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NSW Police Force

Making a voluntary public interest disclosure (PID) to the NSW Police Force

Professional Standards Command

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Summary

Under *section 42* of the *Public Interest Disclosures Act 2022* all NSW government agencies must have a public interest disclosure policy.

Agencies must have regard to the NSW Ombudsman's model policy and guidelines when developing their own policy and guidelines documents.

This document has been prepared taking into account the following:

- *Public Interest Disclosures Act 2022*
- NSW Ombudsman Model PID Policy
- *Law Enforcement Conduct Commission Act 2016*
- *Part 8A* of the *Police Act 1990*
- *S211F* of the *Police Act 1990*
- *Government Sector Employment Act 2013*.

Document Control Sheet

Document Properties

Title	Making a voluntary public interest disclosure (PID) to the NSW Police Force
Subject	How to make a voluntary PID to the NSW Police Force and protections that apply
Command responsible	Professional Standards Command
Authorisation	Assistant Commissioner, Professional Standards
Security Classification	OFFICIAL
Publication date	May 2024
Current version number	Version 1
Review date	March 2027
Document RMS number	D/2024/637068
Linked RMS folder	F/2023/54392
Copyright statement	© Crown in right of NSW through NSW Police Force 2024
Suitable for Public Disclosure	YES

Modification History

Version #	Version creation date	Author / Position	Summary of changes
1	[01/05/2024		Original Version

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Purpose

To state the NSW Police Force position on receiving a voluntary PID in compliance with *section 42* of the *Public Interest Disclosures Act 2022*.

Scope

Applies to all public officials intending to make a voluntary PID to the NSW Police Force.

Commissioner of Police	<ul style="list-style-type: none"> Foster a workplace where reporting misconduct and maladministration (including serious wrongdoing) is encouraged.
Assistant Commissioner, Professional Standards	<ul style="list-style-type: none"> Ensure there is a system in place for assessing voluntary PIDs. Ensure the NSWPF has appropriate systems in place to deal with allegations of misconduct and maladministration (which includes serious wrongdoing under the PID Act) under: <ul style="list-style-type: none"> <i>Public Interest Disclosures Act 2022</i> <i>Part 8A of the Police Act 1990</i> <i>s211F of the Police Act 1990</i> (duty to report misconduct and maladministration) <i>Law Enforcement Conduct Commission Act 2016</i> section 14 agreement between the NSW Police Force and the Law Enforcement Conduct Commission <i>Government Sector Employment Act 2013</i> (GSE Act). Ensure compliance with yearly statistical reporting obligations to the NSW Ombudsman.
All commanders	<ul style="list-style-type: none"> Deal with voluntary PIDs in accordance with instructions issued by Professional Standards Command disclosure officers and the NSWPF Misconduct Management Framework Conduct risk assessments in accordance with the <i>Public Interest Disclosures Act 2022</i> Comply with s169A of the Police Act 1990 Investigate detrimental action offences.
Disclosure officers attached to the Professional Standards Command	<ul style="list-style-type: none"> Receive voluntary PIDs from public officials. Receive voluntary PIDs referred by a Minister or member of a Minister's staff. Receive voluntary PIDs referred to the NSWPF by the Law Enforcement Conduct Commission.

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	<ul style="list-style-type: none">• Assess voluntary PIDs and prepare compliance instructions.• Refer voluntary PIDs to the appropriate command.• Collate and submit annual statistics to the NSW Ombudsman.
Professional standards managers and professional standards duty officers/inspectors (not attached to the Professional Standards Command)	<ul style="list-style-type: none">• Deal with voluntary PIDs in accordance with instructions issued by Professional Standards Command disclosure officers.• No responsibility to receive or assess voluntary PIDs.
Managers <ul style="list-style-type: none">• A member with direct reports• Sergeant or above and more senior in rank• Commander/unit head	<ul style="list-style-type: none">• Refer written reports about misconduct or serious maladministration to a professional standards duty officer, professional standards manager or commander/unit head as per normal Misconduct Management Framework procedures.• Not required to identify or assess voluntary PIDs.
All members of the NSWPF	<ul style="list-style-type: none">• Report all misconduct or maladministration• Use best endeavours to assist in an investigation of serious wrongdoing if asked to do so by a person dealing with a voluntary PID• Treat any person dealing with or investigating reports of serious wrongdoing with respect.• Must not take detrimental action against any person who has made, may in the future make, or is suspected of having made, a PID

Legal and legislative framework

All agencies in NSW are required to have a Public Interest Disclosure Policy (**PID policy**) under *section 42* of the *Public Interest Disclosures Act 2022 (PID Act)*.

