

Parliamentary Counsel's Office

# Public Interest Disclosures Policy

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Approved by Parliamentary Counsel, Annette O'Callaghan



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## Policy Owner / Contact

Corporate Services

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# Section 1 - Introduction

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## 1.1 Purpose

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)*.

At PCO, ethical behaviour and reports of serious wrongdoing are of critical importance. As the executive agency that is responsible for supporting the drafting of and access to NSW's legislation, we should hold ourselves to the highest of standards.

PCO is committed to building a 'speak up' culture, where public officials are encouraged to report any conduct that they reasonably believe involves wrongdoing. This is crucial for the success and culture of PCO and of extra importance in a small agency like ours. This policy 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, and
- imposing obligations on those who receive reports of wrongdoing to take appropriate action to investigate or otherwise deal with them.

In NSW, that framework is the PID Act.

This policy sets out:

- how to make a report of serious wrongdoing
- how a report of serious wrongdoing will be dealt with, including PCO's responsibilities under the PID Act
- how PCO will support and protect those who make a report of serious wrongdoing, and
- the protections which are available to you under the PID Act.

This policy should be read in conjunction with the [PCO Code of Conduct](#) and the Process for managing complaints.

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## 1.2 Who does this policy apply to?

This policy applies to PID reporters. A person must be a public official of PCO to make a PID report. A public official<sup>1</sup> includes:

- a person employed in an ongoing, temporary, or casual role in PCO, or a person providing services or exercising functions on behalf of PCO, including a contractor, subcontractor or volunteer
- a person having public official functions or acting in a public official capacity whose conduct or activities an integrity agency is authorised by law to investigate
- a statutory officer

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<sup>1</sup> See s14 of the *PID Act* for the full definition of 'public official'.

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### 1.3 Who does this policy not apply to?

This policy does not apply to people who have received services from PCO and want to make a complaint about those services. Service-related complaints can be raised by emailing [parliamentary.counsel@pco.nsw.gov.au](mailto:parliamentary.counsel@pco.nsw.gov.au).

Workplace issues, complaints and grievances, including possible misconduct are handled through the Process for managing complaints and under the guidance of Part 8 of the *Government Sector Employment (General) Rules 2014*.

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### 1.4 What is contained in this policy?

This policy will provide you with information on the following:

- ways you can make a voluntary PID to PCO under the PID Act
- the names and contact details for the nominated disclosure officers in PCO
- the roles and responsibilities of PCO staff under the PID Act
- what information you will receive once you have made a voluntary PID
- protections available to those who make a report of serious wrongdoing under the PID Act
- PCO's procedures for dealing with disclosures
- PCO's procedures for managing the risk of detrimental action and reporting detrimental action
- PCO's record-keeping and reporting requirements
- how PCO will ensure it complies with the PID Act and this policy.

If you require further information about this policy, how public interest disclosures will be handled and the PID Act you can:

- confidentially contact a nominated disclosure officer within the PCO
- contact the PID Advice Team within the NSW Ombudsman by phone: (02) 9286 1000 or email: [pidadvice@ombo.nsw.gov.au](mailto:pidadvice@ombo.nsw.gov.au), or
- access the NSW Ombudsman's PID guidelines which are available on its website.

If you require legal advice with respect to the PID Act or your obligations under the PID Act, you may need to seek independent legal advice

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### 1.5 Accessibility of this policy

This policy is available on PCO's website as well as on our intranet, Gulburra.

## Section 2 - How to make a report of serious wrongdoing

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### 2.1 Reports, complaints and grievances

When a report is made, PCO will conduct an assessment to determine if the report meets the criteria under the PID Act to be deemed a PID. Written confirmation of the PID status will be communicated by PCO's PID Co-ordinator after a formal assessment of the report has been undertaken.

Some internal complaints or internal grievances may also be PIDs, as long as they have the features of a PID.

Should the report be determined not to be a PID, the reporter will be advised of the most appropriate pathway to deal with their concern.

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### 2.2 When will a report be a PID?

There are three types of PID. 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.

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.

