

Public Interest Disclosure Procedure

Table of contents

1. Public Interest Disclosures Procedure	1
1.1 Purpose	1
1.2 Scope	1
1.3 Who is covered by this procedure?	1
2. How do I make a report of serious wrongdoing?	2
2.1 What should be reported?	2
2.2 Who do I make a report of serious wrongdoing to?	2
2.3 What are the available methods of reporting serious wrongdoing?	2
2.4 What should I include in my report?	3
2.5 What can I expect once I have made a report?	3
2.6 What protections are available in making a disclosure?	3
3. How will a report be dealt with?	4
3.1 What information will I receive after I make a PID?	4
3.2 How will the CSO assess and manage my PID?	5
3.3 How will my confidentiality be protected?	6
3.4 How will the CSO assess and minimise the risk of detrimental action?	7
3.5 How will the CSO respond to any allegation of detrimental action?	7
3.6 What if my report is deemed not to be a PID?	9
3.7 Are there sanctions for making a false or misleading PID?	9
3.8 Where can I go for further information?	10
4. Policy information	11

1. Public Interest Disclosures Procedure

1.1 Purpose

The Public Interest Disclosures (PID) Procedure details how a disclosure of serious wrongdoing should be reported within the CSO and how a report will be assessed, reviewed and managed under the [Public Interest Disclosures Act 2022 \(PID Act\)](#).

1.2 Scope

This procedure should be read in conjunction with the CSO Public Interest Disclosure Policy and the *PID Act*.

The PID Procedure provides information on:

- How do I make a report of serious wrongdoing?
- How will a PID report be dealt with?

1.3 Who is covered by this procedure?

This procedure applies to:

- a public official who makes a report of serious wrongdoing
- a manager communicating reported serious wrongdoing to a disclosure officer and
- a disclosure officer, the Disclosures Coordinator and Crown Solicitor assigned to assess and review a report of alleged serious wrongdoing.

For the purposes of the procedure, a public official who makes a disclosure of serious wrongdoing is referred to as a reporter.

2. How do I make a report of serious wrongdoing?

2.1 What should be reported?

The PID Policy provides detailed information on the types of serious wrongdoing that may be applicable within the CSO.

Further information is also available on the [NSW Ombudsman's website](#).

2.2 Who do I make a report of serious wrongdoing to?

For a report of serious wrongdoing to be considered a PID, your disclosure must be reported to one of the following:

- a manager
- a disclosure officer
- the Disclosures Coordinator
- the Crown Solicitor
- externally to a disclosure officer or the head of another public service agency
- externally to an integrity agency



Managers must ensure that the report is communicated to a designated CSO disclosure officer on behalf of the person making the report or may accompany the reporter while they make a report to a disclosure officer.

2.3 What are the available methods of reporting serious wrongdoing?

A report of serious wrongdoing can be made in any of the following ways:

- in writing, such as an email or letter to a person who can receive voluntary PIDs
- Orally (in person, by telephone or virtually)
- anonymously

If you elect to make your report anonymously, it is important to consider:

- the review undertaken by the Disclosures Coordinator and Crown Solicitor will be restricted to the information you make available in your report
- the Disclosures Coordinator or Crown Solicitor will not be able to make inquiries with you to clarify any part of your report, or seek additional information
- the ability to provide you with protections under the *PID Act* may be limited
- it may be difficult for the Disclosures Coordinator or Crown Solicitor to provide you with advice on the outcome of the review.

2.4 What should I include in my report?

You should provide as much information as possible so we can deal with the report effectively. The type of information you should include is:

- date, time and location of key events
- names of person(s) involved in the suspected wrongdoing, their role, title and how they are involved
- your relationship with the person(s) involved, such as whether you work closely with them
- your explanation of the matter you are reporting
- how you became aware of the matter you are reporting
- possible witnesses
- other information that supports your report.

You can also contact a disclosure officer for further advice and assistance.

