

DCJ Public Interest Disclosures Policy

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1 Purpose

The *Public Interest Disclosures Act 2022* (PID Act) sets out the system under which people working within the NSW public service, including individuals who are engaged as volunteers, contractors and subcontractors, can come forward and report serious wrongdoing in a way that minimises the risk of detrimental action.

The key objective of the PID Act is to encourage the disclosure, in the public interest, of corrupt conduct, maladministration of a serious nature, serious and substantial waste of public monies, government information contraventions and privacy contraventions by:

- improving established procedures for reporting disclosures
- protecting people from detrimental actions simply because they have reported a disclosure
- providing for disclosures to be properly investigated and dealt with.

2 Scope

The policy applies to:

- ongoing employees, whether full time or part time
- temporary and casual employees
- individual contractors, subcontractors and consultants working on behalf of the Department of Communities and Justice (DCJ)
- employees of contractors providing services on behalf of DCJ
- Commissioned Officers, Statutory Appointees, Official Visitors, Board Members and Judicial Appointees
- other people who perform public official functions whose conduct and activities could be investigated by an investigating authority, including volunteers
- public officials of another public authority who report wrongdoing relating to DCJ.

A copy of this policy is available on the DCJ intranet in the [Corporate Policy Library](#) and DCJ's public internet website under [Policies](#).

3 Policy statement

At DCJ we take reports of wrongdoing seriously. We are committed to building a 'speak up' culture where public officials are encouraged to report any conduct that they honestly believe on reasonable grounds, tends to show serious wrongdoing.

This policy and the associated procedures provide detailed information about how you can provide information regarding corrupt conduct, maladministration of a serious nature, serious and substantial waste of public monies, government information and privacy contraventions, which you honestly believe is occurring or has occurred at DCJ. It describes the way public interest disclosures (PIDs) can be made through an internal reporting system, and how they are managed in DCJ.

This policy has been approved by the Secretary, who is responsible for ensuring compliance with the PID Act, and reflects the public service core values of Integrity, Trust, Service and Accountability.

4 Policy Definitions

Term	Definition
Public Official	<p>A person who is a:</p> <ul style="list-style-type: none"> ▪ Public service employee employed under the <i>Government Sector Employment Act 2013</i> (GSE Act) ▪ Public Service Senior Executive employed under the GSE Act ▪ Statutory Officer ▪ Judicial Officer <p>A public official also includes any volunteer or officer of an entity engaged under a contract, subcontract or other arrangement that is providing services or exercising functions for, or on behalf of, DCJ.</p>
Manager	<p>For the purposes of the PID Act, a Manager means:</p> <ul style="list-style-type: none"> • For public officials: the person to whom a public official reports directly or indirectly, or who supervises them directly or indirectly • For a person providing services or exercising functions for or on behalf of DCJ: the person taken to be the public official who oversees those services or functions, or who manages the relevant contract or volunteering arrangement
Disclosure Officer	A person or role responsible for receiving and assessment of a PID.
Disclosure Coordinator	The principal role responsible for overseeing PID administration in DCJ.
Agency	Department of Communities and Justice (DCJ)
Integrity Agency	An independent government agency that is charged with the functions of overseeing, investigating and/or inquiring into a government agency's exercise of powers, functions etc. , defined by s19 of the PID Act.
Types of PIDs	<ul style="list-style-type: none"> ▪ Mandatory ▪ Voluntary ▪ Witness
Detrimental Action	<p>Means:</p> <p>An action that causes disadvantage, damage, loss or injury to:</p> <ul style="list-style-type: none"> ▪ A person, their property, reputation etc

Term	Definition
	An action that treats a person unfavourably by: intimidating, bullying, harassing, discriminating, or other adverse treatment or actions taken, whether in relation to their profession, employment, trade or otherwise.
Penalty Unit	Noted in Acts as penalty units, however equates to a fine (monetary penalty) as prescribed by s17 of the Crimes (Sentencing Procedure) Act 1999 .

5 Roles and responsibilities

Certain people within DCJ have responsibilities under the PID Act.

(a) Disclosure Coordinator is responsible for:

- ensuring the DCJ PID Framework is implemented and reviewed
- providing support and advice to Managers and Disclosure Officers in the assessment and review of internal reports
- making information available to all employees on how to identify and report any suspected serious wrongdoing
- implementing and delivering training and education for Managers and Disclosure Officers on how to assess and review a report of serious wrongdoing, how to manage risk and the process of reporting any evidence of detrimental action.

