



# PUBLIC INTEREST DISCLOSURE POLICY

**DATE ADOPTED: 26 SEPTEMBER 2023**

**VERSION: 3.0**

## **POLICY OBJECTIVES**

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 Maitland City Council ('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 council 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 to take appropriate action to investigate or otherwise deal with reports of wrongdoing.

This policy should be read in conjunction with our Code of Conduct, Complaint Management Policy and Fraud and Corruption Policy.

This policy is based on the NSW Ombudsman's model public interest disclosure policy.

## **POLICY SCOPE**

### **WHO DOES THIS POLICY APPLY TO?**

This policy applies to, and for the benefit of, all public officials in NSW. 'Public official' is defined in the **Definitions** section of this policy.

With respect to Maitland City Council, you are a public official if:

- you are employed by or a Councillor of Maitland City Council
- you are a contractor, subcontractor or volunteer who provides services, or exercises functions, on behalf of Maitland City Council, or

- you work for an entity (such as a non-government organisation) who is contracted by Maitland City Council to provide services or exercise functions on behalf of Maitland City Council — if you are involved in undertaking that contracted work.

The General Manager, nominated disclosure officers and managers within Maitland City Council have specific responsibilities under the PID Act. This policy also provides information on how people in these roles will fulfil their responsibilities. Other public officials who work in and for the public sector, but do not work for Maitland City Council may use this policy if they want information on who they can report wrongdoing to within Maitland City Council.

## **WHO DOES THIS POLICY NOT APPLY TO?**

This policy does not apply to:

- people who have received services from Council and want to make a complaint about those services
- people, such as contractors, who provide services to Council. For example, employees of a company that sold computer software to Maitland City Council.

This means that if you are not a public official, this policy may not apply to your complaint.

However, you can still make a complaint to Council. This can be done by submitting your written complaint to Council at [info@maitland.nsw.gov.au](mailto:info@maitland.nsw.gov.au) or in person at the Maitland Administration Centre, 263 High Street Maitland NSW 2320. Complaints received by Maitland City Council are handled in accordance with our [Complaint Management Policy](#).

## **POLICY STATEMENT**

### **1. ACCESSIBILITY OF THIS POLICY**

This policy is available on Maitland City Councils' publicly available website as well as the intranet.

### **2. COMPLIANCE WITH THE PID ACT**

The PID policy will be reviewed by Council every three years, or earlier if required by any legislative change, or to enhance the application of the legislation and/or regulations supporting this policy.

### **3. WHAT IS CONTAINED IN THIS POLICY?**

This policy will provide you with information on the following:

- ways you can make a voluntary PID to Maitland City Council under the PID Act
- the names and contact details for the nominated disclosure officers in Council
- the roles and responsibilities of people who hold particular roles under the PID Act and who are employees of Council
- what information you will receive once you have made a voluntary PID
- protections available to people who make a report of serious wrongdoing under the PID Act and what we will do to protect you
- Council procedures for dealing with disclosures
- Council procedures for managing the risk of detrimental action and reporting detrimental action
- Council record-keeping and reporting requirements
- how Council 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 Maitland City Council
- 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 at [ombo.nsw.gov.au](http://ombo.nsw.gov.au).

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.

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

### 4.1. 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.

We encourage our staff to report all wrongdoing and misconduct, not only reports of serious wrongdoing so we can deal with these appropriately.

Some internal complaints or internal grievances 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 related policies such as; [Code of Conduct](#), [Complaint Management Policy](#), [Privacy Management Plan](#), and [Right to Information Policy](#).

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.

### 4.2. 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 at Council.
- *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 a mandatory PID or a witness PID are still entitled to the same protections. More information about protections is available in section 2 of this policy.

Mandatory and witness PIDs will be handled in accordance with the Ombudsman's guidelines 'Dealing with mandatory PIDs' and 'Dealing with witness PIDs', which are available on the NSW Ombudsman's website.

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 all the following five features:

1. A report is made by a public official; and
2. It is made to a person who can receive voluntary PIDs; and
3. The public official *honestly and reasonably believes* that the information they are providing *shows (or tends to show) serious wrongdoing*; and
4. The report was made orally or in writing; and
5. The report is voluntary (meaning it is not a mandatory or witness 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 may 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 10** of this policy.

#### 4.3. Who can make a voluntary PID?

Any public official can make a voluntary PID — see **Who does this policy apply to?** and **Definitions** sections of this policy.

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 of Council. 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.

