



Family &
Community Services

Public Interest Disclosures Act 1994

Internal reporting policy

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1. Purpose and context of the policy

The *Public Interest Disclosures Act 1994* (PID Act) sets up a scheme that allows people who work in the NSW public sector to come forward with important information, without fear of reprisal. The Department of Family and Community Services (FACS) is committed to supporting and protecting staff if they report wrongdoing.

This policy describes the way public interest disclosures can be made through an internal reporting system, and how they are managed in FACS. Each Division within FACS has its own reporting procedures.

The key objective of the *Public Interest Disclosures Act 1994* (PID Act) is to encourage the disclosure, in the public interest, of corrupt conduct, maladministration, serious and substantial waste, and government information contraventions by:

- improving established procedures for making disclosures
- protecting people from reprisals simply because they have made a disclosure
- providing for disclosures to be properly investigated and dealt with.

FACS collects information from each Division about the incidence and management of public interest disclosures. The Department is required to report annually to the Parliament and to the NSW Ombudsman on its obligations under the legislation, and provide six-monthly data to the Ombudsman. Individuals are not identified in this process.

2. Organisational commitment

The Department is strongly committed to:

- maintaining a climate of trust where staff are comfortable and confident about reporting wrongdoing
- encouraging staff to come forward if they have witnessed wrongdoing within the organisation
- keeping the identity of staff making reports confidential, as far as possible
- protecting staff who make disclosures from any detrimental action taken because of their report
- dealing with reports thoroughly and impartially and, if some form of wrongdoing has been found, taking appropriate action to rectify it
- keeping reporters informed about the progress of the matter and the outcome
- encouraging staff to report within the organisation, but respecting any decision to make disclosures to investigating organisations, provided that such disclosures are made in accordance with the PID Act
- ensuring managers and supervisors at all levels understand the benefits of reporting wrongdoing, are familiar with this policy, and aware of the needs of those who report wrongdoing
- providing adequate resources, both financial and human, to:
 - encourage reports of wrongdoing
 - protect and support those who make them
 - provide training for key staff

- investigate allegations
- properly manage any workplace issues that the allegations identify or create
- correct any problem that is identified
- review this policy to ensure it is still relevant and effective.

Under the PID Act, the Director General is responsible for ensuring that:

- FACS has an internal reporting policy
- FACS staff are aware of the contents of the policy and the protection under the PID Act for people who make public interest disclosures
- FACS complies with the policy and the Department's obligations under the PID Act.

3. Responsibilities of staff

This policy applies to the Department's:

- permanent employees, whether full-time or part-time
- temporary or casual employees
- individual contractors and consultants working for FACS
- volunteers.

All staff have the responsibility to:

- report known and suspected wrongdoing in FACS
- not make false or misleading reports of wrongdoing
- keep the identity of internal reporters and anyone who is the subject of a report confidential
- assist those dealing with a report, including supplying any information on request
- support staff who report wrongdoing, if you are aware of the report
- not take reprisals against another staff member that you suspect has reported wrongdoing
- notify your manager or supervisor immediately of any suspicions you have that reprisal against an internal reporter is occurring or has been threatened.

a. Role of FACS Disclosures Manager

The FACS Disclosures Manager has a central coordinating role for FACS Divisions. Responsibilities include:

- ensuring that the positions of Disclosures Coordinators and Disclosures Officers within the FACS Divisions are filled
- coordinating the work of the Disclosures Coordinators within the Divisions
- ensuring that the internal reporting policies for each Division are kept up-to-date
- reporting annually on the incidence and management of public interest disclosures within the Department and its Divisions, and providing a copy of that report and other reports as required to the Ombudsman

4. What should be reported?

You should report any wrongdoing you see within FACS. Reports about the four categories of serious wrongdoing – corrupt conduct, maladministration, serious and substantial waste of public money, and government information contravention – will be dealt with under the PID Act as public interest disclosures and according to this policy.

a. Corrupt conduct

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

For example, this 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, biased or breaches public trust.

For more information about corrupt conduct, see the NSW Ombudsman's guideline on [what can be reported](#).

b. 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

For more information about maladministration, see the NSW Ombudsman's guideline on [what can be reported](#).

c. Serious and substantial waste of public money

Serious and substantial waste is the uneconomical, inefficient or ineffective use of resources that could result in the loss or wastage of public resources.

For example, this could include:

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

For more information about serious and substantial waste, see the NSW Ombudsman's guideline on [what can be reported](#).

d. Government information contravention

A government information contravention is a failure to properly fulfil functions under the *Government Information (Public Access) Act 2009* (GIPA 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.

