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**NSW Police Force**

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# **Internal Witness Support Guidelines**

**Professional Standards Command**

**External Version**

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## **Internal Witness Support Guidelines**

The NSW Police Force is committed to supporting all members, including both officers and administrative employees, as well as students and volunteers, who report misconduct. The Internal Witness Support Unit encourage members of the NSW Police Force to report corruption and misconduct and to provide support, advice and guidance to those members who do report.

### **Essential Summary**

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Members of the NSW Police Force are obligated under various Acts of Parliament as well as internal policies to report misconduct. These guidelines outline the procedures for reporting misconduct, the various avenues and the legislative protections available to those staff that report misconduct.

The purpose of this document is to provide members of the NSW Police Force with information relating to how matters can be referred to the Internal Witness Support Unit as well as outlining what factors are considered in determining a person's suitability to be offered the Internal Witness Support Unit program.

This guide explains the role of a case officer as well as a support person and details the responsibilities of Commanders and Managers as well as members.

## Document Control Sheet

### *Document Properties*

<b>Title</b>	Internal Witness Support Guidelines
<b>Subject</b>	Guidelines for supporting internal witnesses through the Internal Witness Support Programs
<b>Command responsible</b>	Professional Standards Command
<b>Authorisation</b>	Assistant Commissioner, Professional Standards Command
<b>Security Classification</b>	Official
<b>Publication date</b>	November 2021
<b>Current version number</b>	1
<b>Review date</b>	July 2023
<b>Document number</b>	D/2021/1169128
<b>Copyright statement</b>	© Crown in right of NSW through NSW Police Force 2021
<b>Suitable for Public Disclosure</b>	Yes – External Version

### *Modification History*

Version #	Version approval date	Author/Position	Summary of changes
1	November 2021	Professional Standards Command	<ul style="list-style-type: none"> <li>Redacted version 12 of Internal Witness Support Guidelines to remove references to internal contacts and policies</li> </ul>

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## 1. Corruption prevention and the role of the internal witness

An internal witness (**IW**)

*is any person employed or engaged by the NSW Police Force who provides information, within legislative or organisational guidelines alleging corrupt conduct, maladministration, serious and substantial waste or other serious misconduct by another member of the Police Force, and who has been registered as an internal witness*

The use of authority and discretion is inherent in the duties performed by police officers. Due to the difficult and sometimes dangerous situations encountered in policing, this authority and discretion demands frequent ethical and moral judgments by police officers. Police officers operate in an environment which can expose them to situations where there is the opportunity to engage in misconduct or criminality.

Likewise, other members of the NSW Police Force can be exposed to situations where misconduct and / or corruption may arise.

Complaints from the public can provide vital information but are often focused on misconduct rather than corruption because misconduct is more common and is easier to observe. Corruption, by its very nature, is a covert activity, driven by illegal motives and often involving civilians who have good reasons to refrain from reporting these matters.

Information reported may relate to misconduct on or off duty.

The role of the *Internal Witness Support Policy* and these *Guidelines* is to modify this position by encouraging all members to report corruption and misconduct, and to provide support, advice, and guidance to those members who do report.

## 2. Legislative requirements and protections

### 2.1 Requirement of members of the NSW Police Force to report misconduct and corruption

#### **NSW Police Force Code of Conduct and Ethics (Point 10)**

All NSW Police Force employees must report the misconduct of other NSW Police Force employees. This includes all forms of misconduct and inappropriate behaviour including criminal offences, corrupt or unethical conduct, serious mismanagement and substantial waste of public resources. Further, NSW Police Force employees are encouraged to challenge inappropriate behaviour and cultures.