2.5 What can I expect once I have made a report?

In making a report of serious wrongdoing, you can expect:

- your concerns to be taken seriously
- to be treated with dignity, and in a respectful and professional manner
- to be provided with protections under the *PID Act* (as relevant) to ensure you are not subject to any detrimental action
- a disclosure officer or the Disclosures Coordinator to respond to any questions or concerns you may have regarding your PID, or the process for reviewing your reported PID
- procedural fairness to be applied at each stage of review
- to receive regular communication on the status of the review
- action to be taken if you are subject to detrimental action as a result of having made a report or raised a PID
- to be advised of the outcome of the review of your disclosure.

2.6 What protections are available in making a disclosure?

The PID Policy provides information on what protections are available to you in making a report of serious wrongdoing. Some protections are limited to voluntary PIDs.

3. How will a report be dealt with?

3.1 What information will I receive after I make a PID?

When a report which is a PID, or looks like it may be a PID, is received, the Disclosures Coordinator will provide you with the following information:

- Written acknowledgment that the report has been received within 14 days of receipt. This acknowledgement will:
 - State the report will be assessed to identify whether it is a PID
 - State the *PID Act* applies to how the CSO will deal with the report of serious wrongdoing
 - Provide clear information on how you can access the PID policy
 - Provide you with details of a contact person and available supports
- If the report is a PID, you will be informed as soon as possible how the report will be managed. This may include:
 - that a review / investigation of the alleged serious wrongdoing will be completed and by whom.
 - that the report will be referred to a different agency (if appropriate) to deal with the PID. This may be relevant in circumstances where a PID involves the Crown Solicitor or the Disclosures Coordinator. If this is relevant, you will be provided details of the referral.
 - if it is decided that the report will not be investigated and/or not referred to another agency to be investigated, the Disclosures Coordinator will advise the reporter of the reasons for this decision.
 - The disclosure officer will also notify the NSW Ombudsman of this decision.
 - If it is determined a review/investigation will be undertaken, you will be provided with updates at intervals of not more than 3 months.
 - During this time, if you would like more frequent updates, you should advise the Disclosures Coordinator.
- If serious wrongdoing is reviewed/investigated, you will be provided with the following information once the review/investigation is complete:
 - a description of the results of the investigation – this means you are informed whether the alleged serious wrongdoing took place.
 - information about any corrective action resulting from any review/investigation — this means the action that was taken in relation to the person who was found to have engaged in the serious wrongdoing or, if the serious wrongdoing was by the CSO, what measures have been put in place to address the reported serious wrongdoing.



Corrective action could include taking action, inclusive but not limited to, disciplinary action against someone or changing the practices, policies, and procedures that we have in place, which led to the serious wrongdoing, training/re-training, formal apology.

- There may be instances where some details about either the findings made resulting from a review/investigation and/or the corrective action taken cannot be revealed to you.

- We cannot breach our legal obligations to others in providing information to you.

3.2

How will the CSO assess and manage my PID?

Once a report that may be a PID has been taken and reported to a person who can receive a disclosure, the disclosure officer will complete an Initial Assessment Form and will confidentially send to the Disclosures Coordinator or Crown Solicitor (if appropriate) for further review and action.

The Disclosures Coordinator will review the information contained in the report and Initial Assessment Form to see if it has the features of a PID.

If a report is made to a manager, the report **must always** be referred to a disclosure officer, the Disclosures Coordinator, or the Crown Solicitor.

An assessment will be undertaken by the Disclosures Coordinator to identify whether the report is a PID or another type of disclosure, and to make sure the right steps are followed.

If it is a PID, it is the role of the Disclosures Coordinator and Crown Solicitor to ensure compliance with the requirements of the *PID Act*.

The Disclosures Coordinator must document the outcome of their assessment which will be stored and maintained confidentially in Content Manager in accordance with the CSO's Privacy Management Plan.



The CSO is required to comply with yearly reporting obligations to the NSW Ombudsman. A confidential PID register will be maintained by the Disclosures Coordinator and Crown Solicitor and will be managed in accordance with the CSO's Privacy Management Plan. The CSO will not report on any personal identifying information as part of this annual reporting process.

The Disclosures Coordinator may seek advice from the Crown Solicitor (where appropriate) on how to assess and manage a reported PID.

