



# muswellbrook shire council

## Public Interest Disclosure Policy

### MSC16E

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<b>Community Strategic Plan Goal</b>	6. Collaborative and responsive community leadership that meets the expectations and anticipates the needs of the community.		
<b>Community Strategic Plan Strategy</b>	6.2 Ensure Council is well managed, appropriately resourced, effective, efficient, accountable and responsive to its communities and stakeholders		

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## 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**).

Muswellbrook Shire Council takes reports of wrongdoing seriously. Council is 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 Council relies upon Council's staff, volunteers, contractors, and subcontractors speaking up when they become aware of wrongdoing.

This policy sets out:

- how Muswellbrook Shire Council will support and protect you if you come forward with a report of serious wrongdoing;
- how Council will deal with the report and its other responsibilities under the PID Act;
- who to contact if you want to make a report;
- how to make a report; and
- the protections that are available to you under the PID Act.

This policy also documents Council's commitment to fostering 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 duties on agencies who receive reports of wrongdoing to take appropriate action to investigate or otherwise deal with them.

In NSW, that framework is the PID Act.

This policy should be read in conjunction with Muswellbrook Shire Council's:

- Model Code of Conduct;
- Fraud and Corruption Control Policy;
- Gifts, Bribes & Benefits Policy;
- Grievance and Dispute Resolution Policy;
- Grievance and Dispute Resolution Procedure;
- Formal Workplace Investigation Procedure; and
- Disciplinary Procedures.

## Accessibility of this policy

This policy is available on Muswellbrook Shire Council's publicly available website as well as in Council's Electronic Document Records Management System (EDRMS).

A copy of the policy is also sent to all staff of Muswellbrook Shire Council on their commencement. A hard copy of the policy can be requested from the Governance Officer.

## Who does this policy apply to?

This policy applies to, and for the benefit of, all public officials in NSW. You are a public official if you are:

- a person employed in or by an agency or otherwise in the service of an agency (Council Staff, Councillors, including the General Manager and the Mayor);
- 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;
- an employee, partner, or officer of an entity that provides services, under contract, subcontract, or other arrangement, on behalf of an agency, or exercises functions of an agency, and are involved in providing those services or exercising those functions;
- a judicial officer;
- a Member of Parliament (MP), including a Minister; or
- a person employed under the Members of Parliament Staff Act 2013.

The General Manager, other nominated disclosure officers, and managers within Muswellbrook Shire 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 Muswellbrook Shire Council, may use this policy if they require information on who they can report wrongdoing to within Muswellbrook Shire Council.

## Who does this policy not apply to?

This policy does not apply to:

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

This means that if you are not a public official, this policy does not apply to your complaint (there are some circumstances where a complaint can be deemed to be a voluntary PID; see section 1(i) of this policy for more information).

However, you can still make a complaint to Muswellbrook Shire Council. This can be done by:

Submitting your complaint in writing to the General Manager via Email:

[council@muswellbrook.nsw.gov.au](mailto:council@muswellbrook.nsw.gov.au) or by Post: PO Box 122, Muswellbrook 2333

## Compliance with the PID Act

The Policy will be reviewed every 2 years by the Manager Governance & Risk.

The Policy is to be endorsed by Council.

# What is contained in this policy?

This policy will provide you with information on the following:

- ways you can make a voluntary PID to Muswellbrook Shire Council under the PID Act;
- the names and contact details for the nominated disclosure officers in Muswellbrook Shire Council;
- the roles and responsibilities of people who hold particular roles under the PID Act and who are employees of Muswellbrook Shire 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 Council will do to protect you;
- Muswellbrook Shire Council procedures for dealing with disclosures;
- Muswellbrook Shire Council procedures for managing the risk of detrimental action and reporting detrimental action;
- Muswellbrook Shire Council record-keeping and reporting requirements; and
- how Muswellbrook Shire 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 Muswellbrook Shire 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.

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.

## 1 How to make a report of serious wrongdoing

### (a) Reports, complaints and grievances

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

Some internal complaints or internal grievances may also be PIDs if they have the features of a PID. If an internal complaint or grievance is a report of serious wrongdoing, Council will consider whether it is a PID. If it is a PID, Council will deal with it as set out in this policy. Additionally, Council will also make sure its Grievance and Dispute Resolution Policy is followed.