For more information about government information contravention, see the NSW Ombudsman's guideline on [what can be reported](#).

e. Other wrongdoing

Although reports about the previous four categories of conduct can attract the specific protections of the PID Act, you should report all activities or incidents that you believe are wrong.

For example, these could include:

- harassment or unlawful discrimination
- reprisal action against a person who has reported wrongdoing
- practices that endanger the health or safety of staff or the public.

Even if these reports are not dealt with as public interest disclosures, the Department will consider each matter and protect the staff member making the report from any form of reprisal.

You can also make reports about another public authority. You can make this type of report within FACS, to the other organisation, or to a relevant investigating authority (see section 18).

5. When will a report be protected?

FACS will support any staff member who reports wrongdoing. For a report to be considered a public interest disclosure, it has to meet all of the requirements under the PID Act. These requirements are:

- The person making the disclosure must honestly believe on reasonable grounds that the information shows or tends to show wrongdoing. This means that you must have sufficient information to indicate that the wrongdoing has happened or is happening and that there are no alternative explanations for what is observed. You must have seen it happening, had other people also see it happen or have other evidence such as unbalanced accounts, missing items or contradictory records.
- The report has to be made to one or more of the following:
 - Director General, Department of Family and Community Services
 - a FACS Chief Executive
 - a Disclosures Coordinator
 - a Disclosures Officer
 - one of the investigating authorities nominated in the PID Act – see section 10 below

Reports by staff will not be considered to be public interest disclosures if they:

- mostly question the merits of government policy
- are made with the sole or substantial motive of avoiding dismissal or other disciplinary action.

6. How to make a report

You can report wrongdoing in writing or verbally. You are encouraged to make a report in writing as this can help to avoid any confusion or misinterpretation.

If a report is made verbally, the person receiving the report must make a comprehensive record of the disclosure and ask the person making the disclosure to sign it. You should keep a copy of this record.

If you are concerned about being seen making a report, ask to meet in a discreet location away from the workplace.

7. Can a report be anonymous?

There will be some situations where you may not want to identify yourself when you make a report. Although these reports will still be dealt with by FACS, it is best if you identify yourself. This allows us to provide you with any necessary protection and support, as well as feedback about the outcome of any investigation into the allegations.

It is important to realise that an anonymous disclosure may not prevent you from being identified. If we do not know who made the report, it is very difficult for us to prevent any reprisal action.

8. Maintaining confidentiality

FACS realises most staff making a report will want their report to remain confidential. This can help to prevent any action being taken against you for reporting wrongdoing.

We are committed to keeping your identity, and the fact you have reported wrongdoing, confidential. However there may be situations where this may not be possible or appropriate. We will discuss with you whether it is possible to keep your report confidential.

If confidentiality cannot be maintained, we will develop a plan to support and protect you from risks of reprisal. We will involve you in developing this plan.

If you report wrongdoing, you should only discuss your report with those dealing with it. Although you may wish to share your concerns with other people, it is generally better to keep to yourself the fact that you have made a report. The fewer people who know, the greater the chance that your report will remain confidential.

9. Who can receive a report within FACS?

You are encouraged to report general wrongdoing to your supervisor. However the PID Act requires that – for a report to be a public interest disclosure – it must be made to a public official in accordance with the organisation’s disclosure procedures. For FACS this means this policy and the Divisions’ internal reporting procedures.

Any supervisor who receives a report that they believe may be a public interest disclosure must refer the staff member making the report to one of the positions listed below.

The following positions are the only staff within FACS who can receive a public interest disclosure.

a. Principal Officers

You can report wrongdoing directly to a Principal Officer (i.e. the Director General, or a Division Chief Executive) who is responsible for:

- deciding whether a report is a public interest disclosure
- determining what needs to be done next, including referring it to other authorities
- deciding what needs to be done to correct any problem that has been identified.

The Principal Officer must make sure there are systems in place in FACS to support and protect staff who report wrongdoing.

The Principal Officer is also responsible for referring actual or suspected corrupt conduct to the Independent Commission Against Corruption.

b. Disclosures Coordinators

Each Division has a nominated Disclosures Coordinator who has a central role in dealing with reports made by staff. The Coordinator receives them, assesses them, and refers them to the people within FACS who can deal with them. The Coordinator also tracks the investigation and resolution of reports, and makes sure that appropriate support and protection actions are taken.

c. Disclosures Officers

Disclosures Officers receive and forward reports to the relevant Disclosures Coordinator for assessment. A current list of FACS disclosure officers will be maintained on the FACS Intranet.