In most cases the Disclosures Coordinator will conduct an assessment and make a recommendation to determine whether serious wrongdoing should be reported to the Crown Solicitor. The referral should include information disclosed in the report about what occurred, who was involved, who was responsible, and whether the people involved, or the agency engaged, in serious wrongdoing.

There may also be circumstances where the Disclosures Coordinator, on advice from the Crown Solicitor, may decide that the report should be referred to another agency, such as an integrity agency. For example, reports concerning possible corrupt conduct may be required to be reported to the ICAC in accordance with section 11 of the *Independent Commission Against Corruption Act 1988*.

How will my confidentiality be protected?

It is acknowledged that people who report a PID 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 reporter of a PID (known as identifying information) is not to be disclosed by a public official or an agency.

There are certain circumstances under the *PID Act* that allow for the disclosure of identifying information. These include:

- where the person consents in writing to the disclosure
- where it is generally known that the person is the reporter of the voluntary PID because of their voluntary self-identification as the reporter
- when the reporter or the CSO reasonably considers it necessary to disclose the information to protect a person from detriment
- where it is necessary information is disclosed to a person whose interests are affected by the disclosure
- where the information has previously been lawfully published
- when the information is disclosed to a medical practitioner or psychologist for the purposes of providing medical or psychiatric care, treatment or counselling to the individual disclosing the information
- when the information is disclosed for the purposes of proceedings before a court or tribunal
- when the disclosure of the information is necessary to deal with the disclosure effectively
- if it is otherwise in the public interest to disclose the identifying information.

The CSO will not disclose identifying information unless it is necessary and authorised under the *PID Act*.

The CSO will put in place steps to keep the identifying information of the reporter, and the fact that a report has been made, confidential.

However, it may not always be possible for the CSO to maintain complete confidentiality, as a review/investigation progresses. All measures as far as practical will be taken to ensure information provided is de-identified and is not unnecessarily disclosed.

These steps may include:

- limiting the number of people who are aware of the reporter's identity or information that could identify them
- obtaining consent from a reporter, if the reporter of the PID must be disclosed or information that may identify a reporter of a PID
- ensuring that any person who does know the identity of the reporter of a PID, is reminded that they have a legal obligation to keep their identity confidential
- ensuring that only authorised persons have access to emails, files or other documentation that contain information about the identity of the reporter

- undertaking an assessment to determine if anyone is aware of the reporter's identity and if those persons have a motive to cause detrimental action to be taken against the reporter or impede the progress of the investigation
- providing information to the reporter of a PID emphasizing the importance of maintaining confidentiality and providing advice or practical suggestions for protecting their identity, for example, by telling them not to discuss their report with other staff

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

- advise the person whose identity may become known
- update the PID risk assessment (including risk management plan)
- implement strategies to minimise the risk of detrimental action
- provide additional supports to the person who has reported the PID, reminding 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

3.4 How will the CSO assess and minimise the risk of detrimental action?

The CSO will not tolerate any detrimental action being taken by any person against a reporter who has reported a PID, investigators, witnesses, or the person the report is about.

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

The CSO will take steps to assess and minimise the risk of detrimental action as follows:

- Undertaking and consistently reviewing risks assessments, including the creation of a risk management plan
- Communicating with the reporter of the PID to identify and proactively manage risks
- Advising the reporter of the PID of the protections and support that will be offered

3.5 How will the CSO respond to any allegation of detrimental action?

The CSO will act to protect a reporter who makes a disclosure of serious wrongdoing from detrimental action:

- when a report is received, the Disclosures Coordinator will ensure that a thorough risk assessment is conducted. This will identify any risks to the reporter who made the disclosure of serious wrongdoing, as well as strategies to deal with those risks. The reporter may participate in this assessment process

- if you believe that detrimental action has been, or is being taken against you, or someone else who has reported wrongdoing in reprisal for making a report, you must tell your manager (if they know about the report) or alternatively a disclosure officer, the Disclosures Coordinator, or Crown Solicitor immediately
- if a reporter believes they are, or have been subject to detrimental action, a report is to be made to the Disclosures Coordinator
- managers must report to a disclosure officer or the Disclosures Coordinator any suspicions they have that detrimental action against a reporter is occurring, or any reports of detrimental action made to them.