It is important that Council quickly recognise that a PID has been received. This is because once a PID is received, the person who has made the report is entitled to certain protections and certain decisions that Council makes on how the PID will be dealt with and how Council will protect and support the person who has made the report.

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

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

1. *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.

2. **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.
3. **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.

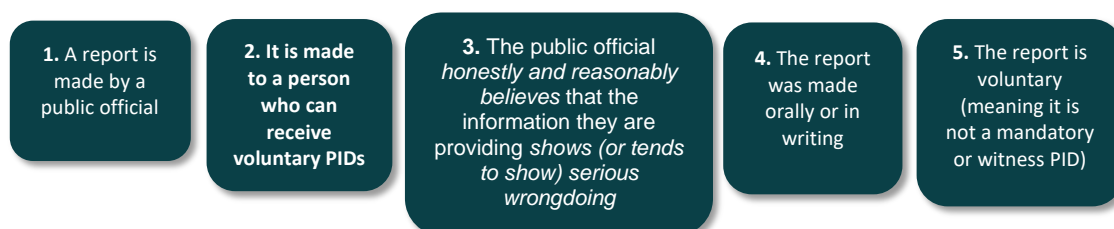
This policy mostly relates to making a voluntary PID and how Council will deal with voluntary PIDs. People who make a mandatory PID or a witness PID are still entitled to protection. More information about protections is available in section 2 of this policy.

You can find more information about mandatory and witness PIDs in the Ombudsman's guidelines 'Dealing with mandatory PIDs' and 'Dealing with witness PIDs'.

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

They involve a public official making a report because they have information that they believe shows (or tends to show) serious wrongdoing, where they are not under a legal obligation to make that report, and where it is not an ordinary part of their role to report such wrongdoing.

A report is a voluntary PID if it has the following five features, which are set out in sections 24 to 27 of the PID Act:



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

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

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

If Council makes an error and does 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 Council 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 Council 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 7 of this policy.



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

Any public official can make a voluntary PID — see ‘Who this policy applies to’. You are a public official if:

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

A public official can make a PID about serious wrongdoing relating to *any* agency, not just the agency they are working for. This means that Council 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.

### (d) What is serious wrongdoing?

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

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

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

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

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

#### ***Making a report to a public official who works for Muswellbrook Shire Council***

You can make a report inside Muswellbrook Shire Council to:

- the General Manager;
- a disclosure officer or Public Officer — a list of disclosure officers for Muswellbrook Shire Council and their contact details can be found at Annexure A of this policy; or
- your manager — this is the person who directly, or indirectly, supervises you. It can also be the person to whom you directly, or indirectly, report. 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 Muswellbrook Shire 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; or
- a *Minister or a member of a Minister's staff*; however, the report *must be made in writing*.

If you choose to make a disclosure outside of Muswellbrook Shire Council, it is possible that your disclosure will be referred back to Muswellbrook Shire Council 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 did not receive the following from Muswellbrook Shire Council:
  - notification that Muswellbrook Shire 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 Muswellbrook Shire Council's decision to investigate the serious wrongdoing;
    - a description of the results of an investigation into the serious wrongdoing; or
    - details of proposed or recommended corrective action as a result of the previous disclosure or investigation.

Investigation period means:

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

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

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

You can make a voluntary PID:

- *in writing* — 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. It may be difficult, however, for Muswellbrook Shire Council to investigate the matter(s) you have disclosed if you cannot be contacted for further information.

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

You should provide as much information as possible so Council 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; and
- other information you have that supports your report.

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

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

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

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

The General Manager / Public Officer 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 / Public Officer 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 General Manager / Public Officer. For more information about the deeming power, see the Ombudsman's guideline 'Deeming that a disclosure is a voluntary PID'.

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

Annexure A contains the names and contact details of disclosure officers for Muswellbrook Shire Council.

## 2 Protections

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

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

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

Council 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 Council becomes aware that a voluntary PID by a person employed or otherwise associated with Muswellbrook Shire Council has been made that concerns serious wrongdoing relating to Muswellbrook Shire Council, Council 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).