10. Who can receive a report outside FACS?

You are encouraged to report wrongdoing within FACS, but internal reporting is not your only option. If you follow the guidance below, your report can still be a public interest disclosure.

You can choose to make your report to an investigating authority. You can do this first, or at any stage after your initial report to FACS. If your report is about a Principal Officer, you should make it to an investigating authority.

You can also choose to make a report to a Member of Parliament or a journalist, but only in limited circumstances.

a. Investigating authorities

The PID Act lists a number of investigating authorities in NSW that staff can report wrongdoing to and the categories of wrongdoing each authority can deal with.

These authorities include:

- the Auditor-General — for serious and substantial waste
- the Independent Commission Against Corruption (ICAC) — for corrupt conduct
- the Ombudsman — for maladministration
- the Police Integrity Commission (PIC) — for police misconduct
- the Information Commissioner — for disclosures about a government information contravention.

You should contact the relevant authority for advice about how to make a disclosure to them. Contact details for each investigating authority are provided at the end of this policy.

You should be aware that it is very likely the investigating authority will discuss the case with FACS. We will make every effort to assist and cooperate with the investigating authority to ensure the matter is dealt with appropriately and there is a satisfactory outcome. We will also provide appropriate support and assistance to staff who report wrongdoing to an investigating authority.

b. Members of Parliament or journalists

To have the protections of the PID Act, staff reporting wrongdoing to a Member of Parliament (MP) or a journalist must have already made substantially the same report to one of the following:

- a Principal Officer
- a Disclosures Coordinator

- a Disclosures Officer
- an investigating authority in accordance with the PID Act.

Also, FACS or the investigating authority that received the report must have either:

- decided not to investigate the matter
- decided to investigate the matter, but not completed the investigation within six months of the original report
- investigated the matter but not recommended any action as a result
- not told the person who made the report, within six months of the report being made, whether the matter will be investigated.

Most importantly – to be protected under the PID Act – if you report wrongdoing to an MP or a journalist you will need to be able to prove that you have reasonable grounds for believing that the disclosure is substantially true and that it is in fact substantially true.

If you report wrongdoing to a person or an organisation that is not listed above, you will not be protected under the PID Act. This may mean you will be in breach of legal obligations or FACS' code of conduct – by, for example, disclosing confidential information.

For more information about reporting wrongdoing outside FACS, contact the NSW Ombudsman's Public Interest Disclosures Unit on 02 9286 1000.

11. Feedback to staff who report wrongdoing

Staff who report wrongdoing will be told what is happening in response to their report.

When you make a report, you will be given:

- an acknowledgement that your disclosure has been received
- the timeframe for when you will receive further updates
- the name and contact details of the people who can tell you what is happening.

The PID Act requires that you are provided with an acknowledgement letter and a copy of this policy within 45 days after you have made your report. We will attempt to get this information to you within two working days from the date you make your report.

After a decision is made about how your report will be dealt with, you will be given:

- information about the action that will be taken in response to your report
- likely timeframes for any investigation
- information about the resources available within FACS to handle any concerns you may have
- information about external agencies and services you can access for support.

This information will be given to you within 10 working days from the date you make your report.

During any investigation, you will be given:

- information on the ongoing nature of the investigation
- information about the progress of the investigation and reasons for any delay
- advice if your identity needs to be disclosed for the purposes of investigating the matter, and an opportunity to talk about this.

At the end of any investigation, you will be given:

- enough information to show that adequate and appropriate action was taken and/or is proposed to be taken in response to your disclosure and any problem that was identified
- advice about whether you will be involved as a witness in any further matters, such as disciplinary or criminal proceedings.

12. Protection against reprisals

The PID Act provides protection for people reporting wrongdoing by imposing penalties on anyone who takes detrimental action substantially in reprisal for them making the public interest disclosure.

The Department will not tolerate any reprisal action against staff who report wrongdoing. The criminal penalties that can be imposed include imprisonment or fines. Detrimental action is also misconduct that justifies disciplinary action. People who take detrimental action against someone who has made a disclosure can also be required to pay damages for any loss suffered by that person.

Detrimental action means action causing, comprising or involving any of the following:

- injury, damage or loss
- intimidation or harassment
- discrimination, disadvantage or adverse treatment in relation to employment
- dismissal from, or prejudice in, employment
- disciplinary proceedings.

a. Responding to reprisals

The Department will act to protect staff who report wrongdoing from reprisals.

When a report is received, we will ensure that a thorough risk assessment is conducted. This will identify any risks to the member of staff who reported the wrongdoing, as well as strategies to deal with those risks.

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 should tell your supervisor, if they know about the report, a Disclosures Coordinator or a Principal Officer immediately.