#### 4.4. 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 here). Serious wrongdoing is defined in the PID Act as:

- *corrupt conduct* — such as a public official accepting a bribe
- *serious maladministration* — such as Council 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 Council 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 to Council what category of serious wrongdoing you are reporting or that you are reporting serious wrongdoing.



The Ombudsman's guidelines on 'What is serious wrongdoing' provides more information about the types of serious wrongdoing that can be reported under the PID Act.

#### 4.5. 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 Maitland City Council

You can make a report inside Maitland City Council to:

- the General Manager
- a disclosure officer for Maitland City Council — a list of disclosure officers for Maitland City Council and their contact details can be found at **Annexure A** of this policy
- 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 officer.

#### Making a report to a recipient outside of Maitland City Council

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 can be 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 Council, it is possible that your disclosure will be referred back to us so that appropriate action can be taken.

#### Making a report to a Member of Parliament (MP) 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 did not receive the following from Council:
  - notification that Council will not investigate the serious wrongdoing and will also not refer the previous disclosure to another agency, or
  - the following information at the end of the investigation period:
    - notice of Council's decision to investigate the serious wrongdoing
    - a description of the results of an investigation into the serious wrongdoing
    - 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.

#### 4.6. What form should a voluntary PID take?

You can make a voluntary PID:

- *in writing* — complete the 'Public Interest Disclosure Reporting Form', included at **Annexure C** of this policy and available on our website, and electronically send this form to a person who can receive voluntary PIDs. This can also be in the form of an email or letter.
- *orally* — have a private discussion with a person who can receive voluntary PIDs. This can be face-to-face, via telephone or virtually.
- *anonymously* — complete the 'Public Interest Disclosure Reporting Form', write a 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.

#### 4.7. 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.

#### 4.8. 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 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 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.

#### 4.9. 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 the requirements of a voluntary PID, you can refer your matter to the General Manager to request that they consider deeming your report to be a voluntary PID.

Where disclosure officers receive a report that has not met all the requirements of a voluntary PID but is considered by the disclosure officer to be a voluntary PID, the disclosure officer will escalate the report to the General Manager for determination.



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 Ombudsman's guideline 'Deeming that a disclosure is a voluntary PID'.

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

If you have any questions or concerns, please contact one of the disclosure officers listed in **Annexure A** of this policy. All enquiries will be treated as confidential.

Alternatively, you can contact the integrity agencies listed in **Annexure B** of this policy for assistance and support.

## 5. PROTECTIONS

### 5.1. 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 Council that concerns serious wrongdoing, 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 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, 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.
- *Confidentiality*

Public officials and Council 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.

## 5.2. Protections for people who make mandatory and witness PIDs

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

Protection	Mandatory PID	Witness PID
<i>Detrimental action</i> — 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.	☑	☑
<i>Right to compensation</i> — A person can initiate proceedings and seek compensation for injury, damage or loss suffered as a result of detrimental action being taken against them.	☑	☑
<i>Ability to seek injunction</i> — 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.	☑	☑
<i>Immunity from civil and criminal liability</i> — 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>	☑	☑

## 6. REPORTING DETRIMENTAL ACTION

If you experience adverse treatment or detrimental action, such as bullying or harassment, you should report this immediately to one of our nominated disclosure officers, or to an integrity agency Contact information for disclosure officers and integrity agencies is located at **Annexure A** and **Annexure B** of this policy, respectively.

All managers must notify the Disclosure Coordinator if they believe a staff member is suffering any detrimental action as a result of disclosing wrongdoing.

## 7. GENERAL SUPPORT

Council will make sure that staff who have reported wrongdoing, regardless of whether they have made a PID, are provided with access to any professional support they may need as a result of the reporting process – such as stress management and/or counselling services.

Council also has staff who will support those who report wrongdoing. They are responsible for initiating and coordinating support particularly to those who are suffering any form of detrimental action.



## **8. ROLES AND RESPONSIBILITIES OF MAITLAND CITY COUNCIL EMPLOYEES**

Certain people within Maitland City Council have responsibilities under the PID Act.

### **8.1. 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 that Council complies with this policy and the PID Act
- ensuring that 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.

