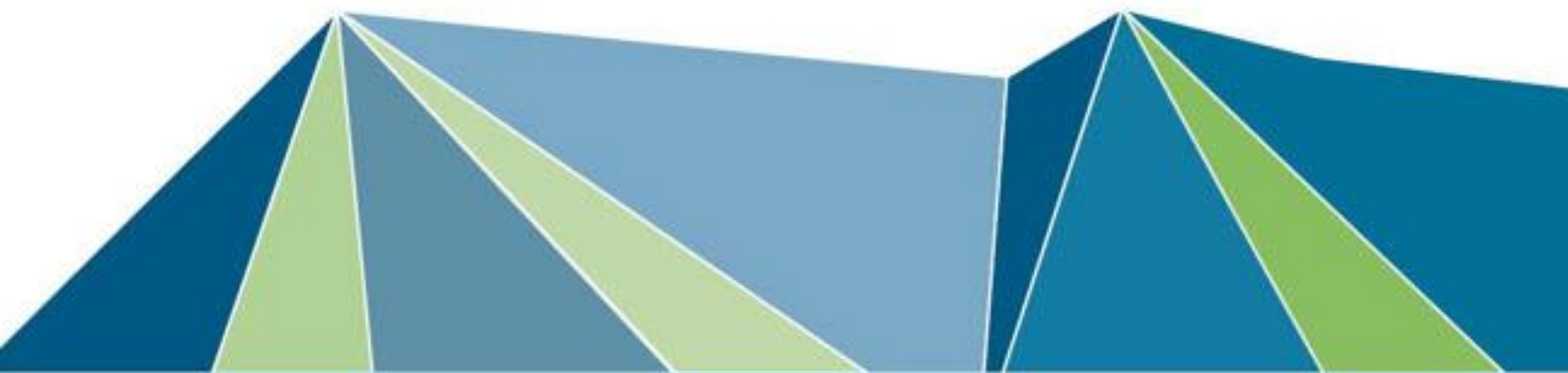


# **ATTACHMENTS TO**

## ***B Ward Committee Meeting***

18 March 2024



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**POLICY NAME:** PUBLIC INTEREST DISCLOSURE  
**POLICY REF:** P11  
**MEETING ADOPTED:** 28 September 2023  
 Resolution No. 280923/21  
**POLICY HISTORY:** 241122/23;260718/21;240714/20;260913/32;  
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### **OBJECTIVE**

At Ballina Shire Council we take reports of serious wrongdoing seriously. We are committed to building a 'speak up' culture where public officials are encouraged to report any conduct that they reasonably believe involves wrongdoing.

The integrity of our agency relies upon our staff, volunteers, contractors, and subcontractors speaking up when they become aware of wrongdoing.

This policy sets out:

- how we will support and protect you if you come forward with a report of serious wrongdoing
- how we will deal with the report and our other responsibilities under the PID Act
- who to contact if you want to make a report
- how to make a report
- the protections which are available to you under the PID Act.

This policy also documents our commitment to building a speak up culture. Part of that speak up culture is having in place a framework that facilitates public interest reporting of wrongdoing by:

- protecting those who speak up from detrimental action
- imposing duties on agencies who receive reports of wrongdoing to take appropriate action to investigate or otherwise deal with them.

In NSW that framework is the Public Interest Disclosures Act, or the PID Act.

This policy is based on the [Model Policy and Guidelines](#) as developed by the NSW Ombudsman, and should be read in conjunction with the following Council policies;

[Code of Conduct](#)

[Complaints Management](#)

[Fraud and Corruption Control](#)

All Council's policies, including those listed above, are located on our [website](#).

### **POLICY**

This policy will provide you with information about the following:

- ways you can make a voluntary PID to Ballina Shire Council under the PID Act
- the contact details for the nominated Disclosure Officers of Ballina Shire Council
- the responsibilities of people who hold particular roles under the PID Act and who are employees of Ballina Shire Council
- what information you will receive once you have made a voluntary PID
- the protections available to people who make a report of serious wrongdoing under the PID Act and what we will do to protect you
- our procedures for dealing with disclosures
- our procedures for managing the risk of detrimental action and reporting detrimental action

- our record-keeping and reporting requirements
- how Ballina Shire Council will ensure it complies with the PID Act and this policy

### 1. HOW TO MAKE A REPORT OF SERIOUS WRONGDOING

#### (a) Reports, complaints and grievances

When a public official reports suspected or possible wrongdoing in the public sector, their report will be a PID if it has certain features which are set out in the PID Act.

Some internal complaints or internal grievances procedures may also be PIDs, as long as they have the features of a PID. If an internal complaint or grievance is a report of serious wrongdoing, we will consider whether it is a PID. If it is a PID, we will deal with it as set out in this policy, but we will also make sure we follow our Complaints Management Policy requirements.

It is important that we quickly recognise that we have received a PID. This is because once a PID is received, the person who has made the report is entitled to certain protections and we have certain decisions that we have to make on how we will deal with the PID and how we will protect and support the person who has made the report.

#### (b) When will a report be a PID?

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

*Voluntary PID* – this is a PID where a report has been made by the public official because they decided, of their own accord, to come forward and disclose what they know.

*Mandatory PID* – this is a PID where the public official has made a report about serious wrongdoing because they have a legal obligation to make that report, or because making that report is an ordinary aspect of their role or function in an agency.

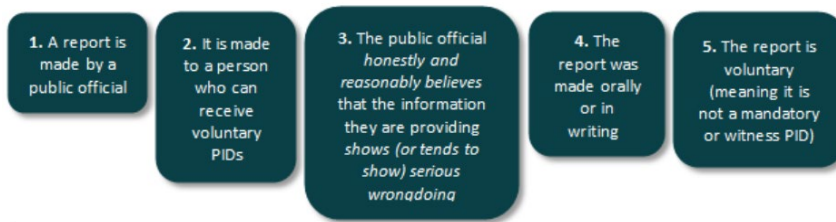
*Witness PID* – this is a PID where a person discloses information during an investigation of serious wrongdoing following a request or requirement of the investigator.

This policy mostly relates to making a voluntary PID and how we will deal with voluntary PIDs. People who make voluntary PID or a witness PID are still entitled to protection. More information about protections is available in Section 2 of this Policy.

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

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:



If the report has all five features, it is a voluntary PID.

You will not be expected to prove that what you reported actually happened or is serious wrongdoing. You *do* have to honestly believe, on reasonable grounds, that the information you are reporting shows or tends to show serious wrongdoing.

Even though you do not have to prove the serious wrongdoing happened or provide evidence, a mere allegation with no supporting information is unlikely to meet this test.

If we make an error and do not identify that you have made a voluntary PID, you will still be entitled to the protections under the PID Act.

If you make a report and believe we have made an error by not identifying that you have made a voluntary PID, you should raise this with a nominated Disclosure Officer or your contact officer for the report.

If you are still not satisfied with this outcome, you can seek an internal review or we make seek to conciliate the matter. You may also contact the NSW Ombudsman. Further information on rights to internal review and conciliation is found in section 7 of this policy.

### (c) **Who can make a voluntary PID?**

Any public official can make a voluntary PID. You are a public official if:

- you are employed by Ballina Shire Council
- you are an elected Councillor of Ballina Shire Council
- you are a member of a Committee of Ballina Shire Council
- you are a contractor, subcontractor or volunteer who provides services, or exercises functions, on behalf of Ballina Shire Council, or
- you work for an entity (such as a non-government organisation) who is contracted by Ballina Shire Council to provide services or exercise functions on behalf of Ballina Shire Council if you are involved in undertaking that contracted work.

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 we may receive PIDs from public officials outside our agency.

It also means that you can make a PID to *any* agency, including an integrity agency like the Independent Commission Against Corruption (ICAC) and the NSW Ombudsman. Annexure B of this policy has a list of integrity agencies.

### (d) What is serious wrongdoing

Reports must be of one or more of the following categories of *serious wrongdoing* to be a voluntary PID (in addition to having the other features set out here). Serious wrongdoing is defined in the PID Act as:

- *corrupt conduct* – such as a public official accepting a bribe
- *serious maladministration* – such as an agency systemically failing to comply with proper recruitment processes when hiring staff
- *a government information contravention* – such as destroying, concealing or altering records to prevent them from being released under a Government Information Public Access application
- *a local government pecuniary interest contravention* – such as a senior council staff member recommending a family member for a council contract and not declaring the relationship
- *a privacy contravention* – such as unlawfully accessing a person's personal information on an agency's database
- *a serious and substantial waste of public money* – such as an agency not following a competitive tendering process when contracting with entities to undertake government work.

When you make your report, you do not need to state what category of serious wrongdoing you are reporting, or that you are reporting serious wrongdoing.

### (e) Who can I make a voluntary PID to?

For a report to be a voluntary PID, it must be made to certain public officials.

You can make a report *inside* Ballina Shire Council to:

- the General Manager
- a Disclosure Officer or Disclosure Coordinator of Ballina Shire Council
- your Manager – this is the person who directly, or indirectly, supervises you. It can also be the person who you directly, or indirectly, report to. You may have more than one Manager. Your Manager will make sure that the report is communicated to a Disclosure Officer on your behalf or may accompany you while you make the report to a Disclosure Coordinator or Officer.
- for a public official who is a person providing services or exercising functions on behalf of an agency (including a contractor, subcontractor or volunteer) – your Manager is taken to be the public official in that agency who oversees those services or functions, or who manages the relevant contract or volunteering arrangements.

