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# Public Interest Disclosure Policy and Procedure

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Authorised	Janine Lonergan, Acting Chief Executive
Signature	
Date	28 september 2023

OFFICIAL

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# 1 Definitions

In this Policy and Procedure:

**corrupt conduct** has the same meaning as in the *Independent Commission Against Corruption Act 1988* (ICAC Act) and may involve:

- any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority,
- any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions.
- any conduct of a public official or former public official that constitutes or involves a breach of public trust,
- any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.
- any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority and which could involve any of the following matters:
  - official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition),
  - bribery,
  - blackmail,
  - obtaining or offering secret commissions,
  - fraud,
  - theft,
  - perverting the course of justice,
  - embezzlement,
  - election bribery,
  - election funding offences,
  - election fraud,
  - treating,
  - tax evasion,
  - revenue evasion,
  - currency violations,
  - illegal drug dealings,
  - illegal gambling,
  - obtaining financial benefit by vice engaged in by others,
  - bankruptcy and company violations,

- harbouring criminals,
  - forgery,
  - treason or other offences against the Sovereign,
  - homicide or violence,
  - matters of the same or a similar nature to any listed above,
  - any conspiracy or attempt in relation to any of the above.
- any conduct of any person (whether or not a public official) that impairs, or that could impair, public confidence in public administration and which could involve any of the following matters:
    - collusive tendering
    - fraud in relation to applications for licences, permits or other authorities under legislation designed to protect health and safety or the environment or designed to facilitate the management and commercial exploitation of resources,
    - dishonestly obtaining or assisting in obtaining, or dishonestly benefiting from, the payment or application of public funds for private advantage or the disposition of public assets for private advantage,
    - defrauding the public revenue,
    - fraudulently obtaining or retaining employment or appointment as a public official.

However, under the ICAC Act, to be corrupt conduct, the conduct must also be a criminal offence, a disciplinary offence, or reasonable grounds for dismissal, dispensing with the services of a public official, or otherwise terminating the services of a public official.

**detriment** means disadvantage to the person, including the following:

- (a) injury, damage or loss caused to the person;
- (b) damage caused to the person's reputation;
- (c) intimidation, bullying or harassment;
- (d) unfavourable treatment in relation to the person's career, profession, employment or trade;
- (e) discrimination, prejudice or adverse treatment, whether in relation to employment or otherwise;
- (f) disciplinary proceedings or disciplinary action.

**detrimental action** means an act or omission causing, comprising, involving or encouraging detriment to the person or the threat of detriment to the person, whether express or implied.

**disclosure officer** means INSW employees nominated as disclosure officers and listed for that purpose on the INSW infranet.

**employee** means staff who are employed in INSW under permanent, temporary, casual or secondment arrangements or otherwise assigned to INSW and includes volunteers, contractors and consultants who provide services, or exercise functions, on behalf of INSW.

**fraud** means dishonest activity by any employee that causes actual or potential financial loss to INSW or the Government, including theft of moneys or other property. It includes deliberate fabrication, concealment, destruction or improper use of documentation used for a normal business purpose or the improper use of other information or position.

**government information contravention** means 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*.

**integrity agency** means the NSW Ombudsman, the NSW Auditor-General, ICAC, the Inspector of ICAC, the Law Enforcement Conduct Commission, the Privacy Commissioner, the Information

Commissioner, and any person or body declared by the regulations to be an integrity agency for the PID Act.

**local government pecuniary interest contravention** means the contravention of an obligation imposed in connection with the *Local Government Act 1993* or a Council Code of Conduct under section 440(3) of that Act.

**mandatory public interest disclosure** means a disclosure about serious wrongdoing made by a public official while meeting the ordinary requirements of the officials' particular role or functions or under a statutory or other legal obligation.

**PID Act** means the *Public Interest Disclosures Act 2022*.

**public official** has the same as in the *Public Interest Disclosures Act 2022*, being:

- a person employed in or by an 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 Crown;
- a statutory officer;
- a person providing services or exercising functions on behalf of an agency, including a contractor, subcontractor or volunteer,
- if an entity, under a contract, subcontract or other arrangement, to provide services on behalf of an agency or exercise functions of an agency in whole or in part – an employee, partner or officer of the entity who is to be involved in providing the services in whole or in part, or who is to exercise the functions;
- a judicial officer;
- a member of Parliament, including a Minister;
- a person employed under the *Members of Parliament Staff Act 2013*.

**privacy contravention** means 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*.

**serious and substantial waste of public money** means any substantial uneconomical, inefficient or ineffective use of resources that results in a loss or wastage of public funds or resources.

**serious maladministration** means action or inaction of a serious nature that is:

- contrary to law, or
- unreasonable, unjust, oppressive, or improperly discriminatory, or
- based wholly or partly on improper motives.

**witness public interest disclosure** means a disclosure of information, in an investigation of serious wrongdoing, at the request of or in response to a requirement of a person or agency investigating the serious wrongdoing, whether or not the investigation relates to or arises from the making of a voluntary public interest disclosure or constitutes dealing with a voluntary public interest disclosure.