### **8.2. Disclosure Coordinator – Public Officer**

The Disclosure Coordinator is responsible for:

- acting as a central point for all PIDs
- receiving, forwarding, and acting upon disclosures in accordance with this policy and the PID Act
- coordinating the Council's response to a report by making an initial assessment of any disclosure and then referring the matter to either the General Manager or the Mayor for determination of action to be taken
- acknowledging corresponding and providing feedback to the maker of the report
- ensuring that the person who is subject of the disclosure has an opportunity to explain his/her version of events
- assessing the risk of detrimental action and workplace conflict related to or likely to arise out of a report, and develop strategies to manage any risk identified
- dealing with allegations of detrimental action offences
- where required, providing or coordinating support to persons involve in the reporting or investigation process, including protecting the interests of any person who is the subject of a report
- providing reporting to the NSW Ombudsman in accordance with the PID Act

### **8.3. 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 Disclosure Coordinator
- ensuring that any oral reports that have been received are recorded in writing.

The Mayor may receive a PID from any member of staff or Councillor concerning the General Manager. In this case, the Mayor will have the same responsibilities as a disclosure officer.

### **8.4. 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
- reporting alleged detrimental action offences.



## 8.5. 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 Council
- 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.

## 9. HOW WE WILL DEAL WITH VOLUNTARY PIDS

### 9.1. How we will acknowledge that we have received a report and keep the person who made it informed

When a Maitland City Council 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 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 supports.
- 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:
    - o a description of the results of the investigation — that is, we will tell you whether we found that serious wrongdoing took place.
    - o 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.



## 9.2. 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 the report is not a voluntary PID, it will still need to be dealt with in a manner consistent with this policy 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 disclosure coordinator or General Manager, 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.

### 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).

The maker of the report will be notified in writing that Council has ceased to deal with the report as a voluntary PID, the reasons for the cessation, and how the report will be dealt with moving forward, e.g., as a complaint.

### 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.

## 9.3. 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.

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 information from which the maker of the report can be identified.

If confidentiality cannot be maintained or is unlikely to be maintained, we will develop a plan to support and protect the maker of the PID from risks of detrimental action. The maker of the PID will be involved in developing this plan. The maker of the PID will also be told if their report will be dealt with under Council's Code of Conduct, as this may mean certain information may have to be tabled at a council meeting.

We will remind persons who become aware of 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.

#### **9.4. How we will assess and minimise the risk of detrimental action**

We 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 PID, the person whose conduct is the subject of a PID, investigators and witnesses.

Further information on assessing the risk of detrimental action is found in the Ombudsman's guideline 'Agencies — assessing and managing the risk of detrimental action'.

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

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

Detrimental action does not include:

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

#### **9.5. How we will deal with allegations of a detrimental action offence**

Any allegations of a detrimental action offence should be reported to the Disclosure Coordinator for investigation.

If an allegation of a detrimental action offence is reported to a disclosure officer or manager, this should be immediately referred to the Disclosure Coordinator.

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.

#### 9.6. What Maitland City Council will do if an 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 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.

## 10. REVIEW AND DISPUTE RESOLUTION

### 10.1. Internal review

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

- that 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.

We 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 our decision should not have been made. You may also submit any other relevant material with your application.

### 10.2. Voluntary dispute resolution

If a dispute arises between us and a person who has made a report, we may request the NSW Ombudsman to conciliate the dispute. Conciliation is a voluntary process and will only be suitable for disputes where we and the maker of the report are willing to resolve the dispute.

## 11. OTHER AGENCY OBLIGATIONS

### 11.1. Record-keeping requirements

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

### 11.2. Reporting of voluntary PIDs and Maitland City Councils annual return to the Ombudsman

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

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



### 11.3. How we will ensure compliance with the PID Act and this policy

Council will put in place appropriate mechanisms to monitor the effectiveness of our PID Policy and for ensuring compliance with the PID Act.

Any non-compliance with the PID Act or this policy will be handled in accordance with our incident and breach management protocol. Intentional breaches of the PID Act or this policy may result in disciplinary action and criminal penalties.

Reporting on legislative compliance, including compliance with the PID Act, is provided to executive management and the Audit, Risk and Improvement Committee on a quarterly basis.



## DEFINITIONS

### Agency

'Agency' is defined in section 16 of the PID Act to mean any of the following:

- a Public Service agency
- a group of staff comprising each of the following services, or a separate group of that staff:
  - the NSW Police Force
  - the Teaching Service of New South Wales
  - the NSW Health Service
  - the Transport Service of New South Wales
- a statutory body representing the Crown
- an integrity agency
- a public authority whose conduct or activities are authorised to be investigated by an integrity agency under another Act or law
- a State-owned corporation or its subsidiaries
- a Local Government Authority
- a Local Aboriginal Land Council
- the Department of Parliamentary Services, the Department of the Legislative Assembly, and the Department of the Legislative Council
- a Minister's office is not an agency for the purposes of the PID Act.

