



## **NSWIS**

### **Fraud, Corruption and Public Interest Disclosures Policy**

**Policy endorsed by Exec: June 2020**

**Policy approved by Board:**

**CEO:** \_\_\_\_\_  
(signature)

**Next formal review by Exec: June 2022**

#### **Policy Author and Contact person for more information:**

1. Manager, Financial Services and  
Manager, Information Technology and  
Operations

**NOTE:** Any agreed changes to the Policy approved by the Executive and Board between the date of issue and the date for next review are to be updated and made available to all staff for advice.

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## Policy Statement

**The NSW Institute of Sport (NSWIS) is committed to maintaining the highest standards of ethical and accountable conduct and will support all staff who report wrongdoing.**

**In doing so, NSWIS will safeguard the trust and confidence of the community by preventing, addressing and reporting any unethical behaviour.**

NSWIS is committed to:

- minimising the opportunities for fraudulent and/or corrupt conduct via a clear framework for fraud and corruption control
- investigating, addressing and reporting any unethical behaviour
- providing a safe environment for employees to report unethical behaviour without reprisal
- reporting conduct in accordance with NSW legislation and government regulations and, where appropriate, to NSW Police

## Scope

This Policy applies to all employees, fee for service contractors, interns, volunteers and board and committee members.

Individuals who are engaged as contractors, or are employed by a contractor, to provide a service to a public authority are also included within scope and can make a public interest disclosure or be the subject of one.

The *NSWIS Code of Conduct* and *Ethics for Public Sector Executives* provides a framework for ethical decision-making and sets out the values and behaviours expected of all state public employees in NSW. The code is underpinned by the ethical principles of integrity, impartiality, responsiveness to the public interest, accountability and honesty.

It states that executives have special responsibilities for demonstrating ethical behaviour by virtue of their positions of authority, and high levels of accountability for decision-making and leadership. Implementing the provisions of the [\*Public Interest Disclosures Act 1994\*](#) (PID Act) is one element of this commitment.

The Institute's Code of Conduct aligns with the requirements of NSW public sector employees.

As an NSW Public Sector Agency, NSWIS must also develop, implement and maintain a fraud and corruption control framework to prevent, detect and manage fraud and corruption. This Policy sets out the minimum requirements necessary for NSWIS to maintain an appropriate system of fraud and corruption control.

## Approach to Fraud and Corruption Prevention

This Policy clearly outlines the responsibilities for managing fraud and corruption as well as the systems and processes that are in place to investigate and report suspected misconduct.

This Policy will be periodically reviewed by the NSWIS Audit and Risk Committee (every two years) in accordance with TPP 15-03 Internal Audit and Risk Management Policy for the NSW Public Sector.

### *Internal controls*

NSWIS's internal financial and management controls require staff to follow defined standards of practice. These internal controls include:

- suitable recruitment procedures, inductions and screening processes for new employees and due diligence measures on suppliers and business partners
- segregation of duties to prevent an individual from exercising end to end control over risky processes
- security of records and information systems
- consideration of risk and risk management strategies
- supervision and internal checks
- setting and enforcing delegations and permissions
- supervision of high-risk functions and systems that impose joint decision making
- reconciliations
- budget control
- regular review of management reports
- clear reporting lines
- internal audit
- training and awareness activities targeted at the risk of serious misconduct
- information integrity

The internal audit plan includes both scheduled and responsive reviews of compliance and the effectiveness of internal controls. The findings of these audits are reported to the Audit and Risk Committee with recommendations that address identified adverse trends or deficiencies.

The effectiveness of internal audit in detecting corruption is enhanced by:

- Including risks specifically related to corruption in audit plans
- Preparing a list of red flags based on previous incidents (including known breaches of internal controls) to inform future audits
- Ensure there is a process in place to follow up on the implementation of recommendations arising from internal audit reports

These internal controls are supported by a suite of NSWIS policies designed to prevent corrupt and fraudulent conduct e.g. Gifts and Benefits, Procurement, Secondary Employment, and Credit Card policies.

## Role of the NSW Ombudsman and the Independent Commission Against Corruption

The below provides a brief overview of the role of the NSW Ombudsman and the Independent Commission Against Corruption (ICAC).