## 2 Policy Statement

### 2.1 This policy establishes a process for reporting serious wrongdoing

This Policy establishes the system for employees to report serious wrongdoing without fear of detrimental action. It sets out:

- who to contact if you want to report serious wrongdoing;
- what conduct amounts to “serious wrongdoing”;
- how reports of serious wrongdoing will be dealt with by Infrastructure NSW (INSW); and
- how INSW will support and protect you if report serious wrongdoing and the legislative protections available to you.

INSW is committed to the highest standards of ethical and accountable conduct and will not tolerate any form of wrongdoing. Employees who come forward and report wrongdoing are helping to promote integrity, accountability, and good management within INSW.

INSW aims to establish and maintain a working environment that creates a climate of trust, where employees are comfortable and confident about reporting wrongdoing, and which encourages employees to come forward if they became aware of or suspect wrongdoing.

This Policy is to complement normal communication channels between managers/supervisors and employees. Employees are encouraged to raise matters of concern at any time with their supervisors, but also have the option of making a report about serious wrongdoing in accordance with this Policy, the Public Interest Disclosure Procedure set out in section 10 (**Procedure**) and the PID Act.

### 2.2 Compliance with the PID Act

This policy was developed having regard to the NSW Ombudsman’s *Developing your Public Interest Disclosure Policy* guidelines, issued July 2023.

In accordance with the PID Act, this Policy and the Procedure are intended to ensure there is no “wrong door” for reporting serious wrongdoing, and that technicalities in previous public interest disclosure legislation do not prevent reporting. This Policy is to be read in conjunction with the Procedure, which forms part of the Policy.

The Executive Director Corporate Services is responsible for monitoring the effectiveness of this Policy and the Procedure and for ensuring it is reviewed every 2 years. The CEO is responsible for approving the Policy.

If any error or issue is found in this Policy, please contact the PID Coordinator at [PID@infrastructure.nsw.gov.au](mailto:PID@infrastructure.nsw.gov.au) or in writing addressed to the PID Coordinator, INSW, Level 27, 201 Kent Street, Sydney NSW 2000.

### 2.3 Accessibility of this Policy

This Policy is available on the INSW website and intranet. A copy of the Policy is made available to all INSW employees on their commencement. A hard copy of the Policy can be requested from Corporate Services.

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## 3 Who does this Policy apply to?

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### 3.1 This Policy has broad application

This Policy applies to all employees (as defined in Section 1). The Policy also applies to public officials from other NSW government agencies who report serious wrongdoing relating to INSW.

Under the PID Act, serious wrongdoing is unlawful or improper conduct in the following categories:

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

Section 1 defines each of these terms.

A report of serious wrongdoing may be made orally or in writing.<sup>1</sup> Section 10.6 of the Procedure provides information about anonymous reporting.

### 3.2 Who does this Policy not apply to?

If you are not a public official, this policy does not apply to your complaint (although there are some circumstances where a complaint can be deemed to be a voluntary public interest disclosure).

This policy does not apply to:

- members of the public who want to make a complaint about INSW; and
- people, such as contractors, who provide services to INSW. For example, employees of a company that sold computer software to INSW.

#### How to make a complaint

If you are a member of the public who wants to make a complaint, you can contact INSW at:

- [mail@infrastructure.nsw.gov.au](mailto:mail@infrastructure.nsw.gov.au) or
- PO Box R220, Royal Exchange NSW 1225.

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<sup>1</sup> Except for a report of serious wrongdoing to a Minister or member of staff of a Minister's office which, must be in writing.



## 4 What is a public interest disclosure?

Employees who become aware of or suspect serious wrongdoing within INSW should report it, as well as any activities or incidents they see within INSW that they believe to be wrong.

A report of serious wrongdoing, which otherwise meets the criteria of a public interest disclosure as defined by the PID Act, will be dealt with in accordance with this Policy, the Procedure and the PID Act.

A **public interest disclosure** is an appropriate disclosure of serious wrongdoing made by a public official to a suitable authority. That is, the disclosure must meet four criteria:

1. **appropriate disclosure** – the person making the report must honestly and on reasonable grounds, believe the disclosure shows or tends to show serious wrongdoing.
2. of **serious wrongdoing** – the disclosure must be about corrupt conduct, a government information contravention, serious maladministration, a privacy contravention, a local government pecuniary interest contravention or a serious and substantial waste of public money.
3. made by a **public official** – see definition in Section 1.
4. made to a **suitable recipient** – the person receiving the disclosure can be any of the following:
  - the head of an agency (which includes an integrity agency<sup>2</sup>);
  - the manager or supervisor of the person making the disclosure;
  - the most senior employee on site for each work site that is permanently maintained by the agency which has more than one employee; or
  - a person (or member of a class of persons) specified on the INSW intranet page as a disclosure officer.

Even if reports of serious wrongdoing are not public interest disclosures, INSW recognises such reports may raise important issues. INSW will respond to all reports and make every attempt to protect the employee making the report from detrimental action.

The reporting system established by this Policy is not intended to be used for employee grievances. If a report is substantially a grievance, it should be referred to People and Culture to be dealt with in accordance with the Grievance Policy and Procedure.

