

Public Interest Disclosures Policy

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1. Purpose

The *Public Interest Disclosures Act (2022)* (the **PID Act**) aims to encourage and facilitate the disclosure of public offences (in the public interest) of corrupt conduct, maladministration or serious and substantial waste in the public sector. At the Art Gallery of New South Wales (the **Art Gallery**) reports of serious wrongdoing are taken seriously. The Art Gallery is committed to building a 'speak up' culture where our people are encouraged to report any conduct that they reasonably believe involves wrongdoing.

The integrity of the Art Gallery relies upon our staff, volunteers, contractors (and subcontractors) speaking up when they become aware of wrongdoing. This policy explains the rights and responsibilities under the PID Act for Art Gallery employees, volunteers, trustees, committee members, as well as contractors and subcontractors who exercise functions on behalf of the Art Gallery (includes the Art Gallery Society and other service providers of the Art Gallery who carry out Art Gallery functions such as security contractors, in-house caterer, etc). This policy sets out:

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

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

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

In NSW, that framework is the PID Act.

This policy should be read in conjunction with the Code of Ethics and Conduct Policy, Board and Committee Code of Conduct, Conflict of Interest Policy, Corruption Prevention Strategy, Discrimination, Harrassment and Bullying Policy, Drugs and Alcohol in the Workplace, Gifts and Benefits Policy, Grievance and Dispute Resolution Procedure and Policy, Secondary Employment Policy Counselling and Disciplinary Action Policy and Guidelines Policy.

2. Authority

- The Art Gallery of New South Wales Act 1980 (NSW)
- Public Interest Disclosures Act 2022 (NSW)
- Independent Commission Against Corruption Commission Act 1988 (NSW)
- Ombudsman Act (NSW)
- State Records Act 1998

3. This policy applies to 'public officials'

This policy applies to, and for the benefit of, all 'public officials' in NSW. Under the PID Act and in the context of the Art Gallery, you are a public official if you are:

- an Art Gallery employee,
- a volunteer at the Art Gallery,
- a member of the Board of Trustees or a committee member,
- a contractor (or subcontractor) who exercises functions on behalf of the Art Gallery (includes the Art Gallery Society and other service providers of the Art Gallery who carry out Art Gallery functions such as security contractors, in-house caterer, ticketing service provider, visitor survey company, etc).

The Director, Art Gallery of New South Wales, the Chief Operating Officer (as the nominated disclosure officer) and some other roles within the Art Gallery 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 the Art Gallery, may use this policy if they want information on who they can report wrongdoing to within the Art Gallery.

4. Who does this policy not apply to?

This policy does not apply to:

- visitors to the Art Gallery (including guests at functions and events)
- people who have received goods or services from Art Gallery and want to make a complaint about those services
- consultants engaged to provide advisory services to the Art Gallery
- contractors who provide goods and/or services directly to the Art Gallery

To clarify whether a particular contracting arrangement will make a contractor a public official under the PID Act, please consult with the Art Gallery Legal Department.

Where you are not a public official (see section 3), 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 6.9 of this policy for more information). However, you can still make a complaint to us via the following channels: artmail@ag.nsw.gov.au or +61 (2) 9225 1700 Monday to Friday.

5. What is contained in this policy?

This policy will provide you with information on the following:

- ways you can make a voluntary PID to the Art Gallery under the PID Act
- the names and contact details for the nominated Disclosure Officers in the Art Gallery
- the roles and responsibilities of people who hold particular roles under the PID Act and who are employees of the Art Gallery
- 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

- Art Gallery procedures for dealing with disclosures
- Art Gallery procedures for managing the risk of detrimental action and reporting detrimental action
- Art Gallery record-keeping and reporting requirements
- how the Art Gallery will ensure it complies with the PID Act and this policy.

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

- confidentially contact a nominated disclosure officer within the Art Gallery
- contact the PID Advice Team within the NSW Ombudsman by phone: (02) 9286 1000 or email: 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.

6. How to make a report of serious wrongdoing

6.1 Reports, complaints and grievances

When a 'public official' (refer to section 3) 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, as long as they have the features of a PID. If an internal complaint or grievance is a report of serious wrongdoing, the Art Gallery 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 process set out in the relevant policy such as the Grievance and Dispute Handling procedures and 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.

6.2 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 we 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 7 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:

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

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

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

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

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

If you make a report and believe we have made an error by not identifying that you have made a voluntary PID, you should raise this with a nominated disclosure officer or your contact officer for the report. If you are still not satisfied with this outcome, you can seek an internal review or we make seek to conciliate the matter. You may also contact the NSW Ombudsman. Further information on rights to internal review and conciliation is found in section 12 of this policy.

6.3 Who can make a voluntary PID?

Any 'public official' can make a voluntary PID (see section 3). You are a public official if you are:

- an Art Gallery employee,
- a volunteer at the Art Gallery,
- a member of the Board of Trustees or a committee member,

- a contractor (or subcontractor) who exercises functions on behalf of the Art Gallery (includes the Art Gallery Society and other service providers of the Art Gallery who carry out Art Gallery functions such as security contractors, in-house caterer, ticketing service provider, visitor survey company, etc).

A public official can make a PID about serious wrongdoing relating to any agency, not just the agency they are working for. This means that we may receive PIDs from public officials outside our agency. It also means that you can make a PID to any agency, including an integrity agency like the Independent Commission Against Corruption (ICAC) and the NSW Ombudsman. Annexure B of this policy has a list of integrity agencies.