(b) Disclosure Officers are responsible for:

- receiving reports from public officials
- receiving reports when they are referred to them by Managers
- ensuring reports are dealt with appropriately, including referring the matter to the appropriate complaint unit (if relevant)
- ensuring that any oral reports that have been received are recorded in writing.

(c) Managers are responsible for:

- receiving reports from persons that report to them, or persons under their supervision
- considering if the report meets the criteria of serious wrongdoing
- discussing the report with a Disclosure Officer and/or the relevant Professional Standards unit
- referring the report to a Disclosure Officer, if a report is considered to meet the criteria of serious wrongdoing.

(d) Employees are responsible for:

- reporting suspected serious wrongdoing or other misconduct
- using their best endeavours to assist in an investigation of serious wrongdoing if asked to do so by a person dealing with a PID on behalf of DCJ

- treating any person dealing with or investigating reports of serious wrongdoing with respect.

Public officials must not take detrimental action against any person who has reported, may in the future report, or is suspected of having reported, a PID.

6 Reporting serious wrongdoing

Any serious wrongdoing observed or suspected to be occurring within DCJ must be reported.

6.1 Corrupt conduct

Corrupt conduct is the dishonest or biased exercise of official functions by a public official.

For example, corrupt conduct could include:

- the improper use of knowledge, power or position for personal gain or the advantage of others
- acting dishonestly or unfairly, or breaching public trust
- a member of the public influencing or trying to influence a public official to use their position in a way that is dishonest or biased or breaches public trust.

6.2 Serious maladministration

Maladministration is conduct that involves action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory or based wholly or partly on improper motives.

For example, this could include:

- making a decision and/or taking action that is unlawful
- failing to make a decision in accordance with official policy for no apparent reason.

6.3 Serious and substantial waste of public monies

Serious and substantial waste of public monies includes any uneconomical, inefficient or ineffective use of resources, whether authorised or unauthorised, which results in a loss of public funds or resources.

For example, this could include:

- not following a competitive tendering process for a large-scale contract
- having no processes, or bad processes, in place for managing large amounts of public funds.

6.4 Government information contravention

A government information contravention is a failure, other than a trivial failure, to exercise or fulfil functions under the:

- *Government Information (Information Commissioner) Act 2009*

- *Government Information (Public Access) Act 2009* (GIPA Act), or
- *State Records Act 1998* (SR Act)

For example, this could include:

- Destroying, concealing or altering records to prevent them from being released
- Knowingly making decisions that are contrary to the legislation
- Directing another person to make a decision that is contrary to the legislation.

6.5 Privacy contravention

A privacy contravention is a failure, other than a trivial failure, to exercise or fulfil functions under the *Privacy and Personal Information Protection Act 1998* (PPIP Act) or the *Health Records and Information Privacy Act 2002*.

For example, this could include:

- Poor data management processes in place which leads to the disclosure of personal information about a person, or group of persons, to another agency or entity without a lawful reason
- Poor email practices resulting in repeated failures by staff of the agency to ensure emails containing personal information go to the correct recipient
- Failure to ensure legitimately retained health records are restricted to the appropriate part of the business
- An eligible data breach as described in the PPIP Act, for example where personal information held by the DCJ is lost because of unauthorised access to a DCJ database that is likely to result in serious harm to the affected individual.

7 Reporting other wrongdoing

Although reports about the previous five categories of conduct can attract the specific protections of the PID Act, all activities or incidents that constitute a breach of legislative, policy or regulatory provisions can be reported through DCJ's internal reporting processes.

For example, these could include:

- Suspected criminal acts
- Child protection, reportable conduct, and/or
- Practices that endanger the health or safety of employees or the public.
- Suspected or identified data or privacy breaches must be reported immediately to databreach@dcj.nsw.gov.au

Reports can also be made about another public sector agency or authority. A report about another public sector agency or authority can be made either within DCJ, to the other organisation, or to a relevant integrity agency (see [section 19](#) of the PID Act).

8 Types of public interest disclosures

Three (3) types of Public Interest Disclosures exist:

Mandatory PID	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.
Voluntary PID	is a PID where a report has been made by a public official because they decided, of their own accord, to come forward and honestly disclose what they know shows, or tends to show on reasonable grounds, serious wrongdoing.
Witness PID	is a PID where a person discloses information during an investigation of serious wrongdoing following a request or requirement of the investigator.

Further information on the types of PIDs can be found on the [NSW Ombudsman's website](#).