Concerns about corrupt conduct should be made to, and are investigated by, ICAC. Public officials who make a complaint to ICAC (known as whistleblowers) are protected from reprisals and other retaliatory actions.

ICAC is an independent statutory body and its principal aims are to:

- Investigate, expose and prevent corruption involving public authorities and public officials
- Educate public authorities, public officials and members of the public about corruption

The NSW Ombudsman is an independent and impartial watchdog whose role is to investigate any improper conduct by public authorities. The Ombudsman's powers are somewhat limited in that the Ombudsman only has power to investigate and report on inappropriate conduct.

The NSW Ombudsman will investigate complaints about the conduct of public authorities, their employees as well as complaints related to access to information and public interest disclosures.

## Public Interest Disclosures

People who work in the public sector are usually well placed to know when a colleague is doing the wrong thing, systems aren't working properly, or a public authority is wasting public funds. The [Public Interest Disclosures Act 1994](#) (PID Act) sets in place a system to encourage public officials to report serious wrongdoing.

The NSW Ombudsman is responsible for promoting public awareness and understanding of the PID Act and monitoring its operation. The Ombudsman provides advice and guidance to public sector employees who are thinking about reporting serious wrongdoing as well as providing assistance, guidance, resources and training to public authorities responsible for managing and responding to public interest disclosures.

## Whistleblowers

*What is a whistleblower?*

A whistleblower is a person who provides information and exposes corrupt conduct within a public sector organisation in the hope of stopping it. In NSW, if you report public sector corrupt conduct in good faith to the ICAC, you are protected by law from reprisals.

*Protections for whistleblowers*

Allegations of corrupt conduct made to the ICAC may attract the protection of the [Independent Commission Against Corruption Act 1988](#) ("the ICAC Act"), the [Public Interest Disclosures Act 1994](#) ("PID Act") and other legislation. For more information go to [Protections for complainants](#).

*ICAC Act protection*

The ICAC Act protects individuals who provide the ICAC with information about suspected corrupt conduct or assist it in other ways. The ICAC Act:

- protects people who are not public officials
- protects people who are public officials
- makes it a crime to victimise a person in reprisal for the person giving the ICAC information or assisting it in other ways. This includes protection against dismissal or disadvantage to anyone in their employment.

## Reporting

### **Internal Processes**

NSWIS is required by law to have an internal reporting process that explains how you can make a disclosure. This information can be found below.

Staff are encouraged to raise disclosures at any time with:

- their managers/supervisors,

- the Director, Corporate & Communications (NSWIS Public Interest Disclosure Coordinator)
- the CEO
- the Secretary, Department of Communities and Justice

All matters reported in good faith are thoroughly investigated using processes outlined in the NSWIS Fraud and Corruption Internal Reporting Procedure provided below (See **Fraud and Corruption Internal Reporting Procedure**).

The public interest disclosures system provides a legal framework to deter people from responding to reports of wrongdoing in a way that hurts or disadvantages those that make the report.

### ***Serious Wrongdoing (External Processes)***

If you have reasons to doubt the Institute's capacity to do something about the wrongdoing you have observed, you can report wrongdoing to an investigating authority:

- serious maladministration to the NSW Ombudsman
- corrupt conduct by a public official to the [Independent Commission Against Corruption \(ICAC\)](#)
- serious and substantial waste to the [NSW Auditor General](#)
- government information contravention to the [Information Commissioner NSW](#)
- serious wrongdoing in a council (of any of the above categories) to the [Office of Local Government](#)
- serious wrongdoing by a police officer (of any of the above categories) to the [Law Enforcement Conduct Commission](#) (LECC).

The [Public Interest Disclosures Act 1994](#) sets in place a system to encourage people who work in the public sector to report serious wrongdoing without fear of being sued for defamation or breach of confidence.

Some people may have concerns that if they report wrongdoing their colleagues or managers will take detrimental action against them. The public interest disclosures system deters this kind of reaction by providing that the taking of detrimental action in reprisal is:

- a criminal offence
- grounds for disciplinary action
- grounds for you to sue them for damages.