<sup>2</sup> Integrity agencies for INSW are the NSW Ombudsman, the NSW Auditor-General, ICAC, the Inspector of ICAC, the Law Enforcement Conduct Commission, the Privacy Commissioner, the Information Commissioner, and any person or body declared by the regulations to be an integrity agency for the PID Act.

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## 5 What happens when a report is made?

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### 5.1 Assessment of reports

All reports of serious wrongdoing will be promptly and thoroughly assessed to determine what action will be taken to deal with the report and whether the report will be treated as a public interest disclosure.

The Procedure sets out in the detail the process INSW will follow upon receipt of a report of serious wrongdoing. In summary:

- INSW's PID Coordinator is responsible for assessing reports, in consultation with the CEO, where appropriate;
- all reports will be assessed on the information available to the PID Coordinator at the time of assessment. The PID Coordinator may seek internal or external advice, or further information, in assessing the information;
- the PID Coordinator, in consultation with the CEO, will decide whether an investigation should be carried out and how that investigation should be carried out;
- in assessing a report, the PID Coordinator may decide that the report should be referred elsewhere or that no action should be taken on the report; and
- the PID Coordinator will consult with the maker of the report and keep them informed of progress, where the identity of the maker of the report is known.

### 5.2 Reporter's review rights

Under section 60 of the PID Act, a person who makes a disclosure may apply to INSW for an internal review of the following decisions:

- a decision that INSW is not required by section 49(1) of the PID Act to deal with the disclosure as a voluntary public interest disclosure under Division 2 of Part 5 of the PID Act;
- a decision under section 49(2) of the PID Act to cease to deal with the disclosure as a voluntary public interest disclosure; and
- a decision under section 55(3) of the PID Act not to investigate the serious wrongdoing or to refer the disclosure, or to cease investigate the serious wrongdoing without competing the investigation or referring the disclosure.

See section 10.14 of the Procedure for information about how to apply for an internal review under section 60 of the PID Act.

## 6 Key responsibilities

The Procedure sets out the responsibilities that sit with individual roles within INSW. Overall key responsibilities under the Policy and the Procedure are:

### INSW

When it receives a report of serious wrongdoing, INSW will:

- appoint a PID Coordinator to assess a report of serious wrongdoing and deal with it appropriately, including with regard to NSW Ombudsman guidelines made under section 73 of the PID Act, and other requirements of the PID Act
- take ownership of the matter and decide whether the report should be investigated, and if so, how it should be investigated and by whom;
- implement systems necessary to maintain the confidentiality and security of information and the identity of the person making the voluntary public interest disclosure<sup>3</sup> and any subject of the disclosure;
- keep the discloser of the serious wrongdoing informed of the progress of any investigation at least every 3 months throughout the duration of the investigation;
- deal with reports of serious wrongdoing fairly and reasonably, respecting the rights of any employees who are the subject of a report;
- provide information and reports required under Part 6 of the PID Act to the NSW Ombudsman;
- ensure all employees are aware how to make a voluntary public interest disclosure and how they may take action if they are dissatisfied with the way in which a voluntary public interest disclosure is handled by INSW;
- provide employees with access to this Policy and the Procedure and where to find information about public interest disclosures; and
- ensure that all employees receive appropriate training (including training specified in clauses 4(2) and (3) of the *Public Interest Disclosures Regulation 2023*) on their responsibilities to ensure compliance with the PID Act, and that reports of serious wrongdoing are dealt with properly.

### Employees

Employees play an important role in contributing to a workplace where known or suspected serious wrongdoing is reported and dealt with appropriately. If employees become aware of or suspect serious wrongdoing within INSW, they are to:

- report known or suspected serious wrongdoing and support those who have made reports of serious wrongdoing;
- if requested, assist those dealing with the report of serious wrongdoing, including supplying information on request;
- co-operate with any investigation, maintain confidentiality in accordance with section 64 of the PID Act and follow any instructions from INSW;
- treat any employee or person dealing with a report of serious wrongdoing with courtesy and respect;

<sup>3</sup> Section 64(1) of the PID Act obliges an agency or a public official not to disclose the identity of a person as the maker of a voluntary public interest disclosure, except in circumstances set out in section 64(2). See section 10.10 of the Procedure.

- not engage or participate in any form of detrimental action; and
- respect the rights of employees who are the subject of reports and keep their identity confidential, where practical and appropriate.

Employees must not:

- take detrimental action against any person in relation to a report, proposed report, investigation or proposed investigation, of serious wrongdoing; or
- make a false or misleading report of serious wrongdoing.

All employees involved in the reporting of serious wrongdoing must adhere to INSW's Code of Ethics and Conduct, a breach of which could result in disciplinary action.

## Reporting obligations

INSW's PID Coordinator is responsible for INSW's compliance with the reporting obligations set out below. Under the PID Act, INSW must:

- keep full and accurate records of all information received in connection with the PID Act in its record management system, with access to such information restricted for security and confidentiality purposes;<sup>4</sup>
- respond to any notice from the NSW Ombudsman under section 75 of the PID Act to provide it with information or documents;
- provide reports every 12 months to the NSW Ombudsman in accordance with section 76 of the PID Act;
- provide an annual return to the NSW Ombudsman for the 12-month period 1 July to 30 June in accordance with section 78 of the PID Act and clauses 5 and 6 of the *Public Interest Disclosures Regulation 2022*; and
- provide any notification to the NSW Ombudsman required under section 34(4) of the PID Act.