You can also make your report to a public official in another agency (meaning an agency you do not work for) or an integrity agency, including;

- the head of any public service agency
- an integrity agency – a list of integrity agencies is provided at Annexure B of this policy
- a Disclosure Officer from another agency. The contact information for Disclosure Officers is located in an agency's PID policy which can be found on their website
- a Minister or a member of a Minister's staff but the report *must be made in writing*

If you choose to make a disclosure outside of Ballina Shire Council, it is possible that your disclosure will be referred back to us so that appropriate action can be taken.

Disclosures to MPs or journalists are different to other reports. You can only disclose a report of wrongdoing as a voluntary PID to an MP or journalist in the following circumstances:

- you must have first made substantially the same disclosure (described here as a 'previous disclosure') to someone who can receive disclosures
- the previous disclosure must be substantially true
- you did not make the previous disclosure anonymously
- you did not give a written waiver of your right to receive information relating to your previous disclosure
- you did not receive the following from Ballina Shire Council
  - notification that we will not investigate the serious wrongdoing and will also not refer the previous disclosure to another agency, or
  - following the end of the investigation period, notice of our decision to investigate the serious wrongdoing
  - following the end of the investigation period, a description of the results of the investigation
  - following the end of the investigation period, details of proposed or recommended corrective action as a result of the previous disclosure or investigation

Investigation period means:

- after six months from the previous disclosure being made, or
- after 12 months if you applied for an internal review of the agency's decision within six months of making the disclosure

If all the above requirements are met, your disclosure to an MP or journalist may be a voluntary PID.

### **(f) What form should a voluntary PID take?**

You can make a voluntary PID:

- *in writing* – via email or letter to a person who can receive voluntary PIDs.  
We have established a secure and confidential email address to encourage the reporting of PIDs directly to our Disclosure Coordinator – [pid@ballina.nsw.gov.au](mailto:pid@ballina.nsw.gov.au).
- *orally* – have a private discussion face-to-face, via telephone or virtually with a person who can receive voluntary PIDs.
- *anonymously* – write an email or letter or call a person who can receive PIDs to make a report without providing your name or anything that might identify you as the maker of the report. A report will only be considered anonymous if there is no reasonable or practical way of communicating with the person making the report. Even if you choose to remain anonymous, you will still be protected under the PID Act. It may be difficult, however, for us to investigate the matter(s) you have disclosed if we cannot contact you for further information.



### **(g) What should I include in my report**

You should provide as much information as possible so we can deal with the report effectively. The type of information you should include 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
- your relationship with the person(s) involved, such as whether you work closely with them
- your explanation of the matter you are reporting
- how you became aware of the matter you are reporting
- possible witnesses
- other information you have that supports your report.

### **(h) What if I am not sure if my report is a PID?**

You should report all wrongdoing you become aware of regardless of whether you think it is serious wrongdoing. It is important for us to understand what is or may be occurring.

We are then responsible for making sure your report is handled appropriately under the PID Act, or if it is not a PID, in line with our other policies or procedures. Even if your report is not a PID, it may fall within another one of Council's policies for dealing with reports, allegations, or complaints.

### **(i) Deeming that a report is a voluntary PID**

The General Manager can, in certain circumstances, determine that a report is a voluntary PID even if the report does not otherwise have all the features of a voluntary PID. This is known as the 'deeming power'.

By deeming that a report is a voluntary PID, it ensures that reporters are provided with protections under the PID Act.

If you make a report that has not met all of the requirements of a voluntary PID, you can refer your matter to the Disclosure Coordinator, or the General Manager to request that consideration be given to deeming your report to be a voluntary PID.

A decision to deem a report to be a voluntary PID is at the discretion of the General Manager. For more information about the deeming power, see the NSW Ombudsman's guideline ['Deeming that a disclosure is a voluntary PID'](#).

### **(j) Who can I talk to if I have questions or concerns**

If you have questions or concerns you can contact Council's Disclosure Coordinator, or any of the Disclosure Officers listed in Annexure A of this policy.

### 2. PROTECTIONS

#### (a) How is the maker of a voluntary PID protected?

When you make a voluntary PID you receive special protections under the PID Act.

We are committed to taking all reasonable steps to protect you from detriment as a result of having made a PID. We are also committed to maintaining your confidentiality as much as possible while the PID is being dealt with.

We will not tolerate any type of detrimental action being taken against you because you have made a report, might make a report or are believed to have made a report.

The maker of a voluntary PID is protected in the following ways:

##### Protection from detrimental action

A person cannot take detrimental action against another person because they have made a voluntary PID or are considering making a PID. Detrimental action includes bullying, harassment, intimidation or dismissal.

Once we become aware that a voluntary PID by a person employed or otherwise associated with Ballina Shire Council that concerns serious wrongdoing relating to Council has been made, we will undertake a risk assessment and take steps to mitigate the risk of detrimental action occurring against the person who made the voluntary PID.

It is a criminal offence for someone to take detrimental action against a person because they have made or may make a voluntary PID. It is punishable by a maximum penalty of 200 penalty units or imprisonment for five years or both.

A person may seek compensation where unlawful detrimental action has been taken against them.

A person can apply for a court order (injunction) where detrimental action is threatened or has occurred (for example, an order to prevent dismissal or to require reinstatement).

##### Note

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

##### Immunity from civil and criminal liability

Some public officials are often subject to a duty of confidentiality that prevents them disclosing certain information that they obtain or become aware of at work. Sometimes, in order to make a PID, public officials will need to breach or disregard such confidentiality duties. If that happens, a public official cannot be disciplined, sued or criminally charged for breaching confidentiality.

An example of where this may occur is the requirement to release information regarding PIDs to third parties where there is a legal obligation to provide this information. Mandatory reports include Section 11 notifications to ICAC, legislative reports to Integrity Agencies. Council's Disclosure Coordinators can provide further information or clarity on these requirements.

##### Confidentiality

Public officials and agencies must not disclose information tending to identify a person as the maker of a voluntary PID unless doing so is permitted by the PID Act.

Protection from liability for own past conduct

The Attorney General can give the maker an undertaking that a disclosure of their own past conduct will not be used against them if a person discloses their own wrongdoing or misconduct while making a report. This undertaking can only be given on application by an integrity agency to the Attorney General.

**(b) Protections for people who make mandatory and witness PIDs**

Apart from PIDs that are made voluntarily by public officials, there are other types of reports that are recognised as PIDs under the PID Act:

- *Mandatory PID* – this is a PID where the public official has made the report about serious wrongdoing because they have a legal obligation to make that report, or because making that report is an ordinary aspect of their role or function in an agency.
- *Witness PID* – this is a PID where a person discloses information during an investigation of serious wrongdoing following a request or requirement of the investigator.

Protections for makers of mandatory and witness PIDs are detailed in the following table.

Protection	Mandatory PID	Witness PID
<b>Detrimental action</b> It is an offence to take detrimental action against a person based on the suspicion, belief or awareness that a person has made, may have made or may make a PID.	✓	✓
<b>Right to compensation</b> A person can initiate proceedings and seek compensation for injury, damage or loss suffered as a result of detrimental action being taken against them.	✓	✓
<b>Ability to seek injunction</b> An injunction can be sought to prevent the commission or possible commission of a detrimental action offence against a person. For example, an order to prevent dismissal or to require reinstatement.	✓	✓
<b>Immunity from civil and criminal liability</b> A person will not incur civil or criminal liability if the person breaches a duty of confidentiality while making a disclosure. This means that legal action cannot be taken against a person for: <ul style="list-style-type: none"> <li>• breaching a duty of secrecy or confidentiality, or</li> <li>• breaching another restriction on disclosure.</li> </ul>	✓	✓

**3. REPORTING DETRIMENTAL ACTION**

If you experience adverse treatment or detrimental action, such as bullying or harassment, you should report this immediately. You can report any experience of adverse treatment or detrimental action directly to Disclosure Coordinators or Disclosure Officers, or to an integrity agency.

A list of integrity agencies is located at Annexure B of this policy.

#### **4. GENERAL SUPPORT**

The key persons that will provide ongoing support to individuals who have made a report will be the Executive Team and Disclosure Coordinators. The Disclosure Coordinators will be the key contact and will ensure that the necessary steps are taken to protect the person who has made the report from risk of detrimental action.

The Executive Team and Disclosure Coordinators will also provide access to Council's confidential employee assistance program.

#### **5. ROLES AND RESPONSIBILITIES OF COUNCIL EMPLOYEES**

Certain people within Council have responsibilities under the PID Act.