The NSWPF Force deals with reports of misconduct and maladministration by its members under *Part 8A* of the *Police Act 1990* and the *Law Enforcement Conduct Commission Act 2016*. This is known as the NSWPF Misconduct Management Framework.

This policy adds to the existing NSW Police Force (**NSWPF**) Misconduct Management Framework and must be read in conjunction with:

- *Part 8A* of the *Police Act 1990*
- *s211F* of the *Police Act 1990*
- *Law Enforcement Conduct Commission Act 2016*
- section 14 agreement between the NSW Police Force and the Law Enforcement Conduct Commission under the LECC Act
- *Government Sector Employment Act 2013*.

Important note: The PID Act does not protect a member of the NSWPF who fails to comply with the statutory duty to report under s211F (see s7(2) of the PID Act).

Accessibility

This policy is available on the NSWPF publicly available website.

Members of the NSWPF can access this policy and other resources through the Professional Standards Command intranet site.

Applicability

Types of PIDS

There are three types of PIDs in the PID Act. These are:

1. **Voluntary PID:** a report of serious wrongdoing made by a public official because they decided, of their own accord, to come forward and disclose what they know.
2. **Mandatory PID:** a public official has made a report about serious wrongdoing because they have a legal obligation to make that report e.g. under s211F of the Police Act 1990, or because making that report is an ordinary aspect of their role or function e.g. through a COPS audit.
3. **Witness PID:** a person discloses information during an investigation of serious wrongdoing following a request or requirement of the investigator.

Important note: This policy only relates to making a **voluntary PID** and how the NSWPF will deal with voluntary PIDs.

When does this policy apply?

This policy only applies to voluntary PIDs received:

- from a member of the NSWPF about serious wrongdoing by an NSWPF administrative officer - excluding reports made as part of the ordinary requirements of the member's official role or function. For example, where serious wrongdoing is identified in a COPS audit report.
- from a Minister or member of a Minister's staff
- from a public official who is not a member of the NSWPF
- via a referral to the NSWPF by an integrity agency, including the LECC.

When does this policy not apply?

This policy does not apply to:

- allegations by members of the public who are not public officials
- s211F reports by members of the NSWPF about police officers
- reports submitted as part of a public official's normal role or function.

What is contained in this policy?

This policy provides information on the following:

- the roles and responsibilities of people who hold particular roles under the PID Act
- ways to make a voluntary PID to the NSWPF
- procedures for dealing with voluntary PIDs
- what information will be provided to a maker of a voluntary PID
- protections available under the PID Act
- managing the risk of detrimental action and reporting detrimental action
- record-keeping and reporting requirements
- how the NSWPF complies with the PID Act and this policy.

General information about how public interest disclosures are handled under the PID Act can be obtained from the PID Advice Team, NSW Ombudsman's Office by phone: 9286 1000 or email: pidadvice@ombo.nsw.gov.au.

How the NSWPF will ensure compliance with the PID Act and this policy

A disclosure of serious wrongdoing under the PID Act will be dealt with under the Misconduct Management Framework.

The Misconduct Management Framework is oversighted and audited by the LECC to ensure that all allegations about members of the NSWPF are managed properly.

The Professional Standards Command includes a team of experienced officers who provide advice and guidance to relevant regions and specialist area professional standards units to promote compliance with legislation. It also maintains and promotes policies and guidelines concerning misconduct and maladministration; undertakes process quality reviews of all matters registered on the NSWPF Misconduct Matters Information System (**MMIS**); and provides training to all levels of the NSWPF.