# 7 Protections available to people who make reports

## 7.1 No detrimental action

Detrimental action against employees involved in reporting or dealing with reports of serious wrongdoing, is **unlawful**. See definitions in Section 1 for the meaning of detrimental action and detriment under the PID Act.

The PID Act provides protection for employees that have made a public interest disclosure by imposing penalties on anyone who takes detrimental action against another person whom they:

- suspect, believe or are aware may make or propose to make a public interest disclosure; or
- suspect, believe or are aware may be investigating or proposing to investigate serious wrongdoing.

<sup>4</sup> The PID Coordinator will ensure there are systems in place to restrict access to all records kept in relation to a report of serious wrongdoing, for security and confidentiality purposes. Only senior INSW managers or executives with a 'need to know' will be given access to Objective workspaces, and any paper documents will be kept in locked cabinets. Sensitive documents created by INSW will be password-protected and passwords will only be shared to those with a 'need to know'. The PID Coordinator will inform INSW employees involved in dealing with the report of serious wrongdoing of the requisite measures.

These penalties may include a fine of up to \$22,000 or 5 years imprisonment or both. In addition, civil penalties and potential awards of damages may apply under the PID Act.

INSW will not tolerate detrimental action against those involved in reporting or investigating public interest disclosures.

## 7.2 Protection against legal action

If an employee makes a public interest disclosure in accordance with the PID Act, they will not be subject to civil or criminal liability or disciplinary action in relation to the making of the disclosure.

## 7.3 Sanctions for making false or misleading statements

All employees should be aware that it is a criminal offence under the PID Act wilfully to make a false or misleading statement when reporting wrongdoing, potentially punishable by a fine of up to \$11,000 or imprisonment for 2 years, or both.

INSW will not support employees who wilfully make false or misleading reports. Such conduct may also be a breach of the INSW Code of Conduct which may result in disciplinary action.

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# 8 What happens if I am the subject of a report?

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## 8.1 The rights of the subject(s) of a report of serious wrongdoing

INSW is committed to ensuring employees who are the subject of a report of serious wrongdoing are treated fairly and reasonably. This includes keeping the identity of any person the subject of a report confidential, in accordance with section 64 of the PID Act (see section 10.10 of the Procedure for further information).

### Procedural fairness

If an employee is the subject of the report, they will be advised of the allegations made against them at an appropriate time and before any adverse findings are made. At this time they will be:

- advised of the details of the allegation;
- advised of their rights and obligations under the relevant related policies and procedures;
- kept informed about the progress of any investigation;
- given a reasonable opportunity to respond to any allegation made against them; and
- told the outcome of any investigation, including any decision made about whether further action will be taken against them.

Where the reported allegations against the subject officer are clearly wrong, or have been investigated and found to be unsubstantiated, the fact of the allegations and any investigation will be kept confidential unless otherwise agreed to by the subject officer.

### Support

Throughout the investigation process and after any findings have been made, INSW will ensure there are measures in place to support the employee and to maintain a safe working environment.

INSW will apply the same key principles as those that apply to the management of concerns and grievances under the Grievance Policy and Procedure (as relevant).

Principle	How INSW will apply the principle
Treat people fairly and justly	At all times handle reports of serious wrongdoing with fairness and impartiality. Ensure everyone involved or impacted by the issue is protected from any form of victimisation. Always respect and protect everyone's right to privacy and confidentiality.
Listen to concerns with respect	Acknowledge that everyone's experiences are different. Interact with an open mind, seeking to understand other peoples' perspectives, values, and beliefs. Listen without judgment. Respect other people's right to have differing thoughts and opinions.
Take prompt, purposeful action	Deal with PID reports as they arise, in according to the Procedure. Take prompt action and keep those who are impacted informed of the action taken and progress towards resolution.
Learn from the experience	Every report of suspected or actual serious wrongdoing is an opportunity to learn how we can do things differently. Reflect on the experience to gain new insights. Put practices in place to mitigate the opportunity for and risk of people engaging in serious wrongdoing. At the end of the process ensure appropriate feedback is provided to the people involved.

## 9 Relevant Legislation and Documents

Relevant legislation and documents	
Related documents	Code of Ethics and Conduct Fraud and Corruption Control Policy Grievance Policy and Procedure
Related legislation	<i>Public Interest Disclosures Act 2022</i> <i>Public Interest Disclosures Regulation 2022</i> <i>Government Interest (Public Access) Act 2009</i> <i>Independent Commission Against Corruption Act 1988</i> <i>Ombudsman Act 1974</i> <i>Law Enforcement Conduct Commission Act 2016</i>

Employees may access the PID Act and regulation at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)

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# 10 Procedure

## 10.1 Purpose

This Procedure provides information about how to make a report of serious wrongdoing, the categories of conduct that can be a public interest disclosure and how INSW will assess and deal with reports of serious wrongdoing or voluntary public interest disclosures it receives from employees.

This Procedure is to be read in conjunction with the Public Interest Disclosure Policy (Policy), and forms part of that Policy.