**Police Act 1990**

**211F Members of NSW Police Force under duty to report misconduct of police officers**

- (1) **A police officer** who has reasonable grounds to suspect that another police officer has engaged in police misconduct or serious maladministration is under a duty to report that police misconduct or maladministration or alleged misconduct or maladministration in writing to another police officer who is of the rank of sergeant or above and is more senior in rank than the police officer with a duty to report (a *senior police officer*).
- (2) **The senior police officer to whom a report is made** must report it in writing promptly to the Commissioner (or a police officer nominated by the Commissioner for the purposes of this section) if the senior police officer has reasonable grounds to suspect that the conduct (or alleged conduct):
  - (a) constitutes (or would constitute) a criminal offence or is (or could be) other police misconduct or serious maladministration, or
  - (b) could provide sufficient grounds:
    - (i) for taking dismissal action against a probationary police officer under section 80 (3), or
    - (ii) for taking reviewable action under section 173 or making an order under section 181D.
- (3) **An administrative employee** who has reasonable grounds to suspect that a police officer has engaged in police misconduct or serious maladministration is under a duty to report that police misconduct or maladministration or alleged misconduct or maladministration in writing to a police officer who is of or above the rank of sergeant.
- (4) **A police officer to whom a report is made** under subsection (3) must report it in writing promptly to the Commissioner (or a police officer nominated by the Commissioner for the purposes of this section) if the police officer has reasonable grounds to suspect the conduct or alleged conduct is of a kind described in subsection (2)(a) or (b).
- (5) This section does not apply to misconduct or maladministration or alleged misconduct or maladministration:
  - (a) that has been the subject of a misconduct matter received by the LECC under the *Law Enforcement Conduct Commission Act 2016* or the Commissioner under Part 8A or of which the LECC or the Commissioner is already aware, or
  - (b) that has been the subject of evidence or other material given, or submissions made, in the course of criminal proceedings, or
  - (c) that has already been reported under this section to a senior police officer.

- (6) A report must be provided in accordance with this section despite any prohibition in, or any requirement of, any Act or law (in particular, the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*) but only if it contains information that is relevant to the officer misconduct or serious maladministration concerned.
- (7) An expression used in this section which is defined in the *Law Enforcement Conduct Commission Act 2016* has the meaning it has in that Act.

### **211G Referral of other misconduct matters to Commissioner**

- (1) Section 211F does not prevent any police officer or administrative employee (within the meaning of Part 8A) from referring any misconduct matter of which the officer or employee becomes aware that the officer or employee is not under a duty to report under that section to the Commissioner.
- (2) Section 211F (6) applies to and in respect of a misconduct matter referred under this section in the same way as it applies to a report under section 211F.
- (3) This section does not limit or affect the operation of the *Public Interest Disclosures Act 1994*. In particular, nothing in this section prevents a police officer who makes a report under section 211F from making a disclosure relating to the same conduct or activities under that Act.

Places a duty on the Commissioner of Police to make all reports of police and administrative officers' misconduct available to scrutiny by the Law Enforcement Conduct Commission (LECC) in accordance with the *Police Act 1990* and the *LECC Act 2016*.

The LECC can also take over, all or part of, any internal police investigation and may take over or review an administrative officer discipline investigation under authority provided by the LECC Act.

### ***Public Interest Disclosures Act 1994***

The PID Act sets out the system under which NSW public officials can make disclosures about serious wrongdoing in ways that minimise the risk of reprisal.

### ***Independent Commission Against Corruption Act 1988 (Section 10(1))***

Makes provision for any person to make a complaint to the Commission about a matter that concerns or may concern corrupt conduct.

### ***Independent Commission Against Corruption Act 1988 (Section 11)***

Places a duty on the Commissioner of Police to report to the Commission any matter that the person suspects on reasonable grounds concerns or may concern corrupt conduct.

***Crimes Act 1900 (Section 316) (Conceal a Serious Indictable Offence)***

Creates an offence for a person who knows or believes an offence has been committed and that person can assist in the apprehension of the offender and fails, without reasonable excuse, to bring that information to the attention of police or other appropriate authority.

***Government Sector Employment Regulation 2014 (Part 2, Clause 9)***

Requires Managers to report charges and convictions for serious offences against employees, as well as a requirement for employees to report charges and convictions of serious offences to appropriate senior officers. In this clause a serious offence is an offence punishable by twelve or more month's imprisonment.

**2.2 Legislative protections for people reporting misconduct**

***Police Act 1990 (Part 10, Section 206)***

Provides protections for police officers and administrative employees who have reported allegations of misconduct or criminal activity by one or more other police officers and administrative employees, from detrimental action by a police officer or administrative employee for having made the allegation.

***Police Regulation 2015 (Division 9, Clause 51)***

Provides for the protection of police officers who report the alleged misconduct of another police officer. Briefly, the clause states a police officer may not treat another police officer detrimentally in retaliation for that officer's reporting of alleged misconduct.