Reporting serious wrongdoing

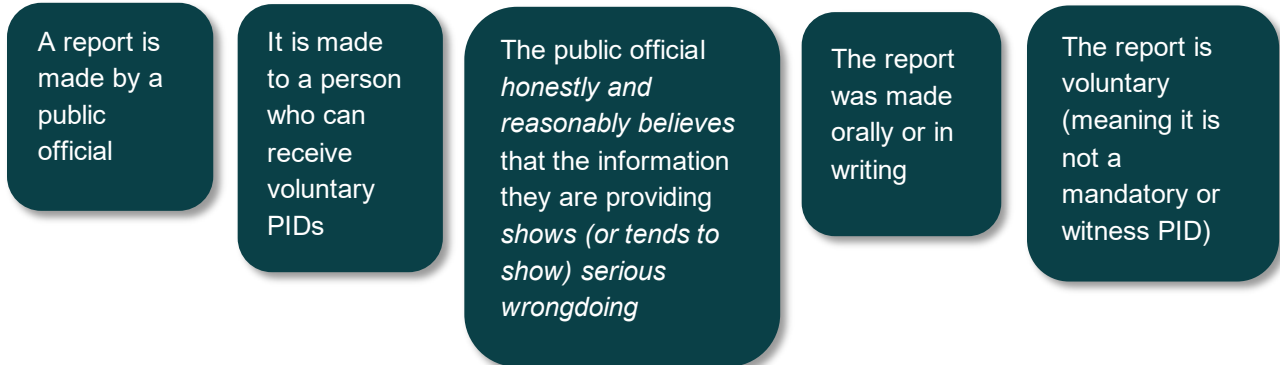
Features of a voluntary PID

Voluntary PIDs are the kind of PIDs most people have in mind when they think about public interest reporting and 'whistleblowing'.

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They involve a public official making a report because they have information that they believe shows (or tends to show) serious wrongdoing, where they are not under a legal obligation to make that report and where it is not an ordinary part of their role to report such wrongdoing.

A report is a voluntary PID if it has the following five features, which are set out in sections 24 to 27 of the PID Act:



A maker is not expected to prove serious wrongdoing actually happened or that it is serious wrongdoing. But the maker must honestly believe, on reasonable grounds, that the information provided shows or tends to show serious wrongdoing. A mere allegation with no supporting information is unlikely to meet this test.

Who can make a voluntary PID?

Any public official can make a voluntary PID. A public official is:

- 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
- an employee, partner or officer of an entity that provides services, under contract, subcontract or other arrangement, on behalf of an agency or exercises functions of an agency, and are involved in providing those services or exercising those functions
- a judicial officer
- a Member of Parliament, including a Minister
- a person employed under the *Members of Parliament Staff Act 2013*.

A public official can make a PID about serious wrongdoing relating to *any* agency, not just the agency they are working for. This means that you can make a PID to any agency, including an integrity agency like the LECC, Independent Commission Against Corruption and the NSW Ombudsman. Annexure B of this policy has a list of integrity agencies.

Information to include in a voluntary PID

A disclosure should provide as much information as possible so that the NSWPF can deal with the report effectively. The type of information that should be included is:

- date, time and location of key events

- names of person(s) involved in the suspected wrongdoing, their role, title and how they are involved
- the maker's relationship with the involved officers e.g. close working relationship; supervisor
- an explanation of the serious wrongdoing
- how the maker became aware of the serious wrongdoing
- names of witnesses
- other information that supports the disclosure.

What is serious wrongdoing?

Not all types of serious wrongdoing are PIDs under the PID Act. Serious wrongdoing is defined in the PID Act as:

Corrupt conduct

In general, this is conduct that is intentionally dishonest, biased or partial, is a breach of public trust, or involves a misuse of information or materials. It might include offering or accepting a bribe, using influence dishonestly, committing fraud, or embezzling money.

Serious maladministration

Conduct by an agency or a public official, that relates to a matter of administration that is unlawful, unreasonable, unjust, oppressive, improperly discriminatory or based wholly or partly on improper motives. Serious maladministration might involve deliberately disregarding agency processes and policies to make an agency decision.