## 10.2 Application

This Procedure applies to all employees, as defined in the Policy.

## 10.3 When will a report of serious wrongdoing be treated as a public interest disclosure?

INSW will deal with a report of serious wrongdoing as a public interest disclosure if it meets the following criteria for a public interest disclosure under the PID Act:

- the report must be about one or more of the following categories of serious wrongdoing (please refer to Definitions in section **Error! Reference source not found.** the Policy):
  - corrupt conduct;
  - a government information contravention;
  - a privacy contravention;
  - a local government pecuniary interest contravention;
  - serious maladministration;
  - a serious and substantial waste of public money;
- the person making the disclosure must honestly believe on reasonable grounds that the information shows or tends to show serious wrongdoing.
- the report is **made to a public official** under the PID Act.

A public interest disclosure report can be made **orally**<sup>5</sup> or **in writing**.

Reports by employees are not public interest disclosures if:

- the maker of the disclosure wilfully makes a false or misleading statement;
- they relate to a disagreement with a government policy (including a government decision concerning amounts, purposes or priorities of public expenditure); or
- they concern only a grievance about a matter relating to the employment or former employment of an individual and either do not have significant implications beyond matters

<sup>5</sup> An exception to this is disclosure to a Minister or a member of staff of a Minister - section 24(3)(c) of the PID Act says that a disclosure is not a voluntary public interest disclosure if made orally to those persons. It must be in writing.



personally affecting or tending to personally affect the individual or relate to a disagreement with the taking or proposed taking of reasonable management action.<sup>6</sup>

## 10.4 There are three types of public interest disclosure

Under the PID Act, there are three types of public interest disclosure:

- voluntary
- witness, or
- mandatory.

The Policy and Procedure deal with voluntary public interest disclosures. Section 1 of the Policy contains definitions from the PID Act of witness public interest disclosures and mandatory public interest disclosure.

### Voluntary public interest disclosures

A voluntary public interest disclosure is a report of serious wrongdoing<sup>7</sup>:

- by a public official who is not a member of Parliament;
- where the maker of the disclosure honestly and on reasonable grounds believes the disclosure shows or tends to show serious wrongdoing;<sup>8</sup> and
- where the disclosure is made to:
  - the head of an agency (which includes an integrity agency<sup>9</sup>);
  - a disclosure officer for an agency;
  - a Minister or a member of staff of a Minister (but only if the disclosure is in writing);
  - in limited circumstances (see section 10.7 of this Procedure), a member of Parliament who is not a Minister, or a journalist.

Within INSW, public officials will be:

- employees of the NSW government working in INSW (including secondees from other agencies);
- employees of entities appointed to work in roles in INSW, for example project directors in ProjectsNSW who are contracted from private sector entities;
- employees of entities that provide secondees to work in roles in INSW; and
- volunteers such as work experience volunteers.

#### Note:

*Section 21(2) of the PID Act provides that a disclosure is not a public interest disclosure to the extent that the maker of the disclosure wilfully makes a false statement to, or misleads or attempts to mislead, the agency or person to whom the disclosure is made.*

<sup>6</sup> This exception does not apply if the grievance arises from a decision made by an agency in dealing with a previous voluntary public interest disclosure or alleged detrimental action relating to a previous voluntary public interest disclosure. Reasonable management action is explained in section 31(3) of the PID Act.

<sup>7</sup> Serious wrongdoing is unlawful or improper conduct in the following categories: corrupt conduct, a government information contravention, a privacy contravention, a local government pecuniary interest contravention, serious maladministration and a serious and substantial waste of public money.

<sup>8</sup> But please note the exceptions detailed in section 3 of this Procedure in relation to grievances.

<sup>9</sup> Integrity agencies for INSW are the NSW Ombudsman, the NSW Auditor-General, ICAC, the Inspector of ICAC, the Law Enforcement Conduct Commission, the Privacy Commissioner, the Information Commissioner, and any person or body declared by the regulations to be an integrity agency for the PID Act.

Section 29 of the PID Act provides that INSW's CEO may deem that a disclosure made by another person is a voluntary public interest disclosure even if it would not otherwise be one.

## 10.5 Who can receive a voluntary public interest disclosure?

Employees may report serious wrongdoing to:

- the head of an agency (which includes an integrity agency<sup>10</sup>);
- a disclosure officer for an agency;
- a Minister or a member of staff of a Minister (if the disclosure is in writing);
- in limited circumstances (see section 10.7 of this Procedure), a member of Parliament who is not a Minister, or a journalist.

Within INSW, reports may be made by employees to:

- their manager or supervisor<sup>11</sup>; or
- disclosure officers (other persons nominated by INSW whose details are provided on the INSW intranet); or
- INSW's CEO; or
- INSW's PID Coordinator (see details on the INSW intranet).

Any other INSW employee who receives a report that they believe may be a public interest disclosure must assist the employee to make the report to one of the positions listed above.

## 10.6 Can a report be anonymous?

A voluntary public interest disclosure report **can be anonymous**<sup>12</sup>.

