

## 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 members of the NSW Police Force or the NSW Crime Commission engaging in:

- corrupt conduct
- maladministration or
- serious and substantial waste of public money.

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## 1. Definitions

<b>Crime Commission</b>	NSW Crime Commission
<b>LECC</b>	Law Enforcement Conduct Commission
<b>LECC contact person</b>	The LECC officer who is assigned to be the contact person for a person who makes a public interest disclosure to the LECC.
<b>Disclosure</b>	A complaint or other information about misconduct
<b>Investigating authority</b>	An agency that can receive and investigate public interest disclosures under the <i>Public Interest Disclosures Act 1994</i> (NSW). The investigating authorities are the Auditor-General, the Independent Commission Against Corruption (ICAC) and ICAC Inspector, the NSW Ombudsman, the LECC and LECC Inspector, the local government investigating authority, and the Information Commissioner.
<b>LECC Act</b>	<i>Law Enforcement Conduct Commission Act 2016</i> (NSW)
<b>PID Act</b>	<i>Public Interest Disclosures Act 1994</i> (NSW)

## 2. What is a ‘public interest disclosure’?

A public interest disclosure is a report, complaint, or other information from a person working in or for the NSW public service. The disclosure must be about other public officials engaging in certain types of conduct. The person who makes a public interest disclosure is a whistle-blower.

The requirements for a public interest disclosure are set out in the *Public Interest Disclosures Act 1994* (NSW) (PID Act). The PID Act provides legal protection to public officials who make a disclosure that meets these requirements (discussed below).

Public sector employees can report certain types of public interest disclosures to the Law Enforcement Conduct Commission (LECC), as we are one of the investigating authorities under the PID Act.<sup>1</sup>

## 3. Who can make a public interest disclosure to the LECC?

Only NSW public officials can make a public interest disclosure to the LECC. This includes any Public Service employee, and any person who is ‘otherwise in the

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<sup>1</sup> *Public Interest Disclosures Act 1994* (NSW) s 4.

service of a public authority’, including a contractor, or any person ‘having public official functions or acting in a public official capacity’.<sup>2</sup>

Members of the public, and public officials in other jurisdictions, cannot make public interest disclosures to the LECC.

## 4. What sort of public interest disclosures can I report to the LECC?

Whether you can make a public interest disclosure to the LECC depends on:

- 1) who you are making the disclosure about, **and**
- 2) the type of conduct you are alleging has occurred.

### 4.1 Disclosure must be about the NSW Police Force or NSW Crime Commission

The LECC can only deal with disclosures that are about the conduct of:

- one or more employees of the NSW Police Force (including a police officer or administrative employee), or
- one or more employees of the Crime Commission.

You can make public interest disclosures about the conduct of other public officials to the other investigating authorities under the PID Act. The appropriate investigating authorities to make disclosures to are:

- for disclosures about corrupt conduct: *NSW Independent Commission Against Corruption* (<https://www.icac.nsw.gov.au/>)
- for disclosures about maladministration: *NSW Ombudsman* (<https://www.ombo.nsw.gov.au/>)
- for disclosures about serious and substantial waste of public money: *Auditor-General of the NSW Audit Office* (<https://www.audit.nsw.gov.au/>)
- for disclosures about government information contraventions in breach of the *Government Information (Public Access) Act 2009*: *NSW Information Commissioner* (<https://www.ipc.nsw.gov.au/>)
- for disclosures about corrupt conduct, maladministration, or serious and substantial waste of public money **by the LECC or a LECC officer**: *The Office of the Inspector of the Law Enforcement Conduct Commission* (<https://www.oilecc.nsw.gov.au/>).

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<sup>2</sup> *Public Interest Disclosures Act 1994* (NSW) s 4A.

## 4.2 Disclosure must also be about certain types of conduct

You can make a disclosure to the LECC about members of the NSW Police Force or the NSW Crime Commission if you honestly believe that they have engaged or are engaging in:

- corrupt conduct
- maladministration or
- serious and substantial waste of public money.<sup>3</sup>

Each of these terms are defined below.