***Government Sector Employment Act 2013 (Part 5, Section 69)***

Provides a definition of misconduct which includes taking any detrimental action (within the meaning of the Public Interest Disclosures Act) against a person that is substantially in reprisal for the person making a public interest disclosure within the meaning of the Act.

***Public Interest Disclosure Act 1994 (Section 20)***

Provides protection for internal reporters who make disclosures by imposing penalties on anyone who takes detrimental action against another staff member substantially in reprisal for them having made a PID. Criminal penalties apply for taking detrimental action with a maximum penalty of 100 penalty units or imprisonment for 2 years, or both.

***Crimes Act 1900 (Sections 60, 60B, 60C)***

Deals with assaults and other actions against police officers, actions against third parties connected with law enforcement officers, obtaining personal information about law enforcement officers.



***Law Enforcement Conduct Commission Act 2016 (Part 6, Division 7, Section 85)***

A person who assists the Commission, if it appears to the Commissioner that, because a person is assisting the Commission, the safety of the person or any other person may be prejudiced or the person or any other person may be subject to intimidation or harassment, the Commissioner may make such arrangements as are necessary to protect the safety of any such person, or to protect any such person from intimidation or harassment.

***Independent Commission Against Corruption Act 1988 (Part 4, Division 5, Section 50)***

If it appears that because a person is assisting the Commissioner, safety of the person or any other person may be prejudiced or the person or any other person may be subject to intimidation or harassment, the Commissioner may take steps to protect the safety of the person, or protect the person from intimidation or harassment.

**2.3 Avenues for reporting information**

Allegations of misconduct or corrupt conduct can be made in several ways, including reporting concerns in writing to:

- a senior officer / manager
- a professional standards duty officer
- a region professional standards manager
- a region commander / senior manager
- the Commander, Professional Standards Command (**PSC**)
- the Manager within PSC responsible for administrative employee conduct
- the Commissioner of Police, Nominated Disclosure Coordinator or nominated disclosure officers (Public Interest Disclosures)
- the Customer Assistance Unit (1800 622 571) is a service where complaints are received and forwarded to the relevant complaint management team for due consideration. The Customer Assistance Unit, PoliceLink Command is staffed Monday to Friday 8am to 4pm
- external investigating authorities including Law Enforcement Conduct Commission (**LECC**) and the Independent Commission Against Corruption (**ICAC**).

**3. Internal Witness Support Unit and Program**

**3.1 Internal witnesses**

All complaints made by members of the NSW Police Force concerning police officers are referred to as internal police complaints. The person laying the complaint is referred to as internal police complainant (**IPC**).

By contrast, an internal witness (**IW**) is any person employed or engaged by the NSW Police Force who provides information, within legislative or NSW Police Force guidelines, alleging corrupt conduct, criminal conduct, maladministration, serious and substantial waste or other misconduct by another member of the NSW Police Force **and who has been registered** on the Internal Witness Support Program (**IWSP**). This registration is completed after an assessment process based on risk. The details of any additional witnesses giving inculpatory evidence in a matter should be disseminated to IWSU for assessment also.

The IWSU does not generally support members through civil proceedings such as the Administrative Appeals Tribunal, NSW Civil and Administrative Tribunal (**NCAT**) or Family Court of Australia.

Responsibility for internal witnesses always remains with their command. The support offered by the IWSU is an additional support to that offered by the officer's command.

The IWSU does not generally become involved in transfers of internal witnesses.

### 3.2 Referrals to the Internal Witness Support Unit (**IWSU**)

#### **Police**

Complaints against police are recorded on the NSW Police Force misconduct matters information system, IAPro. The IWSU receives notifications through IAPro in instances where an IPC has been identified and the command entering the matter elects to notify the IWSU.

#### **Administrative Employees**

Allegations of potential misconduct involving an administrative employee, lodged by a member of the NSW Police Force are referred to the Professional Standards Command. A copy of the report will be supplied to the IWSU at the earliest opportunity to enable an assessment for program participation.

Referrals to IWSU for all members of the NSW Police Force can also come from:

- self-reporting
- commanders / managers
- complaint investigators
- executive officers
- complaints management teams
- senior management teams
- professional standards duty officers
- professional standards managers
- Human Resources' respectful and inclusive workplace
- external investigating authorities including LECC and ICAC when conducting investigations.