A government information contravention

This happens when someone fails to properly exercise their functions under the GIPA Act, the Government Information (Information Commissioner) Act, or the State Records Act. It could include destroying, concealing or altering records, knowingly making decisions that are contrary to the GIPA Act, or directing another person to do so.

A privacy contravention

This applies to a breach of privacy, when secure information or data is stolen, lost, collected, sold, used or disclosed without authority.

A serious and substantial waste of public money

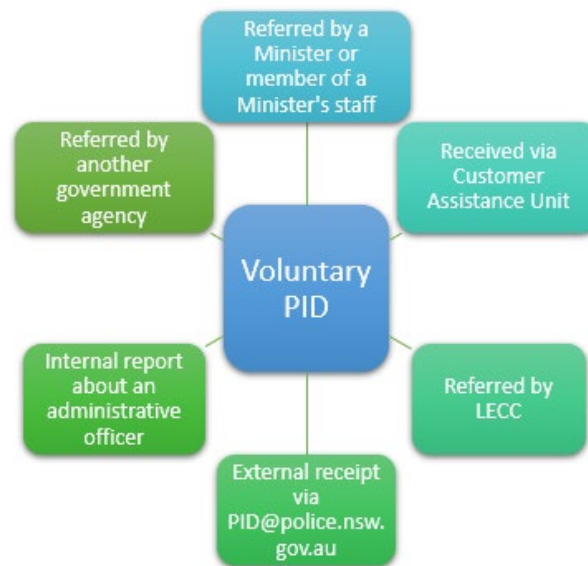
This is uneconomical, inefficient or ineffective use of resources that could result in the loss of public funds or resources — like not following a competitive tendering process for a largescale project, which results in the procurement of a product that is not value for money.

A local government pecuniary interest contravention

This means failure to fulfil requirements that relate to the management of pecuniary interests under the Local Government Act. A pecuniary interest is a personal monetary interest a person has in a matter, because there is a reasonable likelihood or expectation they may make a financial gain or loss.

Acknowledging receipt of a voluntary PID

The NSWPF receives voluntary PID's via the following pathways:



A member of the NSWPF will make a disclosure in accordance with the Misconduct Management Framework to a professional standards duty officer, professional standards manager, or commander/unit head.

A public official who is not a member of the NSWPF can make a voluntary PID to the NSWPF by emailing the disclosure to PID@police.nsw.gov.au

If the NSWPF receives a PID directly (not via another agency) it will provide the maker with an acknowledgment that the disclosure report has been received. This acknowledgement will:

- indicate that the report will be assessed to identify whether it is a voluntary PID
- state that the disclosure will be dealt with under *Part 8A* of the *Police Act 1990* and the *Law Enforcement Conduct Commission Act 2016*
- provide clear information on how you can access this PID policy
- provide details of the command that the matter has been referred to for investigation
- provide a reference number
- provide information regarding how the disclosure will be dealt with. This may include that the disclosure is:
 - being investigated by the NSWPF
 - has been notified to LECC under s14 of the LECC Act
 - will be overseen by the LECC
 - has been referred to another agency

If the NSWPF decides **not** to investigate or refer the disclosure reasons will be provided. The NSWPF will notify the NSW Ombudsman and the LECC of this decision.

Dealing with a voluntary PID

A voluntary PID is dealt with in accordance with the NSWPF Misconduct Management Framework.

The LECC is notified and will oversight the disclosure. If it is not satisfied the disclosure is being handled appropriately it may:

- ask the NSWPF to further investigate
- take over the investigation
- investigate other issues
- make a report to the Minister or a public report to the NSW Parliament.

If the NSWPF decides to investigate a voluntary PID, an update will be provided to the maker every three months.

Protections

How is the maker of a voluntary PID protected?

The table below¹ provides an overview of the protections available for each category of PID.