There will be some situations where employees may not want to identify themselves when making a report. Although these reports will still be dealt with by INSW, it is best to identify yourself. This allows INSW to provide any necessary protection and support, as well as feedback about what action is to be taken or has been taken to deal with the issues raised in the report, or the outcome of any investigation.

Anonymous disclosure may not prevent employees from being identified by the subjects of the report or their colleagues. If INSW does not know who made the report, it is difficult for us to prevent any reprisal should others identify you.

## 10.7 Who can receive a report outside of INSW?

If employees wish to make a voluntary report of serious wrongdoing, internal reporting is not the only option under the PID Act.

<sup>10</sup> Integrity agencies for INSW are the NSW Ombudsman, the NSW Auditor-General, ICAC, the Inspector of ICAC, the Law Enforcement Conduct Commission, the Privacy Commissioner, the Information Commissioner, and any person or body declared by the regulations to be an integrity agency for the PID Act.

<sup>11</sup> Note:

- A manager includes a public official to whom the INSW employee reports directly or indirectly or a public official who directly or indirectly supervises the INSW employee in the exercise of their functions; it includes private sector individuals appointed under INSW contracts to manager/supervisor roles (such as a project director within ProjectsNSW).
- For each permanently maintained INSW worksite, the most senior public official who ordinarily works at the worksite is the person who whom a report of serious wrongdoing can be made.

<sup>12</sup> A report will be anonymous where, considering the circumstances of the disclosure and the material accompanying the disclosure, there is no reasonably practicable means of communicating with the maker of the disclosure about the disclosure, whether the maker's name is known or not.

Employees can also make a voluntary public interest disclosure to a Minister or member of staff of a Minister, **if the report is in writing**.

In addition, a voluntary public interest disclosure may be made to:

- an integrity agency (see footnote 6 on page 14 of this Procedure for a list of integrity agencies relevant to INSW); or
- a Member of Parliament that is not a Minister, or a journalist - in the limited circumstances outlined below.

### Reports to Members of Parliament or journalists

To have the protections of the PID Act, the disclosure must be substantially true, and an employee making a voluntary public interest disclosure to a Member of Parliament (MP) who is not a Minister, or a journalist **must have already made substantially the same report** to one of the following:

- the INSW CEO; or
- the INSW PID Coordinator; or
- a disclosure officer; or
- a manager or supervisor of the person making the disclosure; or
- a Minister or a member of a Minister's staff.

**Additional requirements** for making voluntary public interest disclosures to an MP or journalist are:

- the previous disclosure was not anonymous; and
- the employee did not waive in writing their right to receive information under section 59<sup>13</sup> of the PID Act; and
- either:
  - the employee has not received the required information from INSW at the end of the 6 months investigation period of the previous disclosure (or 12 months if the employee applied for an internal review); or
  - the employee has been notified by INSW that a decision has been made under section 55(3) of the PID Act not to investigate the serious wrongdoing or to refer the disclosure, or to cease investigate the serious wrongdoing without completing the investigation or referring the disclosure.

### Other external reporting

If employees report wrongdoing to a person or authority that is not listed above or make a report to an MP or journalist without following the steps outlined above, the employee **will not be protected under the PID Act**. This may mean the employee could be in breach of legal obligations or INSW's Code of Conduct by, for example, disclosing confidential information.

## 10.8 Key responsibilities

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<sup>13</sup> Section 59 of the PID Act obliges an agency to provide the maker of a voluntary public interest disclosure with a copy of its Public Interest Disclosure Policy (or direct the person to where it may be accessed) and must inform the person that Division 2 of Part 5 of the PID Act applies to the agency's action in dealing with the disclosure. The agency must also explain how the agency is dealing or proposes to deal with the disclosure, its reasons for an agency decision not to investigate the disclosure, not to refer the disclosure or to cease investigating the serious wrongdoing. The agency must give the person details of any referral of the disclosure, provide updates on an investigation, outcomes of an investigation, if it decides to cease to deal with the disclosure.

## Chief Executive Officer

The Chief Executive Officer (CEO) has ultimate responsibility for maintaining INSW's reporting system and workplace reporting culture and ensuring that INSW complies with the PID Act. The CEO is responsible for ensuring that:

- INSW has a policy that complies with the requirements of Part 4 of the PID Act, and approving the contents of the policy;
- Employees of INSW are aware of the contents of the Policy and the protections under the PID Act for people who make public interest disclosures; and
- INSW complies with the Policy and its obligations under the PID Act, including risk minimisation under section 61 and referring evidence of detrimental action under section 34.

The CEO can receive voluntary public interest disclosures from employees.

## PID Coordinator

The Executive Director Corporate Services is INSW's PID Coordinator, receives and assesses reports, and is the primary point of contact in INSW for the person making a voluntary public interest disclosure.