Your disclosure will **not** be a public interest disclosure protected by the PID Act if:

- the main reason you made it was to avoid dismissal or other disciplinary action,<sup>4</sup> or
- your disclosure mainly questions the merits of government policy.<sup>5</sup>

Please note that it is an offence if you wilfully make a false statement to the LECC, or mislead or attempt to mislead the LECC, when making a disclosure.<sup>6</sup>

## 4.3 What is corrupt conduct?

‘Corrupt conduct’ has a broad definition, and includes a public official:

- exercising his or her official functions in a dishonest, or partial, manner, or
- engaging in conduct that breaches public trust, or
- misusing information or material acquired in the course of official functions, or
- engaging in conduct that could negatively affect the honest or impartial exercise of official functions by any other public official, or any public authority, or
- engaging in conduct that could negatively affect the exercise of official functions by any other public official or any public authority, and which could involve bribery, blackmail, obtaining or offering secret commissions, fraud, theft, perverting the course of justice, embezzlement, or other

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<sup>3</sup> *Public Interest Disclosures Act 1994* (NSW) s 12A(1)(b).

<sup>4</sup> *Public Interest Disclosures Act 1994* (NSW) s 18.

<sup>5</sup> *Public Interest Disclosures Act 1994* (NSW) s 17.

<sup>6</sup> *Public Interest Disclosures Act 1994* (NSW) s 28.

offences.<sup>7</sup>

Corrupt conduct also includes a public official conspiring or attempting to commit any of the above.<sup>8</sup>

#### 4.4 What is maladministration?

‘Maladministration’ is conduct that involves action or inaction of a serious nature, that is:

- contrary to law, or
- unreasonable, or
- unjust, or
- oppressive or
- improperly discriminatory, or
- based wholly or partly on improper motives.<sup>9</sup>

The NSW Ombudsman has published a list of factors which may indicate that conduct is serious enough to meet the definition of maladministration.<sup>10</sup>

#### 4.5 What is a serious and substantial waste of public money?

A ‘serious and substantial waste of public money’ includes any uneconomical, inefficient or ineffective use of resources which results in a significant loss of public funds or resources.<sup>11</sup>

It may include misappropriation or misuse of public property; the purchase of unnecessary or inadequate goods and services, or staff being remunerated for skills they do not have.

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<sup>7</sup> *Public Interest Disclosures Act 1994* (NSW) s 4; *Independent Commission Against Corruption Act 1988* (NSW) s 8.

<sup>8</sup> *Independent Commission Against Corruption Act 1988* (NSW) s 7(2).

<sup>9</sup> *Public Interest Disclosures Act 1994* (NSW) s 11(2).

<sup>10</sup> See New South Wales Ombudsman, *What should be reported? Public interest disclosures Guideline B2*, 03/2015, p 3, available at

[https://www.ombo.nsw.gov.au/\\_data/assets/pdf\\_file/0005/3596/Guideline\\_B2\\_What-should-be-reported\\_web.pdf](https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0005/3596/Guideline_B2_What-should-be-reported_web.pdf) (viewed 10 October 2017).

<sup>11</sup> New South Wales Ombudsman, *What should be reported? Public interest disclosures Guideline B2*, 03/2015, p 4, available at

[https://www.ombo.nsw.gov.au/\\_data/assets/pdf\\_file/0005/3596/Guideline\\_B2\\_What-should-be-reported\\_web.pdf](https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0005/3596/Guideline_B2_What-should-be-reported_web.pdf) (viewed 10 October 2017).

## 5. How do I make a public interest disclosure to the LECC?

The easiest way to make a public interest disclosure to the LECC is through the [online complaint form](#) on the LECC's website. You can also email your disclosure to the LECC on [contactus@lecc.nsw.gov.au](mailto:contactus@lecc.nsw.gov.au). Alternatively you can call the LECC on (02) 9321 6700.

You do not need to use any particular language when you make a public interest disclosure, however, it is helpful if you state that you are making a disclosure and wish to rely on the protections under the PID Act.

You do not need to include your name, as you can make a public interest disclosure anonymously. However, your disclosure must contain enough information for the LECC to be able to conclude that you are a public official. You may provide an alias when making a public interest disclosure.

If you do not include any contact details, the LECC will not be able to contact you to confirm receipt of your disclosure. If the LECC cannot contact you this may limit the LECC's ability to assess or investigate your disclosure, and will mean the LECC cannot support you through the process.

## 6. What will the LECC do after it receives my disclosure?

If you have provided your contact details, a member of the LECC will contact you to confirm that we have received your disclosure.

The LECC will also 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).

We will then assess your disclosure to decide whether it meets the requirements for a public interest disclosure under the PID Act. We will notify you in writing of this decision within 45 days of receiving your disclosure. We will also send you a copy of this policy.