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

- *Protection from liability for own past conduct*

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

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

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

- *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 as a result of detrimental action being taken against them.	✓	✓
<b>Ability to seek injunction</b> — An injunction can be sought to prevent the commission or possible commission of a detrimental action offence against a person. For example, an order to prevent dismissal or to require reinstatement.	✓	✓
<b>Immunity from civil and criminal liability</b> — a person will not incur civil or criminal liability if the person breaches a duty of confidentiality while making a disclosure. This means that legal action cannot be taken against a person for: <ul style="list-style-type: none"> <li>• breaching a duty of secrecy or confidentiality, or</li> <li>• breaching another restriction on disclosure.</li> </ul>	✓	✓

### 3 Reporting detrimental action

If you experience adverse treatment or detrimental action, such as bullying or harassment, you should report this immediately. You can report any experience of adverse treatment or detrimental action directly to Muswellbrook Shire Council, or to an integrity agency. A list of integrity agencies is located at Annexure B of this policy.

### 4 General support

Muswellbrook Shire Council will allocate to the maker of the report a person who will be the key contact person and who will take steps to protect their interests, for example, if they are at risk of detrimental action.

Muswellbrook Shire Council will offer wellbeing support to the maker of the report through Council's Employee Assistance Program.

### 5 Roles and responsibilities of Muswellbrook Shire Council employees

Certain people within Muswellbrook Shire Council have responsibilities under the PID Act.

#### (a) 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 Muswellbrook Shire Council complies with this policy and the PID Act;
- ensuring that Muswellbrook Shire Council has appropriate systems for:
  - overseeing internal compliance with the PID Act;
  - supporting public officials who make voluntary PIDs, including by minimising the risk of detrimental action;
  - implementing corrective action if serious wrongdoing is found to have occurred;
  - complying with reporting obligations regarding allegations or findings of detrimental action; and
  - complying with yearly reporting obligations to the NSW Ombudsman.

#### (b) 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 unit (if relevant); and
- ensuring that any oral reports that have been received are recorded in writing.

#### (c) Managers

The responsibilities of managers include:

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

## (d) 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 Muswellbrook Shire Council; and
- 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.

# 6 How Council will deal with voluntary PIDs

## (a) How Muswellbrook Shire Council will acknowledge that Council has received a report and keep the person who made it informed

When a disclosure officer of Muswellbrook Shire Council 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 Council deals with the report;
  - provide clear information on how you can access this PID policy; and
  - provide you with details of a contact person and available supports.
- If the report is a voluntary PID, Council will inform you as soon as possible how Council intends to deal with the report. This may include:
  - that Council is investigating the serious wrongdoing;
  - that Council will refer the report to a different agency (if appropriate) to deal with the voluntary PID. If Council does this, Council will provide you with details of this referral; and
  - If Council decides to not investigate the report and to not refer it to another agency for it to be investigated, Council will tell you the reasons for this decision. Council will also notify the NSW Ombudsman of this decision.
- If Council decides to investigate the serious wrongdoing, Council 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 Council investigates the serious wrongdoing, Council will provide you with the following information once the investigation is complete:
    - a description of the results of the investigation — that is, Council will tell you whether Council found that serious wrongdoing took place.
    - information about any corrective action as a result of the investigation/s — this means Council will tell you what action Council took in relation to the person who engaged in the serious wrongdoing or, if the serious wrongdoing was by Council, what has been 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 Council has 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. Council will always balance the right of a person who makes a report to know the outcome of that report, with other legal obligations Council may have.
- If you have made an anonymous report, in many cases Council may not be able to provide this information to you.

## (b) How Muswellbrook Shire Council will deal with voluntary PIDs

Once a report that may be a voluntary PID is received, Muswellbrook Shire Council 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, Council will ensure that the requirements in the PID Act are complied with.

### ***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 Council's Grievance and Dispute Resolution Policy, Grievance and Dispute Resolution Procedure, Formal Workplace Investigation Procedure and Disciplinary Procedures, or through an alternate process.

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

If you are not satisfied with this assessment or otherwise disagree with it, you can raise it with the person who has communicated the outcome to you or a disclosure officer, request an internal review, or request that the matter be conciliated. In these circumstances, Muswellbrook Shire Council may request the NSW Ombudsman to conciliate the matter.

### ***Cease dealing with report as voluntary PID***

Muswellbrook Shire Council 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).