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:

1. A report is made by a public official
2. It is made to a person who can receive voluntary PIDs
3. The public official honestly and reasonably believes that the information they are providing shows (or tends to show) serious wrongdoing
4. The report was made orally or in writing
5. The report is voluntary (meaning it is not a mandatory or witness PID)

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

You will not be expected to prove that what you reported 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, an allegation with no supporting information is unlikely to meet this test. If not

deemed a PID, appropriate management actions may still be taken under a different policy or procedure.

If you make a report and believe we have made an error by not identifying that you have made a voluntary PID, please refer to section 6.

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## 2.3 Who can make a voluntary PID?

Any public official can make a voluntary PID — see ‘1.2 Who this policy applies to’.

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## 2.4 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). 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.

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## 2.5 Who can I make a voluntary PID to?

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

### **Making a report to a public official who works for PCO**

You can make a report inside PCO to:

- The Parliamentary Counsel
- a disclosure officer for PCO (refer Section 4.3)
- your manager — this is the person who directly supervises you or who you report to. Your manager will make sure that the report is communicated to a disclosure officer on your behalf.

## Making a report to a recipient outside of PCO

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. These include:

- the *head of another agency* — this means the head of any public service agency
- an *integrity agency* — a list of integrity agencies is located at Annexure B of this policy
- a disclosure officer for another agency - ways to contact disclosure officers for other agencies is located in an agency's PID policy which is typically found on their public 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 PCO, it is possible that your disclosure will be referred to PCO so that appropriate action can be taken.

## Making a report to a Member of Parliament or journalist

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 receive notification from PCO that the serious wrongdoing would not be investigated and would also not be referred to another agency.
- You did not receive the following from PCO:
  - i. notice of the department's decision to conduct an assessment/ investigation into the report, or
  - ii. notice of the outcome(s) of the assessment/investigation of the report and whether corrective action was taken.

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, disclosure to an MP or journalist may be a voluntary PID, will therefore entitle the reporter to the protections of the PID Act, and PCO will follow the processes set out in this policy.

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## 2.6 What form should a voluntary PID take?

You can make a voluntary PID:

- *in writing* — this could be an email or letter to a person who can receive voluntary PIDs.



- *orally* — have a private discussion with a person who can receive voluntary PIDs. This can be face-to-face, via telephone or virtually.
  - *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. However, it may be difficult for PCO to investigate matter(s) disclosed anonymously.
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## 2.7 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.
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## 2.8 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 PCO 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 procedures. Even if your report is not a PID, it may fall within another one of the agency's policies for dealing with reports, allegations or complaints.

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## 2.9 Deeming that a report is a voluntary PID

The Parliamentary Counsel as the head of the agency 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. 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 the requirements of a voluntary PID, you can refer your matter to the Parliamentary Counsel to request that they consider 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 Parliamentary Counsel.

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## 2.10 Who can I talk to if I have questions or concerns?

The Leader, People and Culture or a PID Disclosure Officer can provide further information so that any concerns can be addressed.

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## Section 3 - Protections

### 3.1 How is the maker of a voluntary PID protected?

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

PCO 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 and we committed to maintaining your confidentiality as much as possible while the PID is being dealt with.

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 PCO that concerns serious wrongdoing relating to PCO has been made, PCO will undertake an assessment of impact or risk 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 that 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, 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.

#### **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.

## 3.2 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:

- *A 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.
- *A 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 table below.

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 because 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.	✓	✓
Immunity from civil and criminal liability — 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>	✓	✓

## 3.3 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 PCO, or to an integrity agency. A list of integrity agencies is located at Annexure B of this policy.

PCO's process for managing complaints outlines the steps to take if you experience any behaviour or conduct that may be perceived as detrimental action. PCO takes this very

seriously and complaints will be managed quickly and efficiently to ensure the appropriate support and protecting of anyone raising an issues, complaint or PID.

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### 3.4 General support

Providing support to reporters is a foundational element of encouraging a speak up culture and efficiently and effectively dealing with serious wrongdoing.

PCO's People and Culture team can provide support and answer any questions you may have about the process or connect reporters with the right areas for assistance.