##### **(a) General Manager**

The General Manager is responsible for:

- fostering a workplace culture where reporting is encouraged
- receiving disclosures from public officials
- ensuring there is a system in place for assessing disclosures
- ensuring public officials Council comply with this policy and the PID Act
- supporting Supervisors, Managers, Disclosure Officers, Disclosure Coordinators in understanding their requirements under PID Act by ensuring the provision of adequate training and resources
- ensuring that Ballina Shire Council has appropriate systems for:
  - overseeing internal compliance with the PID Act
  - supporting public officials who make voluntary PIDs, including by minimising the risk of detrimental action
  - implementing corrective action if serious wrongdoing is found to have occurred
  - complying with reporting obligations regarding allegations or findings of detrimental action
  - complying with yearly reporting obligations to the NSW Ombudsman.

##### **(b) Disclosure Coordinators**

Disclosure Coordinators are responsible for:

- receiving reports from public officials;
- assisting supervisors and managers in accepting reports
- receiving reports from Disclosure Officers
- ensuring that any oral reports that have been received are recorded in writing
- supporting persons who have made PID reports throughout the process
- supporting Disclosure Officers and managers in their roles under the PID Act
- coordinating or undertaking investigations into reports of wrongdoing
- overseeing the external reporting requirements under PID Act
- coordinating training on PID Act requirements

### **(c) Disclosure Officers**

Disclosure Officers are responsible for:

- receiving reports from public officials
- receiving reports when they are passed on to them by managers
- ensuring reports are dealt with appropriately, including by referring the matter to the Disclosure Coordinators.
- ensuring that any oral reports that have been received are recorded in writing.
- maintaining strict confidentiality of the PID maker and all associated persons

### **(d) Managers**

The responsibilities of Supervisors and Managers include:

- receiving reports from persons that report to them or that they supervise
- passing on reports they receive to a Disclosure Officer
- maintaining strict confidentiality of the PID maker and all associated persons

#### Note

Managers in this section refers to Section Managers, Coordinators, and Team Leaders within the organisation.

### **(e) All Employees**

All employees must:

- report suspected serious wrongdoing or other misconduct
- participate in any training on PID Act or this policy as provided Council
- use their best endeavours to assist in an investigation of serious wrongdoing if asked to do so by a person dealing with a voluntary PID on behalf of Council
- treat any person with or investigating reports of serious wrongdoing with respect.
- maintain strict confidentiality of any PID processes and all associated persons of which they may be aware

*Employees must not take detrimental action against any person who has made, may in the future make, or is suspected to having made, a PID.*

## **6. HOW WE WILL DEAL WITH VOLUNTARY PIDS**

### **(a) Acknowledging and receiving a report**

When a Disclosure Officer receives a report which is a voluntary PID, or looks like it may be a voluntary PID, the person who made the report will receive the following information:

- You will receive an acknowledgment from Council's Disclosure Coordinator that the report has been received. This acknowledgement will:
  - state that the report will be assessed to identify whether it is a PID
  - state that the PID Act applies to how we deal with the report
  - provide clear information on how you can access this PID policy
  - provide you with details of a contact person and available support, including Council's employee assistance program.

- If the report is a voluntary PID, we will inform you as soon as possible how we intend to deal with the report. This may include:
  - that we are investigating the serious wrongdoing
  - that we will refer the report to a different agency (if appropriate) to deal with the voluntary PID. If we do this, we will provide you with details of this referral
- If we decide to not investigate the report and to not refer it to another agency for it to be investigated, we will tell you the reasons for this decision. We will also notify the NSW Ombudsman of this decision.
- If we decide to investigate the serious wrongdoing, we will provide you with updates on the investigation at least every three months.

During this time, if you would like more frequent updates, you should contact the contact person who was nominated when you made the report.
- If we investigate the serious wrongdoing, we will provide you with the following information once the investigation is complete:
  - a description of the results of the investigation — that is, we will tell you whether we found that serious wrongdoing took place.
  - information about any corrective action as a result of the investigation/s — this means we will tell you what action we took in relation to the person who engaged in the serious wrongdoing or if the serious wrongdoing was by our agency, what we have put in place to address that serious wrongdoing.

Corrective action could include taking disciplinary action against someone or changing the practices, policies and procedures that we have in place which led to the serious wrongdoing.

There may be some details about both the findings made as a result of the investigation and the corrective action taken that cannot be revealed to you. We will always balance the right of a person who makes a report to know the outcome of that report, with other legal obligations we have.

If you have made an anonymous report, in many cases we may not be able to provide this information to you.

### **(b) How we will deal with voluntary PIDs**

Once a report that may be a voluntary PID is received we will look at the information contained in the report to see if it has the features of a voluntary PID. This assessment is undertaken to identify whether the report is a voluntary PID or another type of disclosure, and to make sure that the right steps are followed. If it is a voluntary PID, we will ensure that we comply with the requirements in the PID Act.

#### Report not a voluntary PID

Even if a report is not a voluntary PID, it will still need to be dealt with in a manner consistent with our [Complaints Management Policy](#).

If the report is not a voluntary PID, we will let you know that the PID Act does not apply to the report and how we will deal with the concerns raised in the report.

If you are not happy with this assessment or otherwise disagree with it, you can

- raise it with the person who has communicated the outcome with you or a Disclosure Officer
- request an internal review or request that the matter be conciliated.

We can, but do not have to, request the NSW Ombudsman to conciliate the matter.

Annexure B provides a list of integrity agencies that can be contacted should you wish to obtain any clarification on management of PID.

### Cease dealing with report as voluntary PID

We may stop dealing with a voluntary PID because it is not actually a voluntary PID (meaning it does not have all the features of a PID).

In this situation we will provide you with reasons in writing as to why we had ceased dealing with the report as a voluntary PID.

### Where the report is a voluntary PID

In most cases we will conduct an investigation to make findings about whether the serious wrongdoing disclosed in the report occurred, who was involved, who was responsible, and whether the people involved, or the agency engaged, in serious wrongdoing.

There may be circumstances where we believed an investigation is not warranted, for example, if the conduct has previously been investigated.

There may also be circumstances where we decide that the report should be referred to another agency, such as an integrity agency. For example, reports concerning possible corrupt conduct maybe required to be reported to the ICAC in accordance with Section 11 of the Independent Commission Against Corruption Act 1988.

Before referring a matter, we will discuss the referral with the other agency, and we will provide you with details of the referral and a contact person within the other agency.

If we decide not to investigate a report and to not refer the matter to another agency, we must let you know the reasons for this and notify the NSW Ombudsman.

### **(c) How we will protect the confidentiality of the maker of a voluntary PID**

We understand that people who make voluntary PIDs may want their identity and the fact that they have made a report to be confidential.

Under the PID Act, information tending to identify a person as the maker of a voluntary PID (known as identifying information) is not to be disclosed by a public official or an agency.

There are certain circumstances under the PID Act that allow for the disclosure of identifying information. These include:

- where the person consents in writing to the disclosure
- where it is generally known that the person is the maker of the voluntary PID because of their voluntary self-identification as the maker
- when the public official or Ballina Shire Council reasonable considers it necessary to disclose the information to protect the 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
- when the information is disclosed to a medical practitioner or psychologist for the purposes of providing medical or psychiatric care, treatment or counselling to the individual disclosing the information
- when the information is disclosed for the purposes of proceedings before a court or tribunal
- when the disclosure of the information is necessary to deal with the disclosure effectively
- if it is otherwise in the public interest to disclose the identifying information.

We will not disclose identifying information unless it is necessary and authorised under the PID Act.

We will put in place steps to keep the identifying information of the maker and the fact that a report has been made confidential. It may not be possible for us to maintain complete confidentiality while we progress the investigation, but we will do all that we practically can to not unnecessarily disclose the information from which the maker of the report can be identified. We will do this by:

- limiting the number of people who are aware of the maker's identity or information that could identify them
- if we must disclose information that may identify the maker of the PID, we will still not disclose the actual identity of the maker of the PID, unless we have their consent to do so
- we will ensure that any person who does know the identity of the maker of the PID is reminded that they have a legal obligation to keep their identity confidential
- we will ensure that only authorised persons have access to emails, files or other documentation that contain information about the identity of the maker. These authorised officers will be limited to the General Manager and Disclosure Coordinators
- we will undertake an assessment to determine if anyone is aware of the maker's identity and if those persons have a motive to cause detrimental action to be taken against the maker or impede the progress of the investigation
- we will provide information to the maker of the PID about the importance of maintaining confidentiality and advising them how to best protect their identity, for example, by telling them not to discuss their report with other staff.

If confidentiality cannot be maintained or is unlikely to be maintained, we will implement strategies, including a risk management plan, to minimise the risk of detrimental action. The person making the disclosure will be provided with support throughout the process.

#### **(d) How we will assess and minimise the risk of detrimental action**

Ballina Shire Council will not tolerate any detrimental action being taken by any person against a person who has made a PID, investigators, witnesses or the person the report is about.

We will assess and take steps to mitigate detrimental action from being taken against the maker of a voluntary PID, the person whose conduct is the subject of a PID, investigators and witnesses.



We will take steps to assess and minimise the risk of detrimental action by:

- explaining that a risk assessment will be undertaken, and a risk management plan will be created (including reassessing the risk throughout the entirety of the matter)
- providing details of the Disclosure Coordinator, being Director Corporate and Community who oversees risk management function in the organisation, who will be responsible for undertaking a risk assessment
- explaining how Council will communicate with the maker of the PID the identified risks and controls
- listing the protections that will be offered, such as potential for remote working or approved leave, for the duration of the investigation
- outlining what support will be provided

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.