9 Options available for making a public interest disclosure

9.1 Making a report internal to DCJ

Reports can be made internally to DCJ to:

- **A Manager.** This is the person who directly, or indirectly, supervises a public official, noting an employee may have more than one manager in some circumstances. It is the role of a manager to ensure that a report is communicated to a disclosure officer on behalf of a reporter or, they may accompany a reporter when making the report to a disclosure officer.
- **Nominated Disclosure Officer.** A list of Disclosure Officers for DCJ and their contact details can be found at Annexure A of this policy
- **A human resources representative**
- **The Secretary**

9.2 Making a report to a recipient outside of DCJ

A report can also be made to a public official in another agency (meaning an agency that a public official is not directly employed by) or an integrity agency. For an example a report can, be made to:

- The head of another public service agency
- An integrity agency listed at Annexure B of this policy
- A Disclosure Officer for another agency

- A Minister or a member of a Minister's staff, noting the report must be made in writing.

If a reporter chooses to make a report of serious wrongdoing outside of DCJ, it is possible that the report may be referred back to DCJ so that appropriate action can be taken.

9.3 Making a report to a Member of Parliament or Journalist

Disclosures to Members of Parliament or journalists are different to other reports. A disclosure reporting wrongdoing as a voluntary PID may be made to a Member of Parliament or journalist if the following circumstances are satisfied:

- the disclosure reported must be substantially the same disclosure (described here as a 'previous disclosure') and reported to someone who can receive disclosures.
- the previously reported disclosure must be substantially true.
- the previously reported disclosure must not have been made anonymously.
- there was no written waiver by the reporter of their right to receive information relating to the previously reported disclosure.
- the reporter did not receive the following from DCJ:
 - notification that DCJ will not investigate the previously reported disclosure and will also not refer the previously reported disclosure to another agency, or
 - the following information at the end of the investigation period:
 - a notice from DCJ notifying a decision to investigate the previously reported disclosure
 - a description of the results of an investigation into the reported disclosure
 - details of proposed or recommended corrective action as a result of the previously reported disclosure or investigation.

For the purposes of this section, 'investigation period' means:

- after six months from the previously reported disclosure being made, or
- after 12 months if you applied for an internal review of the agency's decision within six months of reporting the disclosure.

If all the above requirements are met, your disclosure to a Member of Parliament or journalist may be a voluntary PID.

10 DCJ procedure for making and managing a PID

Detailed information on how to report a PID and how a PID will be managed is referenced in the DCJ Public Interest Disclosures Procedure, located in the [Corporate Policy Library](#) on the intranet.

11 Protections available for making a PID

When a PID is made (voluntary, witness and/or mandatory), a reporter may receive protections under the PID Act.

DCJ is committed to taking all reasonable steps to protect a reporter from detriment as a result of reporting a PID. DCJ is also committed to maintaining the confidentiality of a reporter as much as possible while the PID is being dealt with.

DCJ will not tolerate any type of detrimental action being taken against a reporter because a report has been made, a report might be made, or an employee is believed to have made a report. The reporter of a PID is protected in the following ways:

Protection from detrimental action

- a person cannot take detrimental action against another person because they have reported a PID or is considering reporting a PID. Detrimental action includes bullying, harassment, intimidation or dismissal.
- once DCJ becomes aware that a PID has been reported by a person employed or otherwise associated with DCJ, a risk assessment will be undertaken and steps taken to mitigate the risk of detrimental action occurring against the person who reported the PID.
- it is a criminal offence for someone to take detrimental action against a person because they have reported or may report a 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).

Note that a person who reports 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.

Immunity from civil and criminal liability

Public officials are often subject to a duty of confidentiality that prevents them disclosing certain information that they obtain or become aware of at work. Sometimes, to report 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 where a valid PID is reported.

This includes any breaches of privacy under the PPIP Act and/or HRIP Act.

Confidentiality

Public officials and agencies must not disclose information tending to identify a person as the reporter of a PID unless doing so is permitted by the PID Act.

Protection from liability for own past conduct

The Attorney General can give the reporter 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.

12 Confidentiality

It is important that all public officials including those reporting, those who have witnessed, or are a respondent to allegations of serious wrongdoing, maintain confidentiality and do not discuss or disclose reported matters of serious wrongdoing.

13 False or misleading reports

It is important to note misconduct action may be taken if evidence is found to substantiate that an individual, in making a report of serious wrongdoing, has or may have:

- wilfully made a false statement
- misled and/or attempted to mislead

A breach of the PID Act is a criminal offence and can attract a maximum penalty of 100 penalty units or imprisonment for a maximum of 2 years, or both.