You can contact the People and Culture team by emailing: [hr.pco@pco.nsw.gov.au](mailto:hr.pco@pco.nsw.gov.au).

Details of PCO's Employee assistance program and other health, safety and wellbeing supports are available on [Gulburra](#).

## Section 4 - Roles and responsibilities of PCO employees

Certain people within PCO have specific responsibilities under the PID Act.

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### 4.1 The Parliamentary Counsel (Head of Agency)

The Parliamentary Counsel 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 the PCO complies with this policy and the PID Act
- ensuring that the PCO has appropriate systems for:
  - i. overseeing internal compliance with the PID Act
  - ii. supporting public officials who make voluntary PIDs, including by minimising the risk of detrimental action
  - iii. implementing corrective action if serious wrongdoing is found to have occurred
  - iv. complying with reporting obligations regarding allegations or findings of detrimental action
  - v. complying with yearly reporting obligations to the NSW Ombudsman.

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### 4.2 Public Interest Disclosure Coordinator

The Public Interest Disclosure Coordinator at PCO is the Director, Corporate Services, and is responsible for:

- determination of whether a report is to be treated as a PID
- coordinating PCO's response to the report, including ensuring the agency decides how to deal with the disclosure. This may include investigating the matters in the report. Investigating could include following a procedure, or conducting an

assessment or other action of an investigative nature, whether on a preliminary or formal basis

- seeking delegate approval to conduct a misconduct investigation
- ensuring the requirements and responsibilities as set out in this policy are followed in connection with other relevant and related policies.
- coordinating training and awareness requirements
- creating and maintaining accurate records
- ensuring PCO's obligations of reporting to the Ombudsman and ICAC are completed.

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## 4.3 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 appropriate complaint team (if relevant)
- ensuring that any oral reports that have been received are recorded in writing.

The disclosure officers within PCO are:

Role and Officer	Contact Details
Jason Emmett, Deputy Parliamentary Counsel	<a href="mailto:jason.emmett@pco.nsw.gov.au">jason.emmett@pco.nsw.gov.au</a>
Richard Hurford, Deputy Parliamentary Counsel	<a href="mailto:richard.hurford@pco.nsw.gov.au">richard.hurford@pco.nsw.gov.au</a>
Mark Cowan, Deputy Parliamentary Counsel	<a href="mailto:mark.cowan@pco.nsw.gov.au">mark.cowan@pco.nsw.gov.au</a>
Elizabeth LARBalestier, Senior Assistant Parliamentary Counsel	<a href="mailto:elizabeth.larbalestier@pco.nsw.gov.au">elizabeth.larbalestier@pco.nsw.gov.au</a>
Ryan McPherson-Fehn, Senior Assistant Parliamentary Counsel	<a href="mailto:ryan.mcpherson-fehn@pco.nsw.gov.au">ryan.mcpherson-fehn@pco.nsw.gov.au</a>
Iain Martin, Senior Assistant Parliamentary Counsel	<a href="mailto:iain.martin@pco.nsw.gov.au">iain.martin@pco.nsw.gov.au</a>

Alternatively, the above Officers can also be reached by phone at 02 9321 3333 or by email at [parliamentary.counsel@pco.nsw.gov.au](mailto:parliamentary.counsel@pco.nsw.gov.au).

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## 4.4 Managers

The responsibilities of managers include:

- receiving reports from persons that report to them or that they supervise
- passing on reports they receive to a disclosure officer.

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## 4.5 All employees

All employees must:

- report suspected serious wrongdoing or other misconduct
- 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 PCO
- treat any person dealing with or investigating reports of serious wrongdoing with respect.

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

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## Section 5 - How we will manage voluntary PIDs

### 5.1 Receiving reports and keeping people informed

When a disclosure officer in PCO 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 (where a report is anonymous, PCO may not be able to provide this information):

- You will receive an acknowledgment that the report has been received. This acknowledgment will:
  - a. state that the report will be assessed to identify whether it is a PID
  - b. state that the PID Act applies to how PCO deals with the report
  - c. provide clear information on how you can access this PID policy
  - d. provide you with details of a contact person and available supports.
- If the report is a voluntary PID, PCO will inform you as soon as possible how we intend to deal with the report. This may include:
  - a. that the serious wrongdoing will be investigated
  - b. that the report will be referred to a different agency (if appropriate) to deal with the voluntary PID. If PCO does this, we will provide you with details of this referral
  - c. 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 PCO decides 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.
  - a. 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.
- b. 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.

