections Unit & IT
- All Assessments Team staff

To contact our disclosure officers:

<https://www.lecc.nsw.gov.au/complaints/make-a-complaint>

contactus@lecc.nsw.gov.au

Call on (02) 9321 6700.

GPO Box 3880, Sydney NSW 2001

Annexure B – Integrity Agencies

Integrity Agency	What they investigate	Contact information
Independent Commission Against Corruption (ICAC)	Corrupt conduct	Telephone: 02 8281 5999 Toll free: 1800 463 909 Between 9am and 3pm Monday to Friday. Writing: GPO Box 500, Sydney NSW 2001 Email: icac@icac.nsw.gov.au Web: www.icac.nsw.gov.au
The NSW Ombudsman	Maladministration	Telephone: 1800 451 524 Between 9am to 3pm Monday to Friday. Writing: Level 24, 580 George Street, Sydney NSW 2000 Email: nswombo@ombo.nsw.gov.au Web: www.ombo.nsw.gov.au
The Auditor General	Serious and substantial waste of public money by auditable agencies	Telephone: 02 9275 7100 Writing: GPO Box 12, Sydney NSW 2001 Email: governance@audit.nsw.gov.au
The Inspector of the Law Enforcement Conduct Commission	Serious maladministration by the LECC or LECC officers	Telephone: 02 9228 3023 Writing: GPO Box 5341, Sydney NSW 2001 Email: oilecc_executive@oilecc.nsw.gov.au
Office of the Local Government	Local government pecuniary interest contraventions	Email: olg@olg.nsw.gov.au
The Privacy Commissioner The Information Commissioner	Privacy contraventions Government information contraventions	Telephone: 1800 472 679 Writing: GPO Box 7011, Sydney NSW 2001 Email: ipcinfo@ipc.nsw.gov.au