### ***Where the report is a voluntary PID***

If the report is a voluntary PID:

- In most cases, Council 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 Council believes an investigation is not warranted — for example, if the conduct has previously been investigated.
- There may also be circumstances where Council decides 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 Independent Commission Against Corruption (ICAC) in accordance with section 11 of the Independent Commission Against Corruption Act 1988.
- Before referring a matter, Council will discuss the referral with the other agency, and provide you with details of the referral and a contact person within the other agency.



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

### (c) How Muswellbrook Shire Council will protect the confidentiality of the maker of a voluntary PID

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

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

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

- where the person consents in writing to the disclosure;
- where it is generally known that the person is the maker of the voluntary PID because of their voluntary self-identification as the maker;
- when the public official, or Muswellbrook Shire Council, 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; or
- if it is otherwise in the public interest to disclose the identifying information.

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

Council will put in place steps to keep the identifying information of the reporter and the fact that a report has been made, confidential. It may not be possible for Council to maintain complete confidentiality while the investigation is progressed, but Council will do all that can reasonably be done 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, Council will:

- advise the person whose identity may become known;
- update the agency's risk assessment and risk management plan;
- implement strategies to minimise the risk of detrimental action;
- provide additional support to the person who has made the PID; and
- 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.

(d) How Muswellbrook Shire Council will assess and minimise the risk of detrimental action

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

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

Muswellbrook Shire Council will take steps to assess and minimise the risk of detrimental action by:

- undertaking a Risk Assessment;
- creating a Risk Management Plan; and
- communicating with the reporter to identify risks listing the protections that will be offered.

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; or
- reasonable management action taken by someone in relation to a person who made or may make a PID, for example, a reasonable appraisal of a PID maker's work performance.

(e) How Muswellbrook Shire Council will deal with allegations of a detrimental action offence

If Muswellbrook Shire Council becomes aware of an allegation that a detrimental action offence has occurred or may occur, Muswellbrook Shire Council 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); and/or

- notify the NSW Ombudsman about the allegation of a detrimental action offence being committed.

(f) What Muswellbrook Shire 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, Muswellbrook Shire Council will take the most appropriate action to address that wrongdoing or misconduct. This is also known as corrective action.

Corrective action may 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); and/or
- payment of compensation to people who have been affected by serious wrongdoing or other misconduct.

## 7 Review and dispute resolution

(a) Internal review

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

- that Muswellbrook Shire Council is not required to deal with the report as a voluntary PID;
- to stop dealing with the report because Muswellbrook Shire Council decided it was not a voluntary PID;
- to not investigate the serious wrongdoing and not refer the report to another agency; or
- to cease investigating the serious wrongdoing without either completing the investigation or referring the report to another agency for investigation.

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

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

(b) Voluntary dispute resolution

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

## 8 Other agency obligations

### (a) Record-keeping requirements

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

### (b) Reporting of voluntary PIDs and Muswellbrook Shire Council annual return to the Ombudsman

Each year, Muswellbrook Shire Council provides an annual return to the NSW Ombudsman, which includes:

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

### (c) How Muswellbrook Shire Council will ensure compliance with the PID Act and this policy

This policy will be reviewed by Muswellbrook Shire Council every two years.

## 9 Definitions

Reference	Definition
Agency	Australian Government agencies, Commonwealth companies, public authorities and Commonwealth contracted service providers.
Council	Muswellbrook Shire Council
ICAC	Independent Commission Against Corruption
MP	Member of Parliament e.g. Member for Hunter, Member for Upper Hunter etc
PID	Public Interest Disclosure

## Annexure A — Names and contact details of disclosure officers for Muswellbrook Shire Council

Position	Name	Location	Contact Information
General Manager	Derek Finnigan	Administration Centre Works Depot Water Treatment Plants Wastewater Treatment Plants Library Facilities Arts Centre Aquatic Centre Facilities Donald Horne Building Waste Management Facilities Muswellbrook Marketplace Campbells Corner	<a href="mailto:Derek.Finnigan@muswellbrook.nsw.gov.au">Derek.Finnigan@muswellbrook.nsw.gov.au</a>
Public Officer / Director – Property & Place	Matt Lysaught	Administration Centre Works Depot Water Treatment Plant Wastewater Treatment Plant Muswellbrook Marketplace Campbells Corner	<a href="mailto:Matthew.Lysaught@muswellbrook.nsw.gov.au">Matthew.Lysaught@muswellbrook.nsw.gov.au</a>
Director – Planning & Environment	Sharon Pope	Administration Centre Animal Shelter	<a href="mailto:Sharon.Pope@muswellbrook.nsw.gov.au">Sharon.Pope@muswellbrook.nsw.gov.au</a>
Director – Community & Economy	Shaelee Welchman	Administration Centre Library Facilities Arts Centre Aquatic Centre Facilities Donald Horne Building	<a href="mailto:Shaelee.Welchman@muswellbrook.nsw.gov.au">Shaelee.Welchman@muswellbrook.nsw.gov.au</a>