To receive the protections under the public interest disclosures system, your concerns must be about wrongdoing that is so serious that it is clearly in the interests of the citizens of NSW that you report it.

Any concerns that relate to the way someone's behaviour is affecting you as an individual are more appropriately dealt with through a grievance process. This includes, for example, actions or decisions by managers or other employees that you believe involve inequitable treatment in the workplace, harassment or bullying that affect you personally (other than where this is part of a course of conduct, particularly of a general practice affecting a number of staff). The Institute has appropriate policies and processes in place that address these issues.

You should consider reporting wrongdoing through the public interest disclosures system if your concerns are about:

- corrupt conduct

- serious maladministration
- serious and substantial waste
- a failure to comply with the system through which people can access government information (*Government Information (Public Access) Act 2009*)
- a breach of local government pecuniary interest requirements.

To receive the protections under the public interest disclosures system, you must disclose information that you honestly believe shows, or tends to show, the wrongdoing that you allege.

You must also have reasonable grounds for your belief. So, think about what documents or other evidence may support your version of events. Provide any evidence you have, or information about where evidence can be found, in support of your report.

It is important that the information you provide is clear, accurate and factual. If you have documents to support your allegations, try to make them available. This will help the organisation focus on the real issues and fix real problems.

Avoid speculation and you should not investigate the matter yourself as this could hinder any future official investigation. Also do not do anything illegal to find evidence.

Further information can be found on the NSW Ombudsman [website](#).

## NSWIS Fraud and Corruption Internal Reporting Procedure

If you report a serious wrongdoing to an external investigating authority, they will tell you their processes.

If you report a wrongdoing to NSWIS, the Director of Corporate and Communications will:

- acknowledge that your disclosure has been received
- tell you what they have decided to do in response (within six months of you reporting)
- keep your identity confidential if possible

NSWIS is not to disclose information that might identify the person that made the disclosure unless:

- the person gives written consent
- the person is generally known to be the reporter
- it is necessary to address procedural fairness
- to enable an effective investigation

Further information in relation to assessing the likelihood of confidentiality can be found [here](#).

See **Appendix A** for the guide that will be utilised to determine if the PID Act applies when a staff member raises concerns.

Support and information will be provided to those who are the subjects of reports. Subjects will be:

- treated fairly and impartially
- told their rights and obligations under the Institute's policy
- kept informed during any investigation – this will be general advice, and cannot prejudice the investigation
- given the opportunity to respond to any allegation made against them
- told the result of any investigation

Subjects of reports should be advised to:

- Keep the matter confidential, and only discuss the matter with authorised people within the organisation, or their legal advisor and anyone providing them with support
- Assist those dealing with the report, including supplying any information on request
- Not take reprisals against another staff member whom they know, or suspect, has reported wrongdoing, and that doing so would be a disciplinary and criminal offence
- If necessary, seek support from their manager or supervisor or any available external support organisations or services

While the nature or substance of allegations must be put to any people they concern at an appropriate time, this does not mean that NSWIS must inform such people before it undertakes any form of investigation or evidence gathering.

Furthermore, there is no legal or procedural obligation for NSWIS to disclose that they have received a PID. While a person should be told the substance of an allegation against them and any adverse comment made about them, they do not have to be given all of the information in relation to the investigation. Doing this could hinder an investigation and place the person who made the report at unnecessary risk of reprisals.

Before any final determination is made, a person who is the subject of a report has a right to be:

- told the substance of the allegation
- told the substance of any adverse comment arising out of an investigation that may be included in a report, memo or letter
- given a reasonable opportunity to answer any allegation and respond to any negative findings

This gives them the opportunity to:

- deny the allegations
- provide any evidence to counter the allegations
- describe and explain any mitigating facts or circumstances

## Reprisals

Provisions relating to reprisals:

- Any person who takes detrimental action is liable in damages for any loss suffered by the person who made the public interest disclosure
- If a person takes detrimental action against someone for making a public interest disclosure, this is not only a criminal offence but also constitutes misconduct that justifies the taking of disciplinary action. This also applies to a situation where a person takes reprisals against a person whom they mistakenly believe made the public interest disclosure
- An investigating authority, or public authority with the consent of the Attorney-General, may apply to the Supreme Court for an injunction to prevent detrimental action being carried out.
- If a person is convicted of the offence of detrimental action substantially in reprisal for a PID being made, the maximum penalty is 100 penalty units or two years jail or both.