The PID Coordinator:

- acknowledges receipt of, and assesses, reports to determine whether or not a report should be treated as a voluntary public interest disclosure, and to decide how each report will be dealt with;
- commissions or undertakes any investigation following the assessment of a voluntary public interest disclosure;
- ensures the person making the voluntary public interest disclosure is provided with the information prescribed by section 59 of the PID Act;
- coordinates INSW's response to a voluntary public interest disclosure, including maintaining the confidentiality and security of information, the identity of the person making the voluntary public interest disclosure and the identity of any subject of the disclosure<sup>14</sup>;
- provides updates and feedback to the person making the voluntary public interest disclosure, including keeping them informed of the progress of any investigation at least every 3 months throughout the duration of an investigation;
- undertakes a preliminary risk assessment to minimise the risk of detrimental action, other than reasonable management action, being taken against any person as a result of the disclosure being made, and recommends to the CEO the taking of steps to minimise those risks under section 61 of the PID Act;
- oversees the implementation of steps approved by the CEO to minimise risks of detrimental action;
- where required, provides or coordinates support to employees involved in the reporting or investigation process, including protecting the interests of any officer who is the subject of a report;
- ensures INSW's processes for managing the voluntary public interest disclosure comply with the PID Act; and
- ensures that INSW provides information and reports to the NSW Ombudsman.

<sup>14</sup> The PID Coordinator will ensure there are systems in place to restrict access to all records kept in relation to a report of serious wrongdoing, for security and confidentiality purposes. Only senior INSW managers or executives with a 'need to know' will be given access to Objective workspaces, and any paper documents will be kept in locked cabinets. Sensitive documents created by INSW will be password-protected and passwords will only be shared to those with a 'need to know'. The PID Coordinator will inform INSW employees involved in dealing with the report of serious wrongdoing of the requisite measures.

The Executive Director Corporate Services is responsible for monitoring the effectiveness of this Policy and the Procedure and for ensuring it is reviewed every 2 years.

### Disclosure officers

Disclosure officers and their contact details are listed on the INSW intranet.

Disclosure officers are additional points of contact within the internal reporting system. They can provide advice about the system and the internal reporting policy, receive reports of wrongdoing and assist employees to make reports.

Disclosure officers and all managers/supervisors have a responsibility to:

- document in writing any reports of serious wrongdoing received verbally, and (where possible) have a written report signed and dated by the person making the voluntary public interest disclosure;
- make arrangements to ensure employees can make reports of serious wrongdoing privately and discreetly when requested, if necessary, away from the workplace;
- take steps necessary to maintain the confidentiality and security of information and the identity of the person making the voluntary public interest disclosure and any subject of the disclosure;
- discuss with the person making voluntary public interest disclosure any concerns they may have about possible detrimental action or workplace conflict;
- carry out a preliminary assessment and provide all information to the PID Coordinator for full assessment or to the CEO; and
- implement any measures approved by the CEO for minimising the risk of detrimental action to the person making the voluntary public interest disclosure.

### INSW Management

INSW management plays an important role in managing the immediate workplace of those involved in or affected by the internal reporting process. Management should be aware of this Procedure and the Policy and are responsible for creating a work environment in their locations where employees are comfortable and confident about reporting wrongdoing.

Under the PID Act, all managers/supervisors and the most senior person on site (for each worksite that is permanently maintained by INSW that has more than one employee) is a public official.

All managers/supervisors have a responsibility to:

- encourage employees to report known or suspected wrongdoing within INSW and support employees when they do;
- identify reports made to them in the course of their work which could be voluntary public interest disclosures, and assist the employee to make the report to an officer authorised to receive voluntary public interest disclosures under the Policy;
- take steps necessary to maintain the confidentiality and security of information and the identity of the person making the voluntary public interest disclosure and any subject of the disclosure;
- implement local management strategies, in consultation with the PID Coordinators, to minimise the risk of detrimental action or workplace conflict in relation to a report; and
- notify the PID Coordinator or CEO immediately if they believe an employee is being subjected to any detrimental action as a result of reporting wrongdoing.

#### Note:

*Section 65 of the PID Act requires public officials to use their best endeavours to assist in investigations of serious wrongdoing.*

## 10.9 Communications after you report serious wrongdoing

When you make a report of serious wrongdoing, INSW will contact you to confirm that your report has been received.

In accordance with section 59 of the PID Act, INSW will do the following where INSW decides to deal with your report of serious wrongdoing as a voluntary public interest disclosure:

- provide you with a copy of the Policy and Procedure, or direct you to where you may access the Policy;
- inform you of the following matters, as soon as reasonably practicable<sup>15</sup>:
  - the fact that Division 2 of Part 5 of the PID Act applies to INSW's action in dealing with the disclosure;
  - how INSW is dealing with, or proposes to deal with, the disclosure;
  - if INSW makes a decision neither to investigate the relevant serious wrongdoing nor to refer the disclosure, or to cease investigating the relevant serious wrongdoing without completing the investigating or referring the disclosure;
  - if INSW refers the disclosure, details of the referral;
  - if INSW investigates the relevant serious wrongdoing, updates (at least every 3 months) on the progress of the investigation;
  - if INSW completes an investigation of the relevant serious wrongdoing, a description of the results of the investigation and details of corrective action taken, proposed or recommended; and
  - the reasons for making a decision under section 49(2) of the PID Act for ceasing to deal with a disclosure as a voluntary protected disclosure (if INSW decides to so cease dealing).

INSW will also inform you of the name and contact details of the people who can tell you what is happening or handle any concerns you may have.

If INSW does not accept your report of serious wrongdoing as a voluntary public interest disclosure, INSW will inform you of that, and the reasons for making that decision.