Protection	Voluntary PID	Mandatory PID	Witness PID
Detrimental action – it is an offence to take detrimental action against a person based on suspicion, belief, or awareness that a person has made, may have made, or may make a PID.	✓	✓	✓
Right to compensation – a person can initiate proceedings and seek compensation for injury, damage, or loss, suffered because of detrimental action being taken against them.	✓	✓	✓
Ability to seek preventative injunction - an injunction can be sought to prevent the commission, or possible commission, of a detrimental action offence against a person.	✓	✓	✓
Confidentiality – information that may identify a person as the maker of a voluntary PID cannot be disclosed by a public official or an agency, except in specific circumstances.	✓	✗	✗
Immunity from civil and criminal liability - a person will not incur civil or criminal liability in relation to making a disclosure. This means that legal action cannot be taken against a person for: <ul style="list-style-type: none"> • breaching a duty of secrecy or confidentiality; or • breaching another restriction on disclosure. 	✓	✓	✓
Protection from liability for own past conduct - if a person discloses their own wrongdoing or misconduct while they are making a PID, they are <i>not</i> protected from liability for their own past conduct.	Can only be provided by the Attorney General		

¹ Source – <https://www.ombo.nsw.gov.au/guidance-for-agencies/pid-act-2022/protections-under-the-pid-act>

Identity Protection

The NSWPF has in place a system for protecting the identity of persons who make allegations of misconduct or maladministration about its members (whether or not the disclosure is a voluntary PID).²

The NSWPF will only disclose identifying information:

- if the maker consents in writing
- if the maker has already self-identified
- when it is reasonably necessary to protect a person from detriment
- where it is necessary the information be disclosed to a person whose interests are affected by the disclosure
- where the information has previously been lawfully published
- to a medical practitioner or psychologist for the purposes of providing medical or psychiatric care, treatment or counselling to the individual disclosing the information
- for the purposes of proceedings before a court or tribunal
- when necessary to deal with the disclosure effectively
- if it is otherwise in the public interest to disclose the identifying information.

Protection from detrimental action

Detrimental action against a person is an act or omission that causes, comprises, involves or encourages detriment to a person or a threat of detriment to a person (whether express or implied). Detriment to a person includes:

- injury, damage or loss
- property damage
- reputational damage
- intimidation, bullying or harassment
- unfavourable treatment in relation to another person's job
- discrimination, prejudice or adverse treatment
- disciplinary proceedings or disciplinary action, or
- any other type of disadvantage.

Detrimental action does not include:

- lawful action taken by a person or body to investigate serious wrongdoing or other misconduct
- the lawful reporting or publication of a finding of serious wrongdoing or other misconduct
- the lawful making of adverse comment, resulting from investigative action
- the prosecution of a person for a criminal offence
- reasonable management action taken by someone in relation to a person who made or may make a PID. For example, a reasonable appraisal of a PID maker's work performance.

A detrimental action offence is a criminal offence and is punishable by a maximum penalty of 200 penalty units or imprisonment for five years or both.

² S169A of the **Police Act 1990**

Risk assessment

When a voluntary PID has been made by a member of the NSWPF, a risk assessment will be conducted.

The NSWPF will assess and take reasonable steps to mitigate detrimental action (other than reasonable management action) from being taken against the maker and the involved officer.

Commands dealing with a voluntary PID will arrange primary support for all members of the NSWPF affected by a voluntary PID.

Where appropriate a command may also contact the Internal Witness Support Unit. The matter will be assessed by that unit and dealt with as per the Internal Witness Support Guidelines. Eligibility to join the IWSU program will be assessed as per usual processes.

Support

All members affected by the disclosure are able to seek assistance from other authorised sources such as the Employee Assistance Program, peer support officers, NSWPF chaplains or their general practitioner.

Members of the NSW Police can find information about the support services available through this link: [Support services \(nsw.gov.au\)](https://www.nsw.gov.au/support-services)

Reporting a detrimental action offence

If detrimental action taken against a person by a member of the NSWPF, it should be reported to the officer who investigated or is investigating the PID.

The NSWPF will:

- register the allegation on the MMIS and deal with the allegation under the Misconduct Management Framework
- take all practical steps possible to stop the action and protect the person(s)
- notify the LECC of the allegation under s14 of the LECC Act
- notify the NSW Ombudsman.