Public authorities are to refer any evidence of an offence of reprisal for making a public interest disclosure to the Commissioner of Police or the Independent Commission Against Corruption. After completing an investigation and forming the opinion that an offence has been committed, these bodies are to refer the matter by providing a brief of evidence to the Director of Public Prosecutions.



## Roles and Responsibilities

### CEO (Head of Public Authority)

The head of a public authority must ensure that:

- the authority has a public interest disclosures policy
- the policy designates at least one officer of the authority as being responsible for receiving public interest disclosures on behalf of the authority
- the staff of the authority are aware of the contents of the policy and the protections under the PID Act
- the authority complies with the policy and the authority's obligations under the PID Act

The CEO has ultimate responsibility for the effective and economical use of Institute's resources and for determining appropriate controls in managing fraud and corruption risks. This responsibility is appropriately delegated to the Executive and managers as detailed in the Financial Delegations manual.

The CEO is obliged, under section 11 of the ICAC Act, to report to the ICAC any matter that he/she reasonably suspects involves or may involve corrupt conduct.

### Public Interest Disclosure Coordinator

Public authorities need to nominate a position to be responsible for understanding and implementing the internal reporting system as well as responding to any public interest disclosures that are received. The Director of Corporate and Communications will perform this function at the Institute.

NSWIS can contact the NSW Ombudsman's Public Interest Disclosures Unit to seek advice when handling a requirement under the PID Act.

### Managers and Line Supervisors

No internal reporting system will be effective without a clearly demonstrated leadership commitment to support staff who report wrongdoing. All levels of NSWIS management – from the CEO to line supervisors – need to fully understand and support this Policy and associated systems for reporting. Managers and supervisors must lead a culture that truly supports the reporting of wrongdoing.

Managers and line supervisors must ensure they:

- have a positive attitude to their staff reporting wrongdoing and encourage them to do so
- are aware of their responsibilities to their staff
- identify when a staff member reports wrongdoing that may be a PID and refer them to the Director Corporate and Communications
- offer genuine support to staff who report wrongdoing, including ensuring that they have access to any necessary professional support such as the NSWIS Employee Assist Program
- effectively manage the workplace situation if reprisals or conflict are threatened or take place.

Managers and supervisors can show their support for internal reporting in many practical ways such as:

- being clear with staff about the types of conduct that are unacceptable
- raising staff awareness of their responsibility to report wrongdoing, as well as the expectation that they do so
- letting staff know who they can report wrongdoing to within the authority

- advising staff of their rights to report wrongdoing to external investigating authorities
- reassuring staff that they will be supported for reporting wrongdoing and reprisals will not be tolerated
- ensuring staff are familiar with the internal reporting policy and procedures
- being visible and approachable, communicating openly and leading by example.

## Employees

All staff are responsible for preventing fraud and corruption and acting ethically in line with NSWIS Values and the Code of Conduct.

They must comply with controls, policies and procedures and report suspected incidences of fraudulent or corrupt behaviour through the lines of internal reporting or via the relevant external agency.

## PID Reporting

All public authorities are required to collect and report certain information in relation to their handling of public interest disclosures. This information must be reported directly to the Ombudsman every six months and included in the NSWIS Annual Report.

## Interactions Between the *PID* and *GIPA Act*

The Institute is required to release certain information under the *Government Information (Public Access) ACT (GIPA)*. On some occasions, where information is requested concerning a public interest disclosure the requirements of both Acts may interact.

A copy of the Institute's Agency Information Guide can be found on the NSWIS website.

A comprehensive guide on how the Institute is to proceed in this situation is provided by the NSW Ombudsman [here](#).

Where this occurs the NSWIS Right to Information Officer (Mgr of Marketing & Communications) will seek direction from the NSWIS Director Corporate and Communications (Public Interest Disclosure Coordinator).

## Health and Safety Considerations

Reporting wrongdoing can be a difficult process and, if not properly managed, can result in stressful interactions with colleagues and managers. Stress is a legitimate and serious workplace concern and may result in a staff member sustaining a serious injury.