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## 5.2 Managing the report of a voluntary PID

Once a report that may be a voluntary PID is received PCO 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 the report is not a voluntary PID, it will still need to be dealt with in a manner consistent with PCO's process of managing complaints or through an alternate process.

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

### Where the report is a voluntary PID

If 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 believe 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 may be 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.



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## 5.3 Protecting confidentiality of the maker of a voluntary PID

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 PCO reasonably considers it necessary to disclose the information to protect a person from detriment
- where it is necessary the information be disclosed to a person whose interests are affected by the disclosure
- where the information has previously been lawfully published
- 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.

While it may not be possible for PCO to maintain complete confidentiality while investigation progresses, PCO will do all it practically can to not unnecessarily disclose information that could identify the maker of the report or the fact that a report has been made. This will be done by:

- Limiting the number of people who are aware of the maker's identity or information that could identify them.
- If information must be disclosed that may identify the maker of the PID, PCO will not disclose the identity of the maker of the PID without their consent to do so.
- Ensuring that any person who does know the identity of the maker of a PID is reminded that they have a legal obligation to keep their identity confidential.
- Ensuring that only authorised persons have access to emails, files or other documentation that contain information about the identity of the maker.
- Undertaking 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 support to the maker of the PID about the importance of maintaining confidentiality and advising them how best to 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, PCO will:

- advise the person whose identity may become known



- update the agency's risk assessment and risk management plan regarding the matter or generally as appropriate
- implement strategies to minimise the risk of detrimental action
- provide additional supports to the person who has made the PID
- remind persons who become aware of the identifying information of the consequences for failing to maintain confidentiality and that engaging in detrimental action is a criminal offence and may also be a disciplinary matter.

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## 5.4 Assessing and minimising the risk of detrimental action

PCO 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.

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

- ensuring appropriate supports are in place, risk assessments complete and controls in place
- taking all steps possible to stop the action and protect the reporter(s)
- taking appropriate disciplinary action against anyone that has been found to have taken detrimental action
- referring any evidence of a detrimental action offence to the Commissioner of Police and the ICAC or the Law Enforcement Conduct Commission (whichever is applicable)
- notifying the NSW Ombudsman about the allegation of a detrimental action offence being committed.

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.

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## 5.5 When an investigation finds that serious wrongdoing has occurred

Where it is determined an allegation of wrongdoing requires an investigation to establish whether misconduct may or may not have occurred, the matter will be managed in accordance with Part 8 of the GSE Act.

If, after an investigation, it is found that serious wrongdoing or other misconduct has occurred, corrective action can include:

- a formal apology
- improving internal policies to adequately prevent and respond to similar instances of wrongdoing
- providing additional education and training to staff where required
- taking employment action against persons involved in the wrongdoing (such as termination of employment, relocation, a caution or reprimand)
- payment of compensation to people who have been affected by serious wrongdoing or other misconduct.

## Section 6 - Review and dispute resolution

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### 6.1 Internal review

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

- that PCO is not required to deal with the report as a voluntary PID
- to stop dealing with the report because PCO 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.

Applications for internal review should be referred to the Parliamentary Counsel.

If you would like to make an application for an internal review, you must apply in writing within 28 days of being informed of PCO's 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.

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### 6.2 Voluntary dispute resolution

If a dispute arises between PCO and a person who has made a report which is, or may be, a voluntary PID, PCO may request the NSW Ombudsman to conciliate the dispute. Conciliation is a voluntary process and may not be suitable for all disputes.

## Section 7 - Other agency obligations

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### 7.1 Record-keeping requirements

PCO must keep full and accurate records with respect to all information received in connection with the PID Act. This ensures that PCO complies with its obligations under the *State Records Act 1998*.