<b>Position</b>	<b>Name</b>	<b>Location</b>	<b>Contact Information</b>
Director – Corporate Services	TBA	Administration Centre	
Manager – Governance & Risk	Emily Lane	Administration Centre	<a href="mailto:Emily.Lane@muswellbrook.nsw.gov.au">Emily.Lane@muswellbrook.nsw.gov.au</a>
Manager – Community Services	Kim Manwarring	Library Facilities Arts Centre Aquatic Centre Facilities	<a href="mailto:Kim.Manwarring@muswellbrook.nsw.gov.au">Kim.Manwarring@muswellbrook.nsw.gov.au</a>
Corporate Lawyer		Administration Centre	
Chief Financial Officer	Josh Hogan	Administration Centre	<a href="mailto:Joshua.Hogan@muswellbrook.nsw.gov.au">Joshua.Hogan@muswellbrook.nsw.gov.au</a>
Manager – Works	Peter Ball	Works Depot	<a href="mailto:Peter.Ball@muswellbrook.nsw.gov.au">Peter.Ball@muswellbrook.nsw.gov.au</a>
Manager – Waste Operations	Joann Polsen	Waste Management Facilities	<a href="mailto:Joann.Polsen@muswellbrook.nsw.gov.au">Joann.Polsen@muswellbrook.nsw.gov.au</a>
Operations Manager	Irene Chetty	Water Treatment Facilities Wastewater Treatment Facilities	<a href="mailto:Irene.Chetty@muswellbrook.nsw.gov.au">Irene.Chetty@muswellbrook.nsw.gov.au</a>
Manager – Aquatic & Fitness Centres	Archit Bele	Aquatic Centres	<a href="mailto:Archit.Bele@muswellbrook.nsw.gov.au">Archit.Bele@muswellbrook.nsw.gov.au</a>
Arts Centre Director	Elissa Emerson	Arts Centre	<a href="mailto:Elissa.Emerson@muswellbrook.nsw.gov.au">Elissa.Emerson@muswellbrook.nsw.gov.au</a>
Governance Officer	Michelle Sandell-Hay	Administration Centre	<a href="mailto:Michelle.sandell-hay@muswellbrook.nsw.gov.au">Michelle.sandell-hay@muswellbrook.nsw.gov.au</a>
Commercial Property Co-Ordinator	Mardi Eriksson	Muswellbrook Marketplace Campbells Corner	<a href="mailto:Mardi.Eriksson@muswellbrook.nsw.gov.au">Mardi.Eriksson@muswellbrook.nsw.gov.au</a>

## Annexure B — 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:oiiecc_executive@oiiecc.nsw.gov.au">oiiecc_executive@oiiecc.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>



## Related Documents

### Legislation and Guidelines

Government Information (Public Access) Act 2009  
 Government Information (Public Access) Regulation 2018  
 Local Government Act 1993  
 Public Interest Disclosures Act 2022  
 Independent Commission Against Corruption Act 1988  
 State Records Act 1998

### Policies and Procedures

Governance Policy  
 Model Code of Conduct  
 Grievance and Dispute Resolution Policy  
 Grievance and Dispute Resolution Procedure  
 Fraud and Corruption Control Policy  
 Gifts, Bribes & Benefits Policy  
 Formal Workplace Investigation Procedure  
 Disciplinary Procedures

### Other Supporting Documents

Further information concerning public interest disclosures is available from the disclosures coordinator and the NSW Ombudsman's website at [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au).

## Version History

This section identifies authors who reviewed the Policy and the date that it became effective.

Version No.	Date changed	Modified by	Amendments/Previous adoption details
1	06.09.2023	Governance Officer	Draft Ombudsman Model Policy. Public exhibition of draft policy 28/09/23-26/10/23. Adopted by Council 28/11/23, minute number 191.