If the LECC considers that one of the other investigating authorities is a more appropriate authority to deal with your disclosure, we may refer your disclosure, and will notify you about that referral.

## **7. What will the LECC do if it decides my disclosure is a public interest disclosure?**

The LECC may decide to investigate your disclosure, take no further action, or refer your disclosure to the NSW Police Force or the Crime Commission for investigation. If the LECC is considering referring your disclosure, we will discuss this with you first.

We will inform you in writing of the decision we make.

## **8. Will the LECC protect my confidentiality if I make a disclosure?**

The LECC will handle your information and personal details carefully and confidentially. We will consider your views before doing anything that might reveal your identity to a third party.

In some cases it may not be possible for us to investigate or otherwise deal with your disclosure without revealing information which may identify you to certain persons or agencies. For example, if the LECC decides to investigate your disclosure, we must allow any persons who are the subject of allegations of wrongdoing a chance to respond to those allegations. This may require us to disclose your name and/or role or information provided by you that may lead to your identification.<sup>12</sup> Our ability to support you and to ensure that others respect the protections in the PID Act will also be limited if we are unable to disclose your identity to support services within your agency.

Please note that when exercising its functions the LECC must always have regard to the public interest and its responsibility to promote integrity in law enforcement.

## **9. What legal protections are there if I make a public interest disclosure that meets the requirements in the PID Act?**

### **9.1 Protection against ‘reprisals’**

Under the PID Act it is a criminal offence for someone to take detrimental action against you if they take that action substantially to punish you for making a

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<sup>12</sup> See *Public Interest Disclosures Act 1994* (NSW) s 22(1).

public interest disclosure.<sup>13</sup> 'Detrimental action' includes action that causes or involves any of the following:

- (a) injury, damage or loss,
- (b) intimidation or harassment,
- (c) discrimination, disadvantage or adverse treatment in relation to employment,
- (d) dismissal from, or prejudice in, employment,
- (e) disciplinary proceeding.

If a person commits this offence, they may face up to two years' imprisonment.<sup>14</sup> You personally may take legal action against the person to seek compensation for any loss that you suffer as a result of the detrimental action.<sup>15</sup>

## 9.2 Protection from legal action

The PID Act also states that no legal action can be taken against you for making a public interest disclosure if that disclosure meets the requirements in that Act.<sup>16</sup> This is despite any duty of secrecy or confidentiality that you may owe in relation to information you provide as part of your disclosure, including any duty imposed by law.

## 10. How will the LECC support me if I make a public interest disclosure?

The LECC is committed to supporting persons who make public interest disclosures. We will:

- provide you with information about our processes, and the PID Act
- ensure that you are given the details of a LECC contact person who you can speak to if you have questions about the LECC's process, or concerns about reprisal action being taken against you by others
- inform you of any decisions the LECC makes about what it will do with your disclosure.

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

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<sup>13</sup> *Public Interest Disclosures Act 1994* (NSW) s 20(1).

<sup>14</sup> *Public Interest Disclosures Act 1994* (NSW) s 20(1A).

<sup>15</sup> *Public Interest Disclosures Act 1994* (NSW) s 20A.

<sup>16</sup> *Public Interest Disclosures Act 1994* (NSW) s 21.

## 11. What can I do if I am not satisfied with the LECC's response to my public interest disclosure?

### 11.1 Taking your disclosure to a journalist or Member of Parliament

If you are not satisfied with what the LECC has done in response to your disclosure, you may, in certain circumstances, take your disclosure to a Member of Parliament or a journalist. You may do this if the LECC:

- decided not to investigate the matter referred to in your disclosure, or
- failed to notify you, within six months of receiving your disclosure, whether or not your matter would be investigated, or
- decided to investigate the matter but did not complete the investigation within six months, or
- investigated the matter but did not recommend that any action be taken in respect of the matter.<sup>17</sup>

You should seek legal advice before you take your disclosure to a journalist or Member of Parliament. If you decide to take these actions, in order for you to be protected under the PID Act you must be able to prove that the information in your disclosure is substantially true.<sup>18</sup>

### 11.2 Making a complaint to the Office of the Inspector of the LECC about maladministration or misconduct

You may 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 maladministration or misconduct, or the LECC itself has engaged in 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:  
<https://www.oilecc.nsw.gov.au>.

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<sup>17</sup> *Public Interest Disclosures Act 1994* (NSW) s 19(1)-(3).

<sup>18</sup> *Public Interest Disclosures Act 1994* (NSW) s 19(4) and (5).