### **(e) How we will assess and minimise the risk of detrimental action**

If we become aware of an allegation that a detrimental action offence has occurred or may occur, we will:

- take all steps possible to stop the action and protect the person(s)
- take appropriate disciplinary action against anyone that has taken detrimental action
- refer any evidence of a detrimental action offence to the Commissioner of Police and the ICAC or the Law Enforcement Conduct Commission (whichever is applicable)
- notify the NSW Ombudsman about the allegation of a detrimental action offence being committed.

- advise and update the person who the alleged detrimental action has been taken against of the actions we have/are taking, who is managing those actions, and, should they require it, how they can access support.

If any persons within Ballina Shire Council, including the maker of a PID, believes that a detrimental action offence has occurred, then this is to be immediately reported to the Disclosure Coordinators or the General Manager.

**(f) What we will do if investigation finds that serious wrongdoing has occurred**

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

- a formal apology
- improving internal procedures or policies to adequately prevent and respond to similar instances of wrongdoing
- providing additional education and training to staff where required
- taking industrial action against persons involved in the wrongdoing, in accordance with the disciplinary procedures as set out in the Local Government State Award
- payment of compensation to people who have been affected by serious wrongdoing or other misconduct

The Disclosure Coordinators oversee or directly manage the investigation process for PIDs.

The findings from the investigation process are provided to the General Manager and relevant integrity agencies.

The maker of the PID will be notified, as appropriate without breaching confidentiality, of the corrective action taken by the Disclosure Coordinator.

## **7. REVIEW AND DISPUTE RESOLUTION**

### **(a) Internal review**

People who make voluntary PIDs can seek internal review of the following decisions made by Ballina Shire Council:

- that Ballina Shire Council is not required to deal with the report as a voluntary PID
- to stop dealing with the report because we 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.

Council will ensure internal reviews are conducted in compliance with the PID Act.

If you would like to make an application for an internal review, you must apply in writing to the General Manager within 28 days of being informed of our decision. The application should state the reasons why you consider the decision should not have been made. You may also submit any other relevant material with your application.

The review will be undertaken by the General Manager within 28 days of receipt of the application.

### **(b) Voluntary dispute resolution**

If a dispute arises between us and a person who has made a report which is, or may be, a voluntary PID, we may request the NSW Ombudsman to conciliate the dispute.

Conciliation is a voluntary process and will only be suitable for disputes where Ballina Shire Council and the maker of the report are willing to resolve the dispute.

## **8. OTHER AGENCY OBLIGATIONS**

### **(a) Record-keeping requirements**

Council has responsibilities under the *State Records Act 1998* to keep full and accurate records with respect to all information received in connection with the PID Act.

PID reports, investigation reports and associated documents and information will be stored in Council's electronic information management system. Access to the information will be restricted to the General Manager and Disclosure Coordinators.

Disclosure Officers and Managers who receive PID related information are required to refer it to a Disclosure Coordinator so that it can be managed in a secure environment.

### **(b) Reporting of voluntary PIDs and annual return to the NSW Ombudsman**

Each year we provide an annual return to the NSW Ombudsman which includes:

- information about voluntary PIDs received by Ballina Shire Council during each return period (yearly with the start date being 1 July)
- action taken by Ballina Shire Council to deal with voluntary PIDs during the return period
- how Ballina Shire Council promoted a culture in the workplace where PIDs are encouraged.

Information for the annual return is collected by the Disclosure Coordinators, and they are responsible for the preparation and provision of the information to the NSW Ombudsman. This information is stored in Council's electronic document management system.

### **(c) How we will ensure compliance with the PID Act and this policy**

Ballina Shire Council will ensure compliance with the PID Act through:

- ensuring appropriate training is provided to support and develop understanding of the PID Act and its requirements
- supporting managers and Disclosure Officers in undertaking their roles
- auditing and reporting of PID processes
- monitoring review timeframes and addressing non-compliance

### **BACKGROUND**

Effective from 1 October 2023 all agencies in NSW are required to have a Public Interest Disclosure (PID) Policy under Section 42 of the Public Interest Disclosures Act 2022 (PID Act).

Council has had in place for many years Disclosure Coordinators and officers and has provided mandatory training to staff on Code of Conduct, Fraud and Corruption Control Policy and PID reporting, to support the previous Public Interest Disclosure Act 1994 requirements.

The PID Act 2022 has a strong focus of 'speak up' culture and much broader measures of reporting. This policy reflects NSW Ombudsman model policy.

Ballina Shire Council is committed to the aims and objectives of the Public Interest Disclosures Act 2022, and does not tolerate serious wrongdoing.

We recognise the value and importance of contributions of our staff to enhance administrative and management practices and strongly support a strong speak up culture to report serious wrongdoing.

Council will, through this Policy, continue to ensure that all reasonable steps are taken to provide protection to staff that make disclosures from any detrimental action in reprisal for the making of the disclosure.

### **SCOPE OF POLICY**

This policy applies to, and for the benefit of, all public officials in NSW. 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
- 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

This policy does not apply to:

- people who have received services from Ballina Shire Council and want to make a complaint about those services
- people, such as contractors, who provide services to an agency. For example, employees of a company that sold computer software to an agency.
- This means that if you are not a public official, this policy does not apply to your complaint.

However, you can still make a complaint to us. This can be done by contacting Council's General Manager, or Public Officer in person at our Administration Centre, by email at [council@ballina.nsw.gov.au](mailto:council@ballina.nsw.gov.au), or on 1300 864 444.

Refer to Council's [Complaints Management Policy](#) for further information on how to lodge a general complaint.

### **RELATED DOCUMENTATION**

This policy should be read in conjunction with the following policies:

- [Code of Conduct](#)
- [Complaints Management](#)
- [Fraud and Corruption Control](#)
- [Risk Management Policy](#)

### **REVIEW**

The Public Interest Disclosure Policy is to be reviewed every four years.

**ANNEXURE A – Disclosure Coordinators and Officers**

Council encourages the reporting of PIDs directly to the Disclosure Coordinators via the secure and confidential email address [pid@ballina.nsw.gov.au](mailto:pid@ballina.nsw.gov.au).

Disclosure Coordinators	Contact Information
Director Corporate and Community Coordinator Information Management	pid@ballina.nsw.gov.au 1300 864 444

Disclosure Officers	Contact Information
General Manager	40 Cherry Street Ballina
Director Civil Services	PO Box 450
Director Planning and Environmental Health	BALLINA NSW 2478
Manager Assets and Resource Recovery	1300 864 444
Manager Commercial Services	council@ballina.nsw.gov.au
Manager Communications and Customer Service	
Manager Development Services	
Manager Engineering Works	
Manager Facilities Management	
Manager Financial Services	
Manager Infrastructure Planning	
Manager Information Services	
Manager Open Spaces	
Manager People and Culture	
Manager Project Management Office	
Manager Public and Environmental Health	
Manager Strategic Planning	
Manager Water and Wastewater	
Airport Manager	
Coordinator Community Facilities	
Coordinator Trades and Services	
Team Leader Visitor Services	
Works Engineer	

In addition to the above, staff can report to their Manager or Supervisor.

For public officials providing services or exercising functions on behalf of Council, such as *contractors*, *subcontractors* or *volunteers*, your Manager is taken to be the person in Council who oversees those services or functions, or who manages your contract or volunteering arrangement.

**ANNEXURE B – Integrity Agencies**

<b>Integrity agency</b>	<b>What they investigate</b>	<b>Contact information</b>
The NSW Ombudsman	Most kinds of serious maladministration by most agencies and public officials (but not NSW Police, judicial officers or MPs)	1800 451 524 Level 24 580 George Street SYDNEY NSW 2000 info@ombo.nsw.gov.au
The Auditor-General	Serious and substantial waste of public money by auditable agencies	02 9275 7100 GPO Box 12 SYDNEY NSW 2001 governance@audit.nsw.gov.au
Independent Commission Against Corruption ICAC	Corrupt conduct	02 8281 5999 or toll free 1800 463 909 fax 02 9264 5364 GPO Box 500 SYDNEY NSW 2001 icac@icac.nsw.gov.au
The Inspector of the Independent Commission Against Corruption	Serious maladministration by the ICAC or the ICAC officers	02 9228 3023 PO Box 5341 SYDNEY NSW 2001 oiicac_executive@oiicac.nsw.gov.au
The Law Enforcement Conduct Commission	Serious maladministration by the NSW Police Force or the NSW Crime Commission	02 9321 6700 or 1800 657 079 GPO Box 3880 SYDNEY NSW 2001 contactus@lecc.nsw.gov.au
The Inspector of the Law Enforcement Conduct Commission	Serious maladministration by the LECC and LECC officers	02 9228 3023 GPO Box 5341 SYDNEY NSW 2001 oilecc_executive@oilecc.nsw.gov.au
The Office of Local Government	Local government pecuniary interest contraventions	olg@olg.nsw.gov.au
The Privacy Commissioner	Privacy contraventions	1800 472 679 GPO Box 7011 SYDNEY NSW 2001 ipcinfo@ipc.nsw.gov.au
The Information Commissioner	Government information contraventions	1800 472 679 GPO Box 7011 SYDNEY NSW 2001 ipcinfo@ipc.nsw.gov.au

# Overview of the new *Public Interest Disclosures Act 2022*

On 1 October 2023 there will be new public interest disclosure (PID) legislation in NSW which completely replaces the *Public Interest Disclosures Act 1994* (1994 Act). This information sheet will provide an overview of key components of the *Public Interest Disclosures Act 2022* (PID Act 2022 or the Act).