The information available is assessed to determine if the person referred is eligible for the Internal Witness Support Program. Referring officers should not assume that the person referred will be accepted onto the Internal Witness Support Program nor in any way obligate the Internal Witness Support Unit until they have been notified that the referral has been accepted.

- A referral should be for a current or pending investigation of a serious nature.

Where a member of the NSW Police Force supports the allegation made by the IPC in an interview, the complaint investigators who conducted the interview should advise their Complaint Management Team and the IWSU. The IWSU should be notified even though the member interviewed is not the original IPC.

Any member of the NSW Police Force may contact the IWSU for advice. In exigent circumstances the Manager of the IWSU is contactable 24 hours, 7 days a week via the State Commander.

### 3.3 Qualifying for admission to the Internal Witness Support Program

When a member of the NSW Police Force is referred to the IWSU, the Manager, IWSU will conduct an assessment of the IPC circumstances and the details outlined in their complaint. The criteria used in this assessment can include, but is not limited to the:

- nature of the information
- rank / grade of IPC and subject officer
- duties and workplace of the IPC and subject officer
- need for support and confidentiality of the IPC
- potential for victimisation, harassment or other reprisal action
- request by commander / investigator / PSDO for assistance for IPC
- personal stress / medical and other needs of the IPC
- willingness of the IPC to participate in the program
- allegation of serious misconduct or corruption.

If the person referred meets the criteria and the Manager, IWSU approves the referral, an IWSU case officer will offer participation in the Internal Witness Support Program to the IPC. On acceptance, the IPC becomes an internal witness (**IW**), and the Manager, IWSU, in consultation with the designated case officer will:

- register the person on the Internal Witness Support Program
- assess the needs of the IW
- recommend support services to the IW eg. Workforce Safety, Police Chaplains, Employee Assistance Program (**EAP**), General Practitioner (GP)
- ensure support throughout any investigative or legal proceedings which occur as a consequence of the complaint
- facilitate the selection of a support officer if required and

- advise the investigator or commander (if appropriate) of the registration of an internal witness.

The Internal Witness Support Program is particularly beneficial to junior officers reporting senior officers in the same workplace. It is not generally offered to senior officers reporting junior officers in accordance with the responsibilities of their position.

### 3.4 Confidentiality

There is a legislative requirement under section 169A of the *Police Act 1990* that a member of the NSW Police Force must not disclose to any person the identity of a complainant unless certain circumstances exist.

Provisions under the *Code of Conduct & Ethics* and *Public Interest Disclosure Act 1994* encompass the requirement of confidentiality for all members of the NSW Police Force.

These requirements of confidentiality give some measure of comfort to IPCs / IWs and are fundamental to the success of the Internal Witness Support Program.

An IW must be informed that because of the internal reporting systems and the provision of support services such as appointment of a support officer, the identity of the complainant will need to be disclosed to certain people. Proactive management strategies should be considered in these instances. In addition, statements or other information provided by witnesses may be released during the post investigative process and before any court or tribunal proceedings are taken.

Part 9 (5A) of Police Act states:

*before making an order for reviewable action, the Commissioner: (a) must cause to be served on the police officer a notice that identifies the misconduct or unsatisfactory performance (including all relevant facts and circumstances) on the basis of which the Commissioner intends to make the proposed order.*

That is, release of evidence is sometimes inevitable which includes IW / IPC statements.

Similarly, confidentiality relating to the identity of an IPC / IW cannot be maintained where matters proceed to any court or tribunal.

### 3.5 Role of the case officer

The case officer will:

- initiate contact with the IPC referred
- explain the role and function of the IWSU and other information including:
  - the investigation / complaint management process
  - the objective of and obstacles to maintaining full confidentiality
  - advice on protective strategies and confidentiality

- support mechanisms including Workforce Safety, EAP, Chaplaincy, GP
- advice regarding managing outcome expectations
- the role of the support officer, if appointed including their obligations under section 211F *Police Act 1990* if any disclosures are made
- legislative protections
- explain the program and offer program participation
- if the offer is accepted, conduct a comprehensive briefing with the IW in relation to the program
- establish the method and frequency of contact with the IW
- advise the IW that case officers also have obligations under section 211F *Police Act 1990*, if disclosures of misconduct are made by the IW to them
- maintain liaison with support officers, investigators and commanders during program participation and advise when deregistered
- contact and brief any support officer and agree on frequency of contacts
- maintain confidential records
- advise the Manager, IWSU of changes in the IWs circumstances which may require a review of status.