NSWIS takes its duty of care for employees very seriously and staff are encouraged to seek support or contact the external Employee Assistance Program.

## Conflicts of Interest

Citizens rightly expect that public officials, or their close connections and associates, should never be in a position to obtain an undue personal benefit as a result of the public official doing their job. This reflects the view that public office is held for the public good, not the purposes or benefits of the officeholder.

There are four elements to consider when determining whether a conflict of interest exists.

1. Does the official have a personal interest?
2. Does the official have a public duty?
3. Is there a connection between the personal interest and the public duty?
4. Could a reasonable person perceive that the personal interest might be favoured?

Conflicts of interest do not, in themselves, usually constitute corrupt conduct. Corrupt conduct can, however, arise when a conflict of interest is concealed, understated, mismanaged or abused.

For a conflict of interest to arise, there must be a logical overlap or connection between an official's public duty and their personal interest(s). To establish a connection, it must be at least feasible for the official to favour their personal interests in some way or for their personal interests to have an adverse effect on the way they perform their public duties. An official may undertake activities and have influence beyond their formal or documented role. It is important that these informal activities and influences are taken into consideration.

All conflicts of interest should be disclosed promptly in writing to the Director Corporate & Communications. A register of Board and Senior Executive disclosures is maintained and updated at each Board meeting.

#### Revision History

<i>Date</i>	<i>Version</i>	<i>Reviewed by</i>	<i>Changes made</i>
Oct 2019	1.0	ITO	Policy created
December 2019	1.1	ITO	Whistleblower information added
June 2020	1.2	DCC	Revised policy created

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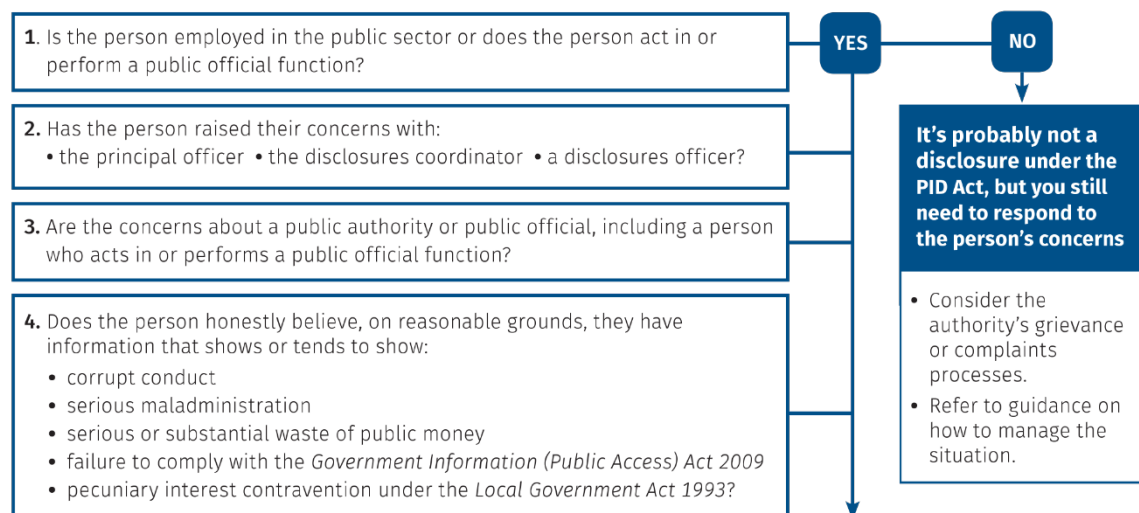
## *Am I dealing with a public interest disclosure?*

## Fact sheet 2

This fact sheet sets out a step-by-step guide to assist public sector managers decide if the *Public Interest Disclosures Act 1994* (PID Act) applies when a staff member raises concerns. It also gives some practical tips on how to manage these situations.

## The scenario

### A member of staff raises serious concerns with you



**It may be a public interest disclosure under the PID Act and by law public authorities must:**

- acknowledge receipt of the PID and provide the staff member with a copy of your internal reporting policy within 45 days (but preferably much sooner)
- assess the PID and decide what action you will take
- keep details about the PID confidential, where practical and appropriate
- tell the member of staff - within six months - what action your authority will take or has taken
- report the matter to ICAC if you suspect on reasonable grounds that it concerns or may concern corrupt conduct
- keep full and accurate records.