## Background

Good government relies on public officials speaking up when they witness, or otherwise become aware of, wrongdoing in the public sector.

A strong 'speak up' culture that encourages public officials to report wrongdoing is important to ensure the integrity of the public sector.

An integral part of that 'speak up' culture is having in place a framework that facilitates public interest reporting of wrongdoing by:

- protecting those who speak up from detriment
- taking active steps to maintain the confidentiality of reports
- imposing duties on agencies who receive reports of wrongdoing to take appropriate action to investigate or otherwise deal with them.

From 1 October 2023 that framework will be the PID Act 2022.

The PID Act 2022 provides for public officials to have multiple pathways to report serious wrongdoing. This includes reporting to a disclosure officer, their manager and other agencies, such as integrity agencies.

The threshold for what is considered detrimental action has been lowered, and the associated penalties for the detrimental action offence have been increased, when compared to the 1994 Act.

Clarity is provided in the PID Act 2022 on what agencies are expected to do with a report when it is received, how they must deal with a report once it is identified

that it is a PID and what they must do if serious wrongdoing is found to have occurred. The PID Act 2022 also outlines when an agency must communicate with a PID maker and with the NSW Ombudsman.

Under this framework, all agencies must ensure they have:

- systems in place to manage confidentiality
- welfare support mechanisms for PID makers and,
- procedures for assessing the risk of detrimental action and implementing risk mitigation strategies.

## Categories of PIDs

When a public official reports suspected or possible wrongdoing in the public sector, their report will be a PID if it has certain features which are set out in the Act.

The Act recognises that there are 3 types of PIDs, and that some people who are not public officials, may also make reports or provide information and require protection from detrimental action.

Under the Act, there are 3 types of PIDs. These are:

**Voluntary PID:** This is a PID where the report has been made by the public official because they decided, of their own accord, to come forward and disclose what they know.

**Mandatory PID:** This is a PID where the public official has made the report about serious wrongdoing because they have a legal obligation to make that



## 7.2 Public Interest Disclosures Act

report, or because making that report is an ordinary aspect of their role or function in an agency.

**Witness PID:** This is a PID where a person discloses information in the course of an investigation of serious wrongdoing following a request or requirement of the investigator.

Most of the obligations on agencies in the Act relate specifically to voluntary PIDs – these include how a voluntary PID must be assessed, what information must be given to the maker of the voluntary PID, how the voluntary PID must be investigated or otherwise dealt with, and what must be reported to the Ombudsman about voluntary PIDs.

The protection against detrimental action and immunity from civil and criminal liability for breaching a duty of secrecy or confidentiality when making a PID, apply to all 3 types of PID.

### Serious wrongdoing

In order to ensure that agencies identify when they have received a voluntary PID, it is important to understand what serious wrongdoing is.

Serious wrongdoing is defined under section 13 of the Act as meaning one or more of the following:

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

### Identifying a voluntary PID

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

This is where a public official made 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:

1. The report has been made by a public official
2. The report has been made to a suitable recipient

3. The report must disclose information that the person honestly and on reasonable grounds believes shows or tends to show serious wrongdoing
4. The report is made in writing or orally (but if it is made to a Minister or ministerial staff, it must be made in writing)
5. The report was made voluntarily, i.e., it is not a mandatory or a witness PID.

The Act contains a deeming provision which gives the head of an agency a delegable power to deem a report to be a voluntary PID, even if it does not have all 5 features of a PID. By deeming that a report is a voluntary PID, it ensures that reporters are provided with protections under the PID Act.

### Recipients of PIDs

For a report to be a voluntary PID, it must have been made to one or more of the following people:

- the person’s manager
- a ‘disclosure officer’ in any agency – this could be:
- the agency where the person works
- the agency to which the wrongdoing related (if not the agency where the person works)
- another agency, including an integrity agency (such as the NSW Ombudsman’s Office, the ICAC, or the Audit Office)
- the head of any agency
- a Minister or Ministerial staff (but only if the report is made in writing)
- a journalist or MP (in very limited circumstances).

Where a voluntary PID is made to the person’s manager, it is the manager’s responsibility to make sure the PID is communicated to a disclosure officer, as soon as reasonably practicable, so it can be properly assessed and dealt with.

The disclosure officers of an agency, together with their contact details, will be set out in the agency’s PID policy on its website.

### Disclosure officers

Disclosure officers are one of the key people to whom a report will be made in an agency.

Disclosure officers are those identified as ‘disclosure officers’ in the agency’s PID policy, which can be found on the agency’s intranet and public website.

In addition to those listed in an agency's PID Policy, the following people are also disclosure officers under the Act:

- the head of an agency,
- the most senior ongoing employee who ordinarily works at a permanently maintained worksite where more than 1 employee works, and
- the member of an unelected governing body within an agency.

It is important that agencies nominate a sufficient number of disclosure officers for the size of the agency, and within the permanently maintained worksites across the agency. The purpose of this is to ensure that public officials have sufficient access to report serious wrongdoing.

### Integrity agencies

The PID Act classifies certain agencies as 'integrity agencies'. Integrity agencies have an important role in the Act.

There is no requirement under the Act that a public official report serious wrongdoing to the 'right' agency for the report to constitute a PID. They may choose to make the report to an integrity agency (or any other agency) instead of to the agency they work in.

Generally, PIDs would be expected to be directed to the most relevant integrity agency – for example, a report of corrupt conduct would be reported to the ICAC, a report of serious maladministration to the NSW Ombudsman, and a report of a government information contravention to the NSW Information and Privacy Commission.

The integrity agency will make a decision on how it will deal with the report, which may include referring it back to the agency where the PID maker works or is otherwise associated with.

### Protecting the identity of PID makers

Agencies have an obligation to ensure that information which identifies, or tends to identify, a person as the maker of a voluntary PID is not unlawfully disclosed. This is called "identifying information" in the Act.

The Act allows for circumstances in which a public official or agency can lawfully disclose identifying information. These circumstances include where the disclosure of the information is necessary for the report to be effectively dealt with.

### 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 includes, but is not limited to actions such as intimidation, bullying and reputational damage.

The Act contains robust protections to ensure that a person who has made a PID does not suffer detrimental action.

Under the Act it is a criminal offence to take detrimental action against a person based on the suspicion, belief or awareness that a person had made, may have made, or may make a PID. This is known as a detrimental action offence.

Agencies have a duty to assess the risk of detrimental action against a PID maker, and to minimise the risk of detrimental action, as soon as they become aware the voluntary PID has been made and on an ongoing basis while the matter is being dealt with.

Injunctions can be sought from the Supreme Court to prevent the commission of a detrimental action offence, or to stop a person committing a detrimental action offence. Generally, an injunction would be sought by a PID maker or an integrity agency, on their behalf.

If unlawful detrimental action is taken against someone, they are entitled to seek compensation through the courts for injury, damage or loss suffered.

### Key terms

A glossary of key terms is contained in Appendix A.

### Further information

This information is intended to provide an overview of the PID Act 2022 and introduce the core concepts of the Act. More information can be found on the [NSW Ombudsman website](#). Alternatively, you can send an email to [pidadvice@ombo.nsw.gov.au](mailto:pidadvice@ombo.nsw.gov.au).

**Appendix A: Glossary of key terms**

<b>Key term</b>	<b>Definition</b>
<b>Agency</b>	<p>'Agency' is defined in section 16 of the PID Act to mean any of the following:</p> <ul style="list-style-type: none"> <li>• a Public Service agency</li> <li>• a group of staff comprising each of the following services, or a separate group of that staff: <ul style="list-style-type: none"> <li>– the NSW Police Force</li> <li>– the Teaching Service of New South Wales</li> <li>– the NSW Health Service</li> <li>– the Transport Service of New South Wales</li> </ul> </li> <li>• a statutory body representing the Crown</li> <li>• an integrity agency</li> <li>• a public authority whose conduct or activities are authorised to be investigated by an integrity agency under another Act or law</li> <li>• a State owned corporation or its subsidiaries</li> <li>• a Local Government Authority</li> <li>• a Local Aboriginal Land Council</li> <li>• the Department of Parliamentary Services, the Department of the Legislative Assembly and the Department of the Legislative Council</li> <li>• a Minister's office is not an agency for the purposes of the PID Act.</li> </ul>
<b>Detriment</b>	<p>Detriment is defined in section 32(1) of the Act as disadvantage to a person, including:</p> <ul style="list-style-type: none"> <li>• injury, damage or loss</li> <li>• property damage</li> <li>• reputational damage</li> <li>• intimidation, bullying or harassment</li> <li>• unfavourable treatment in relation to another person's job</li> <li>• discrimination, prejudice or adverse treatment</li> <li>• disciplinary proceedings or disciplinary action.</li> </ul>
<b>Detrimental action</b>	<p>Detrimental action is defined in section 32(2) of the Act as 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).</p>
<b>Identifying information</b>	<p>Under section 64(1) of the Act, identifying information is information which tends to identify a person as the maker of a voluntary PID.</p>
<b>Integrity agency</b>	<p>The following are 'integrity agencies' as defined under section 19 of the PID Act:</p> <ul style="list-style-type: none"> <li>• the Ombudsman</li> <li>• the Auditor-General</li> <li>• the Independent Commission Against Corruption</li> <li>• the Law Enforcement Conduct Commission</li> <li>• the Inspector of the Independent Commission Against Corruption</li> <li>• the Inspector of the Law Enforcement Conduct Commission</li> <li>• the Secretary of the Department of Planning, Industry and Environment (when exercising certain functions under the Local Government Act 1993)</li> <li>• the Privacy Commissioner</li> <li>• the Information Commissioner</li> <li>• a person or body declared by the regulations to be an integrity agency.</li> </ul>