Frequency of contact between the IWSU case officer and the IW is decided on agreement between both parties on a case by case basis. The IW and their support personnel are encouraged to initiate contact with the IWSU to discuss, clarify and address any requirements or concerns in the intervening periods of contact with the case officer. This also provides feedback from the IW regarding their satisfaction with the program.

If the IWs status alters, workplace changes or the IW wishes to leave the program, it is the responsibility of the IW to advise their case officer immediately. The Manager, IWSU will reassess the case and consider whether active assistance from the IWSU is still required. If an IW disengages from the NSW Police Force, they can remain on the program if there is an identified need to maintain ongoing assistance.

### 3.6 Role of the support officer

The appointment of a formally recognised support officer for an IW is managed by the IWSU.

A support officer in terms of the Internal Witness Support Program will be appointed in consultation with the IW. It is the responsibility of the support officer to provide support to the IW in the workplace and to liaise with the IWSU case officer as required.

This support officer should not be a member of the CMT to ensure real or perceived impartiality of management decisions that may relate to investigations where the IW is involved.

Any other support that a commander / manager wishes to provide is independent to that organised by the IWSU.

### 3.7 Internal witnesses can leave the program at anytime

The Internal Witness Support Program is voluntary. An IW can make a request at any time to leave the program.

Upon deregistration, an exit interview will be conducted with the IW. Information provided in this interview assists with the ongoing evaluation of the program and the unit.

## 4. Responsibilities of commanders and managers

Commanders and managers have a responsibility to IPCs and IWs within their command and must:

- maintain an environment where members of the NSW Police Force are confident:
  - in coming forward as an IPC to report corrupt conduct, criminal conduct, maladministration, serious and substantial waste or misconduct
  - they will receive support from their senior officers and other members of the NSW Police Force
- respond promptly, genuinely and with sensitivity to the needs of the IPC / IW
- provide the IPC / IW with acknowledgment, support and positive reinforcement of their actions as a reporter
- provide the IPC / IW with support against victimisation or harassment and take appropriate management action if required (including risk management action)
- prevent or eliminate any actions against the IPC / IW by other people which might be detrimental or contrary to the *Police Act 1990*, the *Government Sector Employment Regulation 2014*, the *Public Interest Disclosures Act 1994*, the *Law Enforcement Conduct Commission Act 2016*, or the *Code of Conduct and Ethics*.
- consider policies related to managing threats if necessary
- advise IPC's / IW's that statements or other information provided by witnesses may be released during the post investigative process and before any court or tribunal proceedings are taken. (i.e. procedural fairness if appealable management action is being considered)
- provide appropriate advice and referral to support services if required.

## 5. Responsibilities of all members of the NSW Police Force

It is the responsibility of every member of the NSW Police Force to refrain from any activity that is detrimental to another member who has lodged a protected allegation under the Police Act or a public interest disclosure under the Public Interest Disclosures Act.

Section 206 of the *Police Act 1990*, section 69 of the *Government Sector Employment Act 2013*, section 20 of the *Public Interest Disclosures Act 1994* and clause 51 of the *Police Regulation 2015*, deem it an offence to take detrimental action. Any such activity must be reported to a senior officer.

### ***Work Health and Safety Act 2011***

The NSW Police Force is committed to ensuring the health, safety and welfare of all members and others in the workplace. The NSW Police Force expects all members to be aware of their statutory obligations and to comply with provisions of the Work Health and Safety Act.

As a member of the NSW Police Force you must:

- take reasonable care for the health and safety of people
- cooperate with the NSW Police Force to enable compliance with any requirement under the Act or regulation that is imposed in the interest of health, safety and welfare.

## **6. Contacting IWSU**

Other contact details are on the Professional Standards Command intranet.

## **7. Police Employees Corruption Hotline**

PoliceLink (formerly Police Assistance Line) offers a free call service to the Customer Assistance Unit for communicating / reporting information.

Free call line to report information - 1800 622 571  
Monday to Friday 8am - 4pm