### Progress updates

While your report is being dealt with (such as by investigation or by making other enquiries), you will be given information about the progress of the investigation or other enquiries and reasons for any delay. The PID Act obliges INSW to inform you of the progress of any investigation at least every 3 months throughout the duration of that investigation.

## 10.10 Maintaining confidentiality

Where possible and appropriate, INSW will take steps to keep your identity and the fact you have reported wrongdoing, confidential.

Section 64(2) of the PID Act provides that your identity as the maker of a voluntary public interest disclosure may be disclosed by a public official or an agency in the following circumstances:

- if you consent in writing;
- if your identity is generally known as a result of your voluntary self-identification;
- after consulting with you, if it is reasonably considered necessary to disclose in order to protect a person from detriment;

<sup>15</sup> Except for anonymous disclosure or to the extent that the maker of the disclosure waives in writing the right to receive this information.

- if it is necessary to disclose to a person whose interests are affected by the disclosure;
- if your identifying information has previously been lawfully published;
- if your identifying information is disclosed to a medical practitioner or psychologist for the purpose of providing you with medical or psychiatric care, treatment or counselling;
- for the purposes of Court or Tribunal proceedings;
- if it is necessary to deal with the disclosure effectively; or
- if it is otherwise in the public interest to disclose.

The PID Coordinator will consult with you if it is reasonably considered necessary to disclose your identifying information to protect a person from detriment.

If confidentiality cannot be maintained, INSW will develop a plan to support and protect you from detrimental action.

If you report serious wrongdoing, it is important that you only discuss your report with those responsible for dealing with it which will include the PID Coordinator. The fewer people who know about your report, before and after you make it, the more likely it will be that INSW can protect you from any detrimental action.

Any employees involved in the investigation or handling of a report of serious wrongdoing, including witnesses, are also required to maintain confidentiality and not disclose information about the process or allegations to any person except for those people responsible for handling the report of serious wrongdoing.

## 10.11 Managing the risk of detrimental action and workplace conflict

When an employee reports wrongdoing, INSW will undertake a risk assessment to identify the risk to the person making the report of serious wrongdoing, of detrimental action in reprisal for reporting, as well as indirect but related risks of workplace conflict or difficulties.

The risk assessment will also identify strategies to deal with those risks and determine the level of protection and support that is appropriate. Depending on the circumstances, INSW may:

- relocate the person who reported the serious wrongdoing or the employee who is the subject of the allegation, within the current workplace;
- transfer the person who reported the serious wrongdoing or the employee who is the subject of the allegation, to another position for which they are qualified; or
- grant the person who reported the serious wrongdoing or the employee who is the subject of the allegation, leave of absence during the investigation of the disclosure.

These courses of action are not punishment and will be taken in consultation with the person who made the report of serious wrongdoing.

## 10.12 Responding to allegations of detrimental action

Detrimental action is unlawful. It needs to be reported immediately.

All employees must notify their manager/supervisor, the PID Coordinator or the CEO if they suspect that detrimental action against an employee is occurring or has occurred, or if any such allegations are made to them.

If INSW becomes aware of or suspects that detrimental action is being or has been taken against a person who has made a disclosure, INSW will:

- assess the report of detrimental action to decide whether it should be treated as a PID and whether the matter warrants investigation or if other action should be taken to resolve the issue;

- if the detrimental action allegation warrants investigation, ensure this is conducted by a senior and experienced employee;
- if it is established that detrimental action is occurring against someone who has made a report of serious wrongdoing, take all steps possible to stop that activity and protect the person who make the report;
- take appropriate disciplinary action against anyone proven to have taken or threatened any detrimental action; and
- refer any evidence of an offence under section 33 of the PID Act to the Commissioner of Police and ICAC and notify the NSW Ombudsman under section 34(4) of the PID Act.

If you allege detrimental action, you will be kept informed of the progress and outcome of any investigation or other action taken in response to the allegation.

## 10.13 Corrective action

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

Corrective action can include:

- a formal apology.
- improving internal policies to adequately prevent and respond to similar instances of wrongdoing.
- providing additional education and training to employees where required.
- taking employment action against persons involved in the wrongdoing (such as caution or reprimand, relocation or termination of employment).
- payment of compensation to people who have been affected by serious wrongdoing or other misconduct.

## 10.14 Internal review

To apply for internal review under section 60 of the PID Act, the person who made the disclosure to which INSW decisions under sections 49(1), 49(2) and 55(3) applied must:

- apply for an internal review in writing within 28 days after the day on which you were informed of INSW's decision;
- include in your internal review application the reasons you consider the decision should not have been made;
- email your application for review to the PID Coordinator at [PID@infrastructure.nsw.gov.au](mailto:PID@infrastructure.nsw.gov.au) or deliver a copy marked "Strictly Confidential and Private" to the PID Coordinator, INSW, Level 27, 201 Kent Street, Sydney NSW 2000.

The PID Coordinator will refer the application for internal review to a senior employee who has not been substantially involved in the making of the decision or dealing with your disclosure. The reviewer will conduct the internal review in accordance with section 60 of the PID Act and notify you of their decision.