## 7.2 Public Interest Disclosures Act

<b>Public interest disclosure</b>	The term public interest disclosure is defined in section 21 of the PID Act to mean: <ul style="list-style-type: none"><li>• a voluntary PID</li><li>• a witness PID or</li><li>• a mandatory PID.</li></ul>
<b>Public official</b>	'Public official' is defined in section 14 of the PID Act as follows: <ul style="list-style-type: none"><li>• a person employed in or by an agency or otherwise in the service of an agency</li><li>• 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</li><li>• an individual in the service of the Crown</li><li>• a statutory officer</li><li>• a person providing services or exercising functions on behalf of an agency, including a contractor, subcontractor or volunteer</li><li>• if an entity, under a contract, subcontract or other arrangement, is to provide services on behalf of an agency or exercise functions of an agency in whole or in part—an employee, partner or officer of the entity who is to be involved in providing the services in whole or in part, or who is to exercise the functions</li><li>• a judicial officer</li><li>• a member of Parliament, including a Minister</li><li>• a person employed under the Members of Parliament Staff Act 2013.</li></ul>

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NSW Ombudsman  
Level 24, 580 George Street  
Sydney NSW 2000

Email [pidadvice@ombo.nsw.gov.au](mailto:pidadvice@ombo.nsw.gov.au)

Web [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)  
General inquiries 02 9286 1000  
Toll free (outside Sydney metro) 1800 451 524

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# What is serious wrongdoing?



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### **What this guideline covers**

This guideline provides information about the types of serious wrongdoing that can be reported under the *Public Interest Disclosures Act 2022 (PID Act)*. It provides guidance on how to identify whether the report is a report of serious wrongdoing.

### What is ‘serious wrongdoing’?

A framework for staff to report serious wrongdoing and for those reports to be properly dealt with is vital for maintaining the integrity of the public service.

To ensure that agencies identify when they have received a voluntary public interest disclosure (**PID**), it is important to understand serious wrongdoing. A key feature of a voluntary PID is that the public official making the report must honestly believe on reasonable grounds that the information shows or tends to show serious wrongdoing.

Under section 13 of the PID Act, there are 6 categories of serious wrongdoing:

1. corrupt conduct
2. serious maladministration
3. a government information contravention
4. a privacy contravention
5. a serious and substantial waste of public money
6. a local government pecuniary interest contravention.

There is no further assessment that needs to be made as to the seriousness of the reported wrongdoing. If it is serious wrongdoing, as defined under section 13 of the PID Act, it meets the test under the PID Act and is ‘serious’ enough to be a voluntary PID.

A disclosure can show more than one type of serious wrongdoing. For example, a public official could provide information that reveals both corrupt conduct and a privacy contravention. A disclosure may also contain information of other types of conduct that do not fall within the PID Act.

**Important note:** Makers of PIDs do not need to state the category of serious wrongdoing that they are reporting. Indeed, they do not even need to necessarily state that they are reporting serious wrongdoing.

Makers of PIDs can make their report to their manager. Managers have an important role in the PID framework, in that they must communicate the report to a disclosure officer on behalf of their staff member. This means that all managers will need to have a good working knowledge of the type of conduct which may be serious wrongdoing, so they can recognise when they have an obligation to pass on a report to a disclosure officer. Disclosure officers will, of course, need to be more adept in their understanding of serious wrongdoing, to ensure they properly identify when a report is a voluntary PID.



### Corrupt conduct

Corrupt conduct in the PID Act has the same meaning as in sections 7, 8 and 9 of the *Independent Commission Against Corruption Act 1988*. It involves deliberate or intentional wrongdoing involving (or affecting) a public official or agency in NSW.

Corrupt conduct includes:

- conduct of any person that adversely affects, or could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials, or any agency
- any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of their official functions
- any conduct of a public official or former public official that constitutes or involves a breach of public trust
- any conduct of a public official or former public official that involves the misuse of information or material that they acquired during their official functions, whether for their benefit or for the benefit of any other person.

Some practical examples include:

- a public official selling confidential information gained while working in an official capacity
- a public official failing to report criminal conduct in exchange for a financial advantage
- a local councillor voting in favour of a development in which the councillor has an undisclosed financial interest
- a public official accepting a financial benefit from someone in exchange for ensuring a particular outcome for that person (such as a favorable outcome on a driver's licence test or a development application).

For conduct to be considered corrupt, it has to be serious enough to involve a criminal or disciplinary offence, be grounds for dismissal or, in the case of Members of Parliament, involve a substantial breach of their code of conduct.

The Independent Commission Against Corruption (**ICAC**) advises that initially, at the time the report is made, you do not need to know with any certainty that the conduct reaches this level of seriousness as this will often be known only after a full investigation.

**Important note:** The ICAC is the integrity agency that generally investigates corrupt conduct in the NSW public sector.

## **Serious maladministration**

Serious maladministration is defined in the PID Act as conduct, other than conduct of a trivial nature, of an agency or a public official relating to a matter of administration that is:

- unlawful
- unreasonable, unjust, oppressive or improperly discriminatory, or
- based wholly or partly on improper motives.

There are three elements to serious maladministration in this definition:

1. The conduct relates to a matter of administration.  
This means that there must be a link between the relevant action or inaction and the exercise of a power, function or duty of an agency or public official.
2. The conduct is:
  - (a) unlawful
  - (b) unreasonable, unjust, oppressive or improperly discriminatory, or
  - (c) based wholly or partly on improper motives.
3. The action or inaction is serious. This means only that it must be more than trifling or trivial.

**Some examples of serious maladministration include:**

- an agency contravenes legal procurement processes when engaging contractors
- senior staff fail to deal with multiple reports of toxic materials in government-owned properties over a period of time
- an agency implements policies and procedures which are contrary to its governing legislation and result in misuse of powers
- agency procedures are unfairly discriminatory.

**Important note:** The Ombudsman is the integrity agency with primary responsibility to investigate serious maladministration in most agencies in the NSW public sector. The Law Enforcement Conduct Commission (LECC) has jurisdiction to investigate serious maladministration in the NSW Police Force and the NSW Crime Commission. However, there are some bodies and individuals that are excluded from the jurisdiction of the Ombudsman and the LECC, including Parliament and Members of Parliament and courts and judges.

## **Serious and substantial waste of public money**

A 'serious and substantial waste of public money' is not defined in the PID Act.

A serious and substantial waste of public money includes any uneconomical, inefficient or ineffective use of resources, whether authorised or unauthorised, and which results in a loss of public funds or resources.

When addressing any complaint of serious and substantial waste, the Audit Office will have regard to the nature, scale and materiality of the waste.

**Examples of waste include:**

- misappropriation or misuse of public property
- the purchase of unnecessary or inappropriate goods and services
- incurring costs which might otherwise have been avoided
- programs not achieving their objectives and therefore the costs being clearly ineffective and inefficient
- failure to maintain public property in a way that results in far greater expense being incurred in the future.

Waste can result from such things as:

- not following a competitive tendering process
- having poor or no processes in place when administering large amounts of public funds
- the absence of appropriate safeguards to prevent the theft or misuse of public property
- purchasing procedures and practices which fail to ensure that goods and services are necessary and adequate for their intended purpose
- purchasing practices where the lowest price is not obtained for comparable goods or services without appropriate justification.

**Important note:** A disagreement with the merits of intended government outcomes and policy objectives is not a serious and substantial waste of public money. This category of serious wrongdoing is concerned with the effective and efficient deployment of public resources toward government-determined objectives – not with the merit of those objectives themselves.

A public official may complain to the Auditor-General that there has been a serious and substantial waste of government money by an auditable entity or an officer or employee of an auditable entity (including a government officer).

## **Government information contravention**

A government information contravention is a failure, other than a trivial failure, by an agency or public official to exercise functions in accordance with the:

- *Government Information (Information Commissioner) Act 2009*
- *Government Information (Public Access) Act 2009 (GIPA Act)*, or
- *State Records Act 1998 (SR Act)*.

**Examples of a failure to exercise functions under the GIPA Act include:**

- having a policy of charging a fee for open access information, which should be free of charge, either purposely or due to a lack of understanding of the rules around open access
- intentionally overlooking documents that should clearly be included in response to an access application
- destroying, concealing or altering records to prevent them from being released
- knowingly making decisions that are contrary to the GIPA Act
- directing another person to make a decision that is contrary to the GIPA Act.