All supervisors must report any suspicions they have that reprisal action against a staff member is occurring, or any reports that are made to them, to a Disclosures Coordinator or a Principal Officer.

If a Disclosures Coordinator becomes aware of reprisal action against a person who has made a disclosure, they will:

- ensure a senior and experienced member of staff, who has not been involved in dealing with the initial disclosure, will investigate the suspected reprisal
- give the results of that investigation to the relevant Principal Officer for a decision
- if it has been established that reprisal action is occurring against someone who has made a disclosure, take all steps possible to stop that activity and protect the member of staff who made the disclosure
- arrange for appropriate disciplinary or criminal action to be taken against anyone proven to have taken or threatened any action in reprisal for making a disclosure.

If you report reprisal action, you will be kept informed of the progress of any investigation and the outcome.

The Principal Officer may issue specific directions to help protect against reprisals, including:

- issuing warnings to those alleged to have taken reprisal action against the member of staff who made the disclosure
- relocating the member of staff who made the disclosure or the subject officer within the current workplace
- transferring the member of staff who made the disclosure or the staff member who is the subject of the allegation to another position for which they are qualified
- granting the member of staff who made the disclosure or the subject officer leave of absence during the investigation of the disclosure.

If you have reported wrongdoing and feel that any reprisal action is not being dealt with effectively, contact the Ombudsman or the ICAC, depending on the type of wrongdoing you reported. Contact details for all these investigating authorities are included at the end of this policy.

b. Protection against legal action

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.

13.Support for those reporting wrongdoing

The Department will make sure that staff who have reported wrongdoing, regardless of whether they have made a public interest disclosure, are given access to any professional support they may need as a result of the reporting process, such as stress management, counselling services, legal advice or career advice.

A support person will be appointed for each person who reports wrongdoing. This person is responsible for providing and organising additional support, particularly to those who are suffering any form of reprisal.

14.Sanctions for making false or misleading disclosures

It is important that all staff are aware that it is a criminal offence under the PID Act to wilfully make a false or misleading statement when reporting wrongdoing.

15.Support for the subject of a report

The Department is committed to ensuring staff who are the subject of a report of wrongdoing are treated fairly and reasonably. If you are the subject of a report, you will be:

- treated fairly and impartially
- told your rights and obligations under our policies and procedures
- kept informed during any investigation
- given the opportunity to respond to any allegation made against you
- told the result of any investigation.

16.Review

This policy will be reviewed every twelve to eighteen months, in line with the NSW Ombudsman's review of their model policy.

17. More information

Staff can get advice and guidance from a Disclosures Coordinator, a Disclosures Officer and the NSW Ombudsman's website at www.ombo.nsw.gov.au.

18. Resources

Contact details for external investigating authorities that staff can make a public interest disclosure to, or seek advice from.

For disclosures about corrupt conduct:

Independent Commission Against Corruption (ICAC)
Phone: 02 8281 5999
Toll free: 1800 463 909
Tel. typewriter (TTY): 02 8281 5773
Facsimile: 02 9264 5364
Email: icac@icac.nsw.gov.au
Web: www.icac.nsw.gov.au
Address: Level 21, 133 Castlereagh Street,
Sydney NSW 2000

For disclosures about maladministration:

NSW Ombudsman
Phone: 02 9286 1000
Toll free (outside Sydney metro): 1800 451 524
Tel. typewriter (TTY): 02 9264 8050
Facsimile: 02 9283 2911
Email: nswombo@ombo.nsw.gov.au
Web: www.ombo.nsw.gov.au
Address: Level 24, 580 George Street, Sydney NSW
2000

For disclosures about serious and substantial waste:

Auditor-General of the NSW Audit Office
Phone: 02 9275 7100
Facsimile: 02 9275 7200
Email: mail@audit.nsw.gov.au
Web: www.audit.nsw.gov.au
Address: Level 15, 1 Margaret Street, Sydney NSW
2000

For disclosures about breaches of the GIPA Act:

Information Commissioner
Toll free: 1800 463 626
Facsimile: 02 8114 3756
Email: oinfo@oic.nsw.gov.au
Web: www.oic.nsw.gov.au
Address: Level 11, 1 Castlereagh Street, Sydney NSW
2000

For disclosures about police misconduct:

Police Integrity Commission (PIC)
Phone: 02 9321 6700
Toll free: 1800 657 079
Facsimile: 02 9321 6799
Email: contactus@pic.nsw.gov.au
Web: www.pic.nsw.gov.au
Address: Level 3, 111 Elizabeth Street, Sydney NSW
2000