14 Review and dispute resolution

People who report PIDs can seek internal review of decisions made by DCJ, such as:

- that DCJ is not required to deal with the report as a PID
- to stop dealing with the report because DCJ decided it was not a PID
- to not investigate the serious wrongdoing and not refer the report to another agency
- to cease investigating the serious wrongdoing without either completing the investigation or referring the report to another agency for investigation.

DCJ will ensure internal reviews are conducted in compliance with the PID Act.

Further information on the internal review process is detailed in the DCJ PID Procedure.

15 Monitoring & review of this policy

This policy will be initially reviewed in the first 12 months from release to quality assure its operation and will be reviewed every three years thereafter.

This policy will also be reviewed and (if necessary) updated within 90 days of an amalgamation of two or more existing agencies or the division of an agency belonging to DCJ.

Feedback, including reporting of broken links contained within the policy and/or materials may be provided by emailing pid@dcj.nsw.gov.au with subject heading PID Feedback, advising the nature of the issue or feedback.

16 Related legislation/regulation and other documents

- DCJ Public Interest Disclosures Procedure
- [Public Interest Disclosures Act 2022](#)

17 Support and advice

Who can people go to if they need more advice?

Business unit	Conduct and Professional Standards unit
Email	pid@dcj.nsw.gov.au

18 Document information

Document name	DCJ Public Interest Disclosure Policy
Document reference	D23/2320509
Replaces	HR005 Public Interest Disclosure Policy and Procedure
Applies to	All DCJ
Policy administrator	Conduct and Professional Standards
Approval	The Secretary

19 Version and review details

Version	Effective date	Reason for amendment	Due for review
1.0	09/2014	Consolidated Department policy. Business Division based policies to be rescinded.	N/A
2.0	18/09/2015	Formatted into Departmental style guide	N/A
3.0	22/09/2015	Updated with trained disclosure coordinators/officers	N/A
4.0	10/05/2016	Updated with trained disclosure coordinators/officers	N/A
5.0	23/09/2016	Updated with new templates, nominated roles table	N/A
6.0	01/10/2023	Policy modified to accommodate re-written legislation, revised terminology, roles, responsibilities and requirements under new Act and amalgamation of DoJ and FaCS to form DCJ	01/10/2024
6.1	23/01/2024	Update to disclosure officer contact details	01/10/2024

Annexure A — Names and contact details of nominated disclosure officers for DCJ

Alternative Agency Disclosure Officer Roles & Contact Details

Agency Disclosure Coordinator	
The DCJ PID Coordinator can be contacted by email at:	
	pid@dcj.nsw.gov.au

Annexure B — List of integrity agencies

Integrity agency	What they investigate	Contact information
The NSW Ombudsman	Most kinds of serious maladministration by most agencies and public officials (but not NSW Police, judicial officers or MPs)	Telephone: 1800 451 524 between 9am to 3pm Monday to Friday Writing: Level 24, 580 George Street, Sydney NSW 2000 Email: info@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
Independent Commission Against Corruption	Corrupt conduct	Telephone: 02 8281 5999 or toll free on 1800 463 909 (callers outside Sydney) between 9am and 3pm, Monday to Friday Writing: GPO Box 500, Sydney NSW 2001 or faxing 02 9264 5364 Email: icac@icac.nsw.gov.au
The Inspector of the Independent Commission Against Corruption	Serious maladministration by the ICAC or the ICAC officers	Telephone: 02 9228 3023 Writing: PO Box 5341, Sydney NSW 2001 Email: oiicac_executive@oiicac.nsw.gov.au
The Law Enforcement Conduct Commission	Serious maladministration by the NSW Police Force or the NSW Crime Commission	Telephone: 02 9321 6700 or 1800 657 079 Writing: GPO Box 3880, Sydney NSW 2001 Email: contactus@lecc.nsw.gov.au
The Inspector of the Law Enforcement Conduct Commission	Serious maladministration by the LECC and LECC officers	Telephone: 02 9228 3023 Writing: GPO Box 5341, Sydney NSW 2001 Email: olecc_executive@olecc.nsw.gov.au
Office of the Local Government	Local government pecuniary interest contraventions	Email: olg@olg.nsw.gov.au
The Privacy Commissioner	Privacy contraventions	Telephone: 1800 472 679 Writing: GPO Box 7011, Sydney NSW 2001 Email: ipcinfo@ipc.nsw.gov.au
The Information Commissioner	Government information contraventions	Telephone: 1800 472 679 Writing: GPO Box 7011, Sydney NSW 2001 Email: ipcinfo@ipc.nsw.gov.au