**Examples of a failure to exercise functions under the SR Act include:**

- intentionally disposing of records that must be retained under the SR Act
- systemic issues with an agency's record-keeping system that means information is not being stored appropriately.

**Important note:** The Information Commissioner is the integrity agency that generally investigates government information contraventions in the NSW public sector.

## Privacy contravention

A privacy contravention is a failure, other than a trivial failure, by an agency or public official to exercise functions in accordance with the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*.

**Examples of a privacy contravention include:**

• **Personal information**

- a public official unlawfully accessing a person’s personal information, for their personal use or for another non-work-related matter, on a database that is used by an agency to retain customer information
- an agency having poor data management processes in place which leads to the disclosure of the personal information about a person, or group of persons, to another agency or entity without a lawful reason
- an agency’s poor email practices resulting in repeated failures by staff of the agency to ensure emails containing personal information go to the correct recipient.

• **Health information**

- unlawfully accessing someone’s health information on an agency database and then disclosing this to a third party
- agencies which legitimately retain health information, failing to properly ensure that access to those records is restricted to the appropriate part of the business
- agencies that retain health information for one purpose disclosing it internally to another section of the agency for it to be used for another purpose.

**Important note:** The Privacy Commissioner is the integrity agency that generally investigates privacy contraventions in the NSW public sector.

## **Local government pecuniary interest contravention**

A local government pecuniary interest contravention means the contravention of an obligation in relation to a pecuniary interest, imposed by:

- the *Local Government Act 1993 (LG Act)*, or
- a code of conduct adopted by a council under section 440(3) of the LG Act.

A pecuniary interest is an interest that a person has in a matter because they have a reasonable likelihood, or expectation, of appreciable financial gain or loss to themselves or someone within their family.

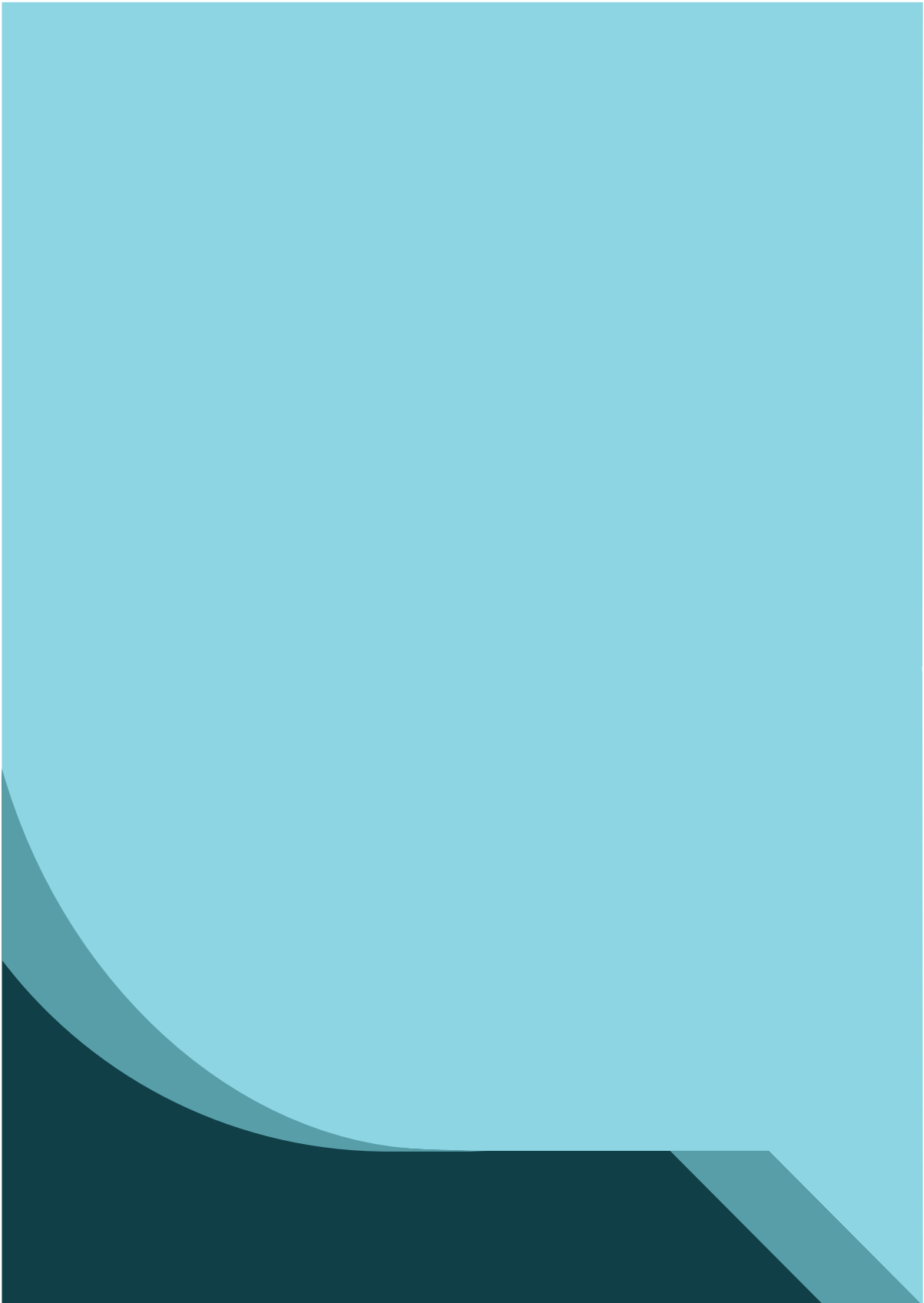
The LG Act places specific obligations on councillors, council delegates, council staff and other people involved in making decisions or giving advice on council matters to act honestly and responsibly in carrying out their functions. Generally, those obligations are to lodge disclosure of interests returns, lodge written declarations and disclose pecuniary interests at council and council committee meetings.

Allegations or complaints concerning possible breaches of the pecuniary interest provisions of the LG Act are to be made to the Department of Planning and Environment (**Department**) via the Office of Local Government (**OLG**) for assessment and any necessary action. Potentially, the OLG may be required to formally investigate the matter and then refer a report of the investigation to the Pecuniary Interest and Disciplinary Tribunal.

**Examples of local government pecuniary interest contraventions include:**

- a senior council staff member recommending a family member for a council contract and not declaring the relationship
- a general manager holding an undisclosed shareholding in a company competing for a council contract
- a councillor participating in considering a development application for a property in which they or their family have an interest.

**Important note:** The LG Act confers powers and responsibilities on the 'Departmental Chief Executive', currently the Secretary of the Department. The OLG is a business unit within the Department that advises the Minister for Local Government and exercises delegated functions of the Secretary of the Department under the LG Act. A Deputy Secretary oversees the OLG and reports to the Secretary.



# Protections under the PID Act





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### **What this guideline covers**

People who report wrongdoing need to be confident they will be protected from harm or disadvantage as a result of making a disclosure. Agencies need to accurately and quickly identify that a disclosure is a public interest disclosure (**PID**) because, if a report is a PID, the public official who made the report will have special protections under the *Public Interest Disclosures Act 2022* (**PID Act**). These protections apply from the time the PID is received by the agency.

This guideline explains these protections and outlines which are available to the makers of voluntary, mandatory and witness PIDs.

## Overview of protections under the PID Act

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

Investigators of serious wrongdoing are also protected from detrimental action<sup>1</sup> and can apply for an injunction to prevent the commission or possible commission of a detrimental action offence.<sup>2</sup>

Protection	Voluntary PID	Mandatory PID	Witness PID
<b>Detrimental action</b> — It is an offence to take detrimental action against a person based on a suspicion, belief or awareness that a person has made, may have made or may make a PID.	✓	✓	✓
<b>Right to compensation</b> — A person can initiate proceedings and seek compensation for injury, damage or loss suffered because of detrimental action being taken against them.	✓	✓	✓
<b>Ability to seek preventive injunction</b> — An injunction can be sought to prevent the commission or possible commission of a detrimental action offence against a person.	✓	✓	✓
<b>Ability to seek remedial injunction</b> — If a person has suffered unlawful detrimental action, an injunction can be applied for to remedy that offence (for example, to reinstate the person's employment).	✓	✓	✓
<b>Confidentiality</b> — 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.  * However, where possible and provided it does not hinder an investigation, it is best practice for agencies to maintain confidentiality of a maker's identity whether it is a mandatory or witness PID, or some other type of complaint.	✓	✗*	✗*
<b>Immunity from civil and criminal liability</b> — 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"> <li>breaching a duty of secrecy or confidentiality, or</li> <li>breaching another restriction on disclosure.</li> </ul>	✓	✓	✓
<b>Protection from liability for own past conduct</b> — 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.  However, the Attorney General may give the maker of the PID a <i>conditional</i> or <i>unconditional</i> undertaking that the disclosure of their own conduct will not be used against them.	Can only be provided by the Attorney General	Can only be provided by the Attorney General	Can only be provided by the Attorney General

1. *Public Interest Disclosures Act 2022*, s 31(2).