Important note: a person who makes a PID can still be subject to reasonable management action (such as performance reviews and performance management). Provided such action is not taken because of the PID, it is not detrimental action under the PID Act.

Making a voluntary PID to an MP or a journalist

A public official can make a voluntary PID to an MP or journalist if the public official previously made substantially the same disclosure to a person who can receive disclosures; and

- the previous disclosure was a voluntary PID; and
- the substance of the previous disclosure was true in fact. That is, the serious wrongdoing did, in fact, occur. If the allegation is not in fact true, then the report to the MP or journalist will not be a PID and the person who made the PID will not be protected under the PID Act (even if the person who made the report honestly believed it was true and even if they had reasonable grounds for that belief); and

- the NSWPF notified the public official it would not investigate the serious wrongdoing or refer it to another agency; or
- the NSWPF did not provide with the required information at the end of the *investigation period*.

Required information is:

- notice of the NSWPF decision to investigate the alleged serious wrongdoing
- a description of the results of any investigation into the alleged serious wrongdoing
- details of proposed or recommended corrective action as a result of the previous disclosure or investigation.

Investigation period means:

- 6 months from the date of the previous disclosure or 12 months from the date of an application for internal review.

A public official cannot make a voluntary PID to an MP or journalist if:

- the previous disclosure was a mandatory PID e.g. s211F report, audit report, supervisor's report; or
- the previous disclosure was a witness PID; or
- the previous disclosure was made anonymously; or
- the maker gave a written waiver of the right to receive information relating to the previous disclosure.

A finding that serious wrongdoing has occurred

If, after an investigation, the NSWPF finds that serious wrongdoing has occurred, the NSWPF will take the most appropriate action to address that serious wrongdoing. 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 serious wrongdoing
- providing additional education and training to staff where required
- taking management action against members of the NSWPF.

There may be some details about both the findings made as a result of the investigation and the corrective action taken that cannot be disclosed.

Internal review

A public official may seek an internal review of the following decisions made by the NSWPF:

- that the NSWPF is not required to deal with a disclosure as a voluntary PID
- to stop dealing with a disclosure because the NSWPF decided it was not a voluntary 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.

An application must be made within 28 days of being informed of the decision. The application should state the reasons why the decision should not have been made and attach any other relevant material.

Applications for review should be sent to PID@police.nsw.gov.au.

Record-keeping requirements

The NSWPF keeps full and accurate records of all voluntary PIDs on the 'misconduct matters information system' (**MMIS**). The LECC has access to the MMIS to perform its statutory oversight functions.

Annual return to the Ombudsman

Each year the NSWPF provides an annual return to the NSW Ombudsman which includes:

- information about voluntary PIDs received by the NSWPF during each return period (yearly with the start date being 1 July)
- action taken by the NSWPF to deal with voluntary PIDs during the return period
- how the NSWPF promoted a culture in the workplace where reporting misconduct and maladministration is encouraged.

The Professional Standards Command is responsible for collecting information about voluntary PIDs, and preparing an annual return.

NSW Police Force disclosure officers and addresses

A public official who is not a member of the NSWPF can make a voluntary PID by email to PID@police.nsw.gov.au

A Minister or member of Minister's staff can forward a voluntary PID by email to PID@police.nsw.gov.au

A government agency can refer a voluntary PID by email to PID@police.nsw.gov.au

An integrity agency can forward a voluntary PID by email to PID@police.nsw.gov.au

Members of the NSWPF can make a voluntary PID to:

- Assistant Commissioner, Professional Standards
- All professional standards managers, except the professional standards manager attached to the Professional Standards Command
- Manager, Administrative Officer Conduct Unit, Professional Standards Command
- Misconduct Services Unit, Professional Standards Command.

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 misconduct and serious maladministration by members of the NSW Police Force or the NSW Crime Commission Serious maladministration by the NSW Police Force	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: oilccec_executive@oilccec.nsw.gov.au
Office of the Local Government	Local government pecuniary interest contraventions	Email: olg@olg.nsw.gov.au

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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