If the Crown Solicitor or the Disclosures Coordinator becomes aware of detrimental action against a person who has made a disclosure, they, or a person who has knowledge of the matter will:

- make a referral to the Disclosures Coordinator, if a reporter believes they are, or have been subject to detrimental action
- consult and co-ordinate with a senior and experienced employee who has not been involved in dealing with the initial disclosure to undertake a preliminary review of the alleged suspected detrimental action
- submit the results of the preliminary review into suspected detrimental action to the Disclosures Coordinator for a decision in consultation with the Crown Solicitor
- if it has been established that detrimental action is occurring against the reporter, take all steps possible to stop that activity and protect the reporter
- arrange for misconduct and/or criminal action to be taken against anyone proven to have taken or threatened detrimental action in reprisal for making a disclosure
- keep a reporter of detrimental action informed of the progress of any investigation process and the outcome.

In consultation with the Crown Solicitor, the Disclosures Coordinator can issue specific directions to help protect against detrimental action, including:

- issuing warnings to those alleged to have taken detrimental action against the reporter
- relocating the internal reporter or the subject individual within the current workplace
- transferring the internal reporter, or the individual who is the subject of the allegation, or assigning them to another appropriate role
- granting the internal reporter or the subject individual special leave of absence during the investigation of the disclosure.

If you have reported wrongdoing and feel that the reported detrimental action is not being dealt with effectively, you may contact the Ombudsman or the ICAC, depending on the type of wrongdoing you reported.

If you make a disclosure in accordance with the *PID Act*, you will not be subject to any liability, and no action, claim or demand can be taken against you for making the disclosure. You will not have breached any confidentiality or secrecy obligations and you will have the defence of absolute privilege in defamation.

What if my report is deemed not to be a PID?

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

Even if the report is not a PID, it will still need to be dealt with in a manner consistent with other internal complaints processes, or through an alternate process or mechanisms.

If the report is not a PID, the Disclosures Coordinator will inform you that the *PID Act* does not apply to the report and how the concerns raised in the report will be dealt with.

If you disagree with the assessment, you can:

- raise it with the Disclosures Coordinator or Crown Solicitor
- request an internal review, or
- request that the matter be conciliated. The CSO can, but does not have to, request the NSW Ombudsman to conciliate the matter.

In certain circumstances, you can make submissions to the Crown Solicitor seeking an internal review of your disclosure, namely:

- a decision not to deal with your disclosure as a PID
- a decision to cease dealing with a disclosure as a PID
- a decision neither to investigate a disclosure of serious wrongdoing nor refer the disclosure
- a decision to cease investigating the serious wrongdoing without either completing the investigation or referring the disclosure

A request for review must:

- be made within 28 days after the day on which the applicant (reporter) is informed of the agency's decision, and
- be in writing and state the reasons the applicant (reporter) considers the decision should not have been made

The review will be dealt with by a person who was not substantially involved in making the decision or dealing with the disclosure.

Are there sanctions for making a false or misleading PID?

It is important to note that you may be subject to misconduct action if evidence is found to substantiate that you have wilfully made any false statement, in order to mislead or attempt to mislead, when reporting serious wrongdoing.

A breach of the *PID Act* is a criminal offence and can result in the issue of penalty units and/or imprisonment.

3.8 Where can I go for further information?

Refer to the CSO PID Policy or the NSW Ombudsman website for further information.

4. Policy information

Document details

Title:	Public Interest Disclosure Procedure
Number:	A25_1
File reference:	AD2014.66
Date of effect:	9 November 2023
Date of last review:	9 November 2023
Security classification:	Official
Policy owner:	Director, People & Culture

Document history

Date	Version	Approved By	Comment
9/11/2023	1	Crown Solicitor	New information sheet to support the implementation of the <i>Public Interest Disclosure Act 2022</i> .