2. *Public Interest Disclosures Act 2022*, s 37(1)(d).

### Detrimental action

The PID Act contains protections to ensure that a person who has made a PID does not suffer detrimental action such as bullying, harassment or dismissal, as a result. These protections extend to people who are suspected by others of having made a PID (even if they have not) or of potentially making a PID in the future.

Detrimental action against a person is an *act or omission* that causes, comprises, involves or encourages detriment, or a threat of detriment, to a person (whether express or implied).<sup>3</sup>

This means that even if someone encourages another person to cause detriment or threaten detriment to a person, that encouragement will itself be considered detrimental action.

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.<sup>4</sup>

Under section 33 of the PID Act, it is a criminal offence to take detrimental action against a person based on a suspicion, belief or awareness that a person has made, may have made or may make a PID. In order to prove the offence, that belief, suspicion or awareness needs only to be a contributing factor in taking the detrimental action.

It is also an offence to take detrimental action against a person who has been, may be or proposes to investigate serious wrongdoing. The investigation into serious wrongdoing does not need to have arisen from the making of a voluntary PID or constitute dealing with a voluntary PID. This means the protection applies to investigators who are investigating serious wrongdoing that has been reported in other ways.

The offence has a reversed onus of proof. This means that if someone is prosecuted for having committed a detrimental action offence, the onus will be on the defendant to show that their suspicion, belief or awareness was not a contributing factor for the taking of the detrimental action.

**Important note:** Where the PID is a voluntary PID, there is a duty on agencies to assess and take proactive steps to minimise the risk of detrimental action against the maker of the PID and the person who is the subject of the disclosure.

3. *Public Interest Disclosures Act 2022*, s 32(2).

4. *Public Interest Disclosures Act 2022*, s 32(1).

## Seeking an injunction to prevent, stop or remedy a detrimental action offence

An injunction can be sought to *prevent* the commission of a detrimental action offence against a person, or to *stop* a person committing a detrimental action offence.<sup>5</sup> An injunction can also be sought to require a person to do something to *remedy* conduct that is a detrimental action offence.

An application for an injunction must be made to the Supreme Court. An application for an injunction can be made by:

- the maker of a PID
- another person that detrimental action has been, or may be, taken against
- an integrity agency (for example, the Independent Commission Against Corruption or the Ombudsman)
- another agency — but only with prior written approval from the Attorney General.<sup>6</sup>

The following terms of an injunction may be ordered by the court:

- An order restraining a person from engaging in conduct that would constitute a detrimental action offence. This can include an order restraining detrimental action that would result in termination of someone's employment.
- An order requiring a person to do an act or thing to remedy conduct that constitutes a detrimental action offence. This can include:
  - a formal apology to the person who suffered detrimental action, or
  - reinstating someone to the same or similar role if their employment has been terminated.<sup>7</sup>

Additionally, where the PID maker applies to a court seeking an injunction, they are generally not liable to pay costs incurred by another party to the proceedings.<sup>8</sup>

**Important note:** When integrity agencies apply for injunctions, they do so on behalf of the person who alleges a detrimental action offence has or will occur against them.

5. *Public Interest Disclosures Act 2022*, s 37(1).

6. *Public Interest Disclosures Act 2022*, s 37(1).

7. *Public Interest Disclosures Act 2022*, s 37(4).

8. *Public Interest Disclosures Act 2022*, s 38(1).

### Compensation – detrimental action

If unlawful detrimental action is taken against someone, they are entitled to seek compensation. Under section 35 of the PID Act, a person can initiate court proceedings and seek compensation for injury, damage or loss suffered as a result of the detrimental action being taken against them.<sup>9</sup>

Proceedings for compensation must be commenced against the person who took the detrimental action (**defendant**). Damages recovered may include exemplary damages.<sup>10</sup>

The court may order that the employer of the defendant is liable to pay damages if the court is satisfied that damages are recoverable under section 35 and the person who took the detrimental action did so in connection with their position or role as an employee.<sup>11</sup>

The defendant will be found liable in damages if the court is satisfied that:

- They had the requisite suspicion, belief and awareness when taking the detrimental action that:
  - the person has made, may have made, may make or proposes to make a PID, or
  - is, has been or may be investigating, or proposes to investigate serious wrongdoing (note, the investigation does not need to be in response to the making of a voluntary PID).
- The suspicion, belief or awareness of the defendant was a contributing factor in taking the detrimental action.<sup>12</sup>

There is a reversed onus of proof for compensation proceedings.<sup>13</sup> The person seeking compensation must show that they suffered detriment by the action, or inaction, of the defendant. Once they have done that, the onus shifts to the defendant who must prove that they either did not have the suspicion, belief or awareness of a PID having been made or if they did have a suspicion, awareness or belief of a PID being made, that this was not a contributing factor in taking the detrimental action.

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9. *Public Interest Disclosures Act 2022*, s 35(1).

10. *Public Interest Disclosures Act 2022*, s 35(6).

11. *Public Interest Disclosures Act 2022*, s 36.

12. *Public Interest Disclosures Act 2022*, s 35(1).

13. *Public Interest Disclosures Act 2022*, s 35(4).

### **Immunity from civil and criminal liability**

Public officials are often subject to a duty of confidentiality that prevents them from disclosing certain information they obtain or become aware of through their work as a public official. This duty of confidentiality does not have to be legislated and may be an obligation which is set out in another document, such as a code of conduct. There may also be 'secrecy provisions' in the legislation which governs their work, including some legislation that makes the unauthorised disclosure of information a criminal offence.

Sometimes, in order to make a PID, public officials will need to breach or disregard such confidentiality duties. The protections in the PID Act mean that, if that happens, the public official cannot:

- be sued for breaching a duty of confidentiality, secrecy or another restriction on disclosure of the information
- be criminally charged for breaching a law or code of conduct that imposes a duty of confidentiality in relation to disclosure of information
- have disciplinary action taken against them.<sup>14</sup>

This protection exists because the PID Act presumes that it is always in the public interest for a public official to make a PID, and this public interest overrides any public interest there might otherwise be in maintaining the usual confidentiality and secrecy obligations imposed upon public officials.

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14. *Public Interest Disclosures Act 2022*, s 40(1).

### Confidentiality

Under section 64(1) of the PID Act, public officials and agencies must not disclose information that identifies or tends to identify a person as the maker of a voluntary PID, unless the disclosure is permitted by the PID Act.

Information tending to identify the maker of a voluntary PID is known as '*identifying information*'. It can include the maker's name, their role, their contact details or other things that, along with other information, might reveal someone as having made a PID. Even specific information in the disclosure, or the very fact that a disclosure has been made, might amount to identifying information.

Identifying information about the maker of a voluntary PID can only be disclosed by a public official or an agency in the following circumstances:

- The maker consents in writing to disclosure of the identifying information.
- It is generally known that the person is the maker because they have voluntarily self-identified as the maker.
- The public official or agency reasonably considers, after consulting with the maker, that disclosure of identifying information is necessary to protect a person from detrimental action.
- It is necessary to disclose the identifying information to a person whose interests are affected by the PID.
- The identifying information has previously been lawfully published.
- The identifying information is disclosed to a medical practitioner or psychologist for the purpose of the practitioner or psychologist providing medical or psychiatric care, treatment or counselling to the individual disclosing the information.
- The identifying information is disclosed for the purpose of court or tribunal proceedings.
- The disclosure of the identifying information is necessary to deal with the disclosure effectively.
- it is otherwise in the public interest to disclose the identifying information.<sup>15</sup>

**Important note:** While the confidentiality obligation only applies to voluntary PIDs, it is best practice for agencies to attempt to maintain confidentiality over a maker's identity wherever possible, whether it is dealing with a mandatory or witness PID, or some other type of complaint or report.

An agency's PID policy must identify what processes it intends to use to ensure that identifying information is not disclosed in breach of the PID Act.

15. *Public Interest Disclosures Act 2022*, s 64(2).



### Protection from liability for own past conduct

A person is not protected against civil and criminal liability for their own past conduct that is disclosed when they make a PID.<sup>16</sup> For example, if a person provides information to a disclosure officer that reveals misconduct or wrongdoing that others have engaged in and the maker has also engaged in that misconduct or wrongdoing, the maker will not be protected from criminal or civil liability relating to their own past conduct that has been disclosed.

However, the Attorney General may give the person an undertaking that the disclosure or the fact of the disclosure (whichever is applicable) will not be used in evidence against them in civil or criminal proceedings (except if proceedings are brought where the disclosure is false).<sup>17</sup> This applies to voluntary, mandatory and witness PIDs.

An undertaking can be given either before the information is provided or after it has been disclosed.<sup>18</sup>

An integrity agency can make a recommendation to the Attorney General that a person be given such an undertaking.<sup>19</sup>

**Important note:** An agency may consider sharing information with an integrity agency under section 83 of the PID Act if the information relates to a recommendation for an undertaking.

16. *Public Interest Disclosures Act 2022*, s 41(1).

17. *Public Interest Disclosures Act 2022*, s 41(2), (4).

18. *Public Interest Disclosures Act 2022*, s 41(2).

19. *Public Interest Disclosures Act 2022*, s 41(3).