## Guidance on how to manage the situation

Whether or not it is a public interest disclosure, you should:

### 1. Support the staff member

If the member of staff genuinely believes there is something seriously amiss with the authority and is sufficiently concerned to report this, the authority has a responsibility to:

- take them seriously and treat them with respect
- give the person support in what is commonly a stressful situation (this includes keeping them informed, at least in general terms, of what is being done)
- protect the person from any repercussions for coming forward (this includes dealing with the matter discreetly if not confidentially, and responding swiftly and fairly to any allegations that reprisal against the person is threatened or has taken place).

### 2. Be fair to any person who has been accused of wrongdoing

The process of finding out the truth of allegations should be impartial. This means you should not take sides and should not have a preconceived outcome in mind.

Any person who has been accused of wrongdoing must be given an opportunity to put forward their response to any allegations made against them. However, he or she does not have a right to any information about who has made the allegations (except where the matter results in disciplinary or criminal proceedings).

### 3. Remember the people involved are employees

Be mindful of obligations under work health and safety legislation, the common law duty of care towards all employees, and obligations to comply with principles of good conduct and administrative practice.

### 4. Don't forget bystanders

If a matter cannot be dealt with confidentially, be vigilant in preventing gossip, innuendo and paranoia amongst staff who find out that something is going on. Explain to potential witnesses why they are being interviewed or give them some information about the process to contain suspicion and fear.

Remember that reprisal is sometimes taken against a person suspected of making a report, who may not be the person who raised their concerns.

### 5. Identify opportunities for improvement

Complaints from staff, just like those from external parties, often contain valuable information that can be used to fix problems or improve the way an authority operates.

Try to find out what's really going on. Do not be tempted to dismiss concerns from a disgruntled staff member who is perceived as a troublemaker. Often it is only the agitators who will speak out. Others may also see problems but have an interest in keeping the peace.

Deal with any problems that are identified.

### 6. Learn from this experience

Do you need to implement or improve your policies or procedures to make these situations easier to handle in the future?

## Contacts

**NSW Ombudsman** - see below

### Independent Commission Against Corruption

Tel: 02 8281 5999 or 1800 463 909 (toll free)  
Email: [icac@icac.nsw.gov.au](mailto:icac@icac.nsw.gov.au)  
Web: [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au)

### Information & Privacy Commissioner (NSW)

Tel: 1800 463 626 (free call)  
Email: [ipcinfo@ipc.nsw.gov.au](mailto:ipcinfo@ipc.nsw.gov.au)  
Web: [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)

### Office of Local Government

Tel: 02 4428 4100  
Email: [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au)  
Web: [www.olg.nsw.gov.au](http://www.olg.nsw.gov.au)

### NSW Audit Office

Tel: 02 9275 7100  
Email: [mail@audit.nsw.gov.au](mailto:mail@audit.nsw.gov.au)  
Web: [www.audit.nsw.gov.au](http://www.audit.nsw.gov.au)

## Public interest disclosures Fact Sheet

Do you need to educate staff and management to prepare them for the challenges that these situations present and to deter people from taking reprisal against people who report suspected problems? Contact the NSW Ombudsman for advice and information about training options.

## Contact us for more information

Our business hours are: Monday to Friday, 9am–5pm (*Inquiries section closes at 4pm*)

If you wish to visit us, we prefer you make an appointment. Please call us first to ensure your complaint is within our jurisdiction and our staff are available to see you.

Level 24, 580 George Street  
Sydney NSW 2000

Email [pid@ombo.nsw.gov.au](mailto:pid@ombo.nsw.gov.au)  
Web [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)

**General inquiries** 02 9286 1000  
**Facsimile** 02 9283 2911


**Toll free** (outside Sydney metro) 1800 451 524  
**National Relay Service** 133 677

Telephone Interpreter Service (TIS): 131 450  
We can arrange an interpreter through TIS or you can contact TIS yourself before speaking to us.

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