### Detriment

Detriment is defined in section 32(1) of the PID Act as disadvantage to a person, including:

- 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.

### Detrimental action

Detrimental action is defined in section 32(2) of the PID 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).

### Identifying information

Under section 64(1) of the Act, identifying information is information which tends to identify a person as the maker of a voluntary PID.

### Integrity agency

The following are 'integrity agencies' as defined under section 19 of the PID Act:

- the Ombudsman
- the Auditor-General
- the Independent Commission Against Corruption
- the Inspector of the Independent Commission Against Corruption
- the Law Enforcement Conduct Commission
- the Inspector of the Law Enforcement Conduct Commission
- the Secretary of the Department of Planning, Industry and Environment (when exercising certain functions under the *Local Government Act 1993*)



- the Privacy Commissioner
- the Information Commissioner
- a person or body declared by the regulations to be an integrity agency.

#### Public interest disclosure

The term public interest disclosure is defined in section 21 of the PID Act to mean:

- a voluntary PID, or
- a witness PID, or
- a mandatory PID.

#### Public official

'Public official' is defined in section 14 of the PID Act as follows:

- a person employed in or by an agency or otherwise in the service of an agency
- An elected Councillor.
- a person having public official functions or acting in a public official capacity whose conduct or activities an integrity agency is authorised by another Act or law to investigate
- an individual in the service of the Crown
- a statutory officer
- a person providing services or exercising functions on behalf of an agency, including a contractor, subcontractor or volunteer
- 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
- a judicial officer
- a member of Parliament, including a Minister
- a person employed under *the Members of Parliament Staff Act 2013*.

#### Serious wrongdoing

Serious wrongdoing is defined in section 13 of the PID Act as one or more of the following:

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



## POLICY ADMINISTRATION

BUSINESS GROUP:	STRATEGY, PERFORMANCE AND BUSINESS SYSTEMS
RESPONSIBLE OFFICER:	GROUP MANAGER STRATEGY, PERFORMANCE AND BUSINESS SYSTEMS
COUNCIL REFERENCE:	Ordinary Council Meeting – 26 September 2023 – Item 11.2
POLICY REVIEW DATE:	Three (3) years from date of adoption
FILE NUMBER:	35/1 & 35/38
RELEVANT LEGISLATION	Government Information (Public Access) Act 2009 Independent Commission Against Corruption Act 1988 Local Government Act 1993 Ombudsman Act 1974 Public Interest Disclosures Act 2022
RELATED POLICIES / PROCEDURES / PROTOCOLS	Code of Conduct Code of Meeting Practice Complaints Management Policy Fraud and Corruption Prevention Policy Privacy Management Plan Right to Information Policy Right to Information Guidelines Unreasonable Complainant Conduct Policy

## POLICY HISTORY

VERSION	DATE APPROVED	DESCRIPTION OF CHANGES
1.0	8/11/2011	New policy adopted. This policy replaces the Protected Disclosures Policy.
2.0	22/3/2016	Periodic Review
3.0	26/09/2023	Periodic review to ensure compliance with NSW Ombudsman Model Policy

## ANNEXURE A

### Names and contact details of disclosure officers for Maitland City Council

Name	Position	Contact Information
Tiffany Allen	Executive Manager Workplace Culture and Safety	<p><b>Telephone:</b> 02 4934 9700 between 8:30am to 5pm Monday to Friday</p> <p><b>Writing:</b> PO Box 220, Maitland NSW 2320</p> <p><b>Email:</b> <a href="mailto:Tiffany.Allen@maitland.nsw.gov.au">Tiffany.Allen@maitland.nsw.gov.au</a></p> <p><b>In Person:</b> Maitland Administration Centre, 263 High Street, Maitland</p>
Stephen McDonald	Public Officer; Manager Governance and Risk	<p><b>Telephone:</b> 02 4934 9700 between 8:30am to 5pm Monday to Friday</p> <p><b>Writing:</b> PO Box 220, Maitland NSW 2320</p> <p><b>Email:</b> <a href="mailto:Stephen.McDonald@maitland.nsw.gov.au">Stephen.McDonald@maitland.nsw.gov.au</a></p> <p><b>In Person:</b> Maitland Administration Centre, 263 High Street, Maitland</p>
Darren Nowicki	Corporate Procurement Officer	<p><b>Telephone:</b> 02 4934 9700 between 8:30am to 5pm Monday to Friday</p> <p><b>Writing:</b> PO Box 220, Maitland NSW 2320</p> <p><b>Email:</b> <a href="mailto:Darren.Nowicki@maitland.nsw.gov.au">Darren.Nowicki@maitland.nsw.gov.au</a></p> <p><b>In Person:</b> Maitland City Council Works Depot, Metford Road, East Maitland</p>