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### 7.2 Annual reporting to the NSW Ombudsman

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

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

The Director, Corporate Services is responsible for compiling and submitting the annual return each year.

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### 7.3 How PCO will ensure compliance with the PID Act and this policy

Periodic audit of PID records will be conducted by PCO to ensure compliance with the provisions of the PID Act including the processes undertaken in administering PIDs.

The Governance and People & Culture teams are responsible for scheduled and periodic checks of all policy at PCO and are also available for any errors or improvements.

## Annexure A — List of integrity agencies

Integrity agency	What they investigate	Contact information
<b>The NSW Ombudsman</b>	Most kinds of <b>serious maladministration</b> by most agencies and public officials (but not NSW Police, judicial officers or MPs)	<b>Telephone:</b> 1800 451 524 between 9am to 3pm Monday to Friday <b>Writing:</b> Level 24, 580 George Street, Sydney NSW 2000 <b>Email:</b> <a href="mailto:info@ombo.nsw.gov.au">info@ombo.nsw.gov.au</a>
<b>The Auditor-General</b>	<b>Serious and substantial waste of public money</b> by auditable agencies	<b>Telephone:</b> 02 9275 7100 <b>Writing:</b> GPO Box 12, Sydney NSW 2001 <b>Email:</b> <a href="mailto:governance@audit.nsw.gov.au">governance@audit.nsw.gov.au</a>
<b>Independent Commission Against Corruption</b>	<b>Corrupt conduct</b>	<b>Telephone:</b> 02 8281 5999 or toll free on 1800 463 909 (callers outside Sydney) between 9am and 3pm, Monday to Friday <b>Writing:</b> GPO Box 500, Sydney NSW 2001 or faxing 02 9264 5364 <b>Email:</b> <a href="mailto:icac@icac.nsw.gov.au">icac@icac.nsw.gov.au</a>
<b>The Inspector of the Independent Commission Against Corruption</b>	<b>Serious maladministration</b> by the ICAC or the ICAC officers	<b>Telephone:</b> 02 9228 3023 <b>Writing:</b> PO Box 5341, Sydney NSW 2001 <b>Email:</b> <a href="mailto:oiicac_executive@oiicac.nsw.gov.au">oiicac_executive@oiicac.nsw.gov.au</a>
<b>The Law Enforcement Conduct Commission</b>	<b>Serious maladministration</b> by the NSW Police Force or the NSW Crime Commission	<b>Telephone:</b> 02 9321 6700 or 1800 657 079 <b>Writing:</b> GPO Box 3880, Sydney NSW 2001 <b>Email:</b> <a href="mailto:contactus@lecc.nsw.gov.au">contactus@lecc.nsw.gov.au</a>
<b>The Inspector of the Law Enforcement Conduct Commission</b>	<b>Serious maladministration</b> by the LECC and LECC officers	<b>Telephone:</b> 02 9228 3023 <b>Writing:</b> GPO Box 5341, Sydney NSW 2001 <b>Email:</b> <a href="mailto:oilc_executive@oilc.nsw.gov.au">oilc_executive@oilc.nsw.gov.au</a>
<b>Office of the Local Government</b>	<b>Local government pecuniary interest contraventions</b>	<b>Email:</b> <a href="mailto:olg@olg.nsw.gov.au">olg@olg.nsw.gov.au</a>

<b>The Privacy Commissioner</b>	<b>Privacy contraventions</b>	<b>Telephone:</b> 1800 472 679 <b>Writing:</b> GPO Box 7011, Sydney NSW 2001 <b>Email:</b> <a href="mailto:ipcinfo@ipc.nsw.gov.au">ipcinfo@ipc.nsw.gov.au</a>
<b>The Information Commissioner</b>	<b>Government information contraventions</b>	<b>Telephone:</b> 1800 472 679 <b>Writing:</b> GPO Box 7011, Sydney NSW 2001 <b>Email:</b> <a href="mailto:ipcinfo@ipc.nsw.gov.au">ipcinfo@ipc.nsw.gov.au</a>