## ANNEXURE B

### List of integrity agencies

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



Integrity agency	What they investigate	Contact information
The Inspector of the Law Enforcement Conduct Commission	Serious maladministration by the LECC and LECC officers	<p>Telephone: 02 9228 3023</p> <p>Writing: GPO Box 5341, Sydney NSW 2001</p> <p>Email: <a href="mailto:oilc_executive@oilc.nsw.gov.au">oilc_executive@oilc.nsw.gov.au</a></p> <p>Website: <a href="http://oilc.nsw.gov.au">oilc.nsw.gov.au</a></p>
Office of the Local Government	Local government pecuniary interest contraventions	<p>Email: <a href="mailto:olg@olg.nsw.gov.au">olg@olg.nsw.gov.au</a></p> <p>Website: <a href="http://olg.nsw.gov.au">olg.nsw.gov.au</a></p>
The Privacy Commissioner	Privacy contraventions	<p>Telephone: 1800 472 679</p> <p>Writing: GPO Box 7011, Sydney NSW 2001</p> <p>Email: <a href="mailto:ipcinfo@ipc.nsw.gov.au">ipcinfo@ipc.nsw.gov.au</a></p> <p>Website: <a href="http://ipc.nsw.gov.au">ipc.nsw.gov.au</a></p>
The Information Commissioner	Government information contraventions	<p>Telephone: 1800 472 679</p> <p>Writing: GPO Box 7011, Sydney NSW 2001</p> <p>Email: <a href="mailto:ipcinfo@ipc.nsw.gov.au">ipcinfo@ipc.nsw.gov.au</a></p> <p>Website: <a href="http://ipc.nsw.gov.au">ipc.nsw.gov.au</a></p>



## ANNEXURE C

### Public Interest Disclosure Reporting Form

To be completed and submitted to a nominated Maitland City Council Disclosure Officer  
*(Refer to Maitland City Council's Public Interest Disclosure Policy for further information)*

Details of reporter <i>(You can make an anonymous report by leaving this section blank)</i>										
Name:										
Position:										
Division/Unit/Employer/Other:		Preferred method of contact								
Telephone:		<input type="checkbox"/> Telephone								
Email:		<input type="checkbox"/> Email								
Postal address:		<input type="checkbox"/> Post								
Details of the wrongdoing being reported										
Description: <ul style="list-style-type: none"> <li><i>What happened?</i></li> <li><i>Where did this happen (e.g., location)?</i></li> <li><i>When did this happen (e.g., date and time)?</i></li> <li><i>Is it still happening?</i></li> </ul> <i>[Attach an additional page if required]</i>										
How did you become aware of this?										
Name and position of people involved in the wrongdoing:	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr style="background-color: black; color: white;"> <th style="width: 50%; padding: 5px;">Name</th> <th style="width: 50%; padding: 5px;">Position</th> </tr> </thead> <tbody> <tr> <td style="height: 30px;"></td> <td style="height: 30px;"></td> </tr> <tr> <td style="height: 30px;"></td> <td style="height: 30px;"></td> </tr> <tr> <td style="height: 30px;"></td> <td style="height: 30px;"></td> </tr> </tbody> </table>		Name	Position						
Name	Position									
How are the people involved in the wrongdoing?										



<p>What is your relationship to the people involved?</p> <ul style="list-style-type: none"> <li>• <i>Do you work closely with them?</i></li> </ul>		
<p>Attach any additional relevant information or indicate where supporting evidence may be found:</p>	<p>Supporting evidence <span style="float: right;">Attached</span></p>	
		<input type="checkbox"/>
		<input type="checkbox"/>
<p>Name and position of other people who may have additional information or witnessed the wrongdoing:</p>	<p>Name <span style="margin-left: 150px;">Position</span></p>	
<p><b>Statement</b></p>		
<p>I honestly believe that the above information shows or tends to show wrongdoing.</p>		
<p>_____          Signature of reporter  <i>(Do not sign if you want to make an anonymous report)</i></p>	<p>_____          Date report submitted  <i>(Essential information)</i></p>	