6.4 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:

Serious wrongdoing	Examples (not exhaustive)
corrupt conduct	<ul style="list-style-type: none"> • such as a public official accepting a bribe • an Art Gallery contract is awarded to a company in circumstances where the company has provided heavily discounted products and services to Art Gallery staff on the decision making panel without that benefit being disclosed.
serious maladministration	<ul style="list-style-type: none"> • such as an agency acting unlawfully in the exercise of its powers, functions, or duties • If the Art Gallery fails to take steps to prevent damp or pests from destroying stored artwork in its collection after being repeatedly advised by staff or external experts over a number of years that such damage to the collection was likely to occur or actually happening
a government information contravention	<ul style="list-style-type: none"> • such as destroying, concealing or altering records to prevent them from being released under a Government Information Public Access (GIPA) application • handwritten notes taken by a staff member about a matter being withheld on the basis the notes were in a personal notebook
a privacy contravention	<ul style="list-style-type: none"> • such as unlawfully accessing a person’s personal information on an agency’s database for personal gain or purposes not related to one’s role • a staff member sees the contact details for a donor and uses that to contact the donor to see if the donor would consider buying a table at a charity event the staff member is involved with in their personal capacity
a serious and substantial waste of public money	<ul style="list-style-type: none"> • spending public money without due diligence as to market rates for suppliers (breaching procurement guidelines) • an example would be hosting a lavish gala event to raise funds without regard to cost and not generating enough funds to cover the cost of the event

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

6.5 Who can I make a voluntary PID to?

For a report to be a voluntary PID, it must be made to certain public officials. There are several avenues for you to make a report.

6.5.1 Making a report to a public official who works for the Art Gallery

You can make a report inside the Art Gallery to:

- the Director, Art Gallery of New South Wales
- a Disclosure Officer for the Art Gallery — a list of Disclosure Officers for the Art Gallery 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, if you wish, they may accompany you while you make the report to a Disclosure Officer.

[^] for a public official who is a person providing services or exercising functions on behalf of an agency (including a contractor, subcontractor or volunteer) or an employee, partner or officer of an entity that provides services on behalf of an agency or exercises functions of an agency — their manager is taken to be the public official in the Art Gallery who oversees those services or functions, or who manages the relevant contract or volunteering arrangement – see Annexure A for the list.

6.5.2 Making a report to a recipient outside of the Art Gallery

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 the Art Gallery, it is possible that your disclosure will be referred back to the Art Gallery so that appropriate action can be taken.

6.5.3 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 the Art Gallery:
 - notification that the Art Gallery 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 an Art Gallery 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 Art Gallery'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.

6.6 What form should a voluntary PID take?

You can make a voluntary PID:

- *in writing*— this could be an email or letter to a person who can receive voluntary PIDs.
- *orally*— have a private discussion with a person who can receive voluntary PIDs. This can be face-to-face, via telephone or virtually.
- *anonymously*— write an email or letter or call a person who can receive PIDs to make a report without providing your name or anything that might identify you as the maker of the report. A report will only be considered anonymous if there is no reasonable or practical way of communicating with the person making the report. Even if you choose to remain anonymous, you will still be protected under the PID Act. However, there will be limitations as to what can be achieved.

For instance, the Art Gallery may not be able to fully investigate the matter(s) you have disclosed (for instance, if the initial report lacks sufficient detail we may not be able to progress an investigation if we cannot seek further information from you). Additionally, the Art Gallery will not be able to provide you with updates or outcomes if we cannot contact you. The Art Gallery will not be able to assign you a Key Contact person (see section 9) and accordingly our ability to provide anything more than general protections under the PID Act will be impaired (section 7).

6.7 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.

6.8 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 the Art Gallery to understand what is or may be occurring.

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

6.9 Deeming that a report is a voluntary PID

The Director, Art Gallery of New South Wales 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 persons who report serious wrongdoing in good faith 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 Director of the Art Gallery, or the Chief Operating Officer in whom the Director has delegated this function, 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 Director or Chief Operating Officer. For more information about the deeming power, see the Ombudsman's guideline ['Deeming that a disclosure is a voluntary PID'](#).

6.10 Who can I talk to if I have questions or concerns?

Internally, the Art Gallery's People and Culture Team or the Directorate should be able to provide you with confidential advice to answer questions or concerns you may have. In addition, you can approach members of the Executive Team to confidentially discuss a matter you are concerned about.

Art Gallery staff can access the employee assistance program. Converge EAP provide confidential and short-term counselling support for home or work. The service can be used by all Art Gallery staff and their immediate family for support with a range of personal and work related issues, including issues related to making reports under the PID Act. Sessions can be face-to-face, via video, phone or live chat. Details about the Converge EAP service are on the Staff Hub.

7. Protections

7.1 How is the maker of a voluntary PID protected?

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

The Art Gallery is 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:

7.1.1 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 the Art Gallery that concerns serious wrongdoing relating to the Art Gallery has been made, we will undertake a risk assessment and take steps to mitigate the risk of detrimental action occurring against the person who made the voluntary PID (this will be harder to do where the voluntary PID is submitted anonymously).
- 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.

[^] Penalty unit value is prescribed by the Crimes Act 1914 (NSW) and as at 1 July 2023 is \$313.

7.1.2 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.

7.1.3 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.

7.1.4 Protection from liability for own past conduct

The Attorney General can give the maker of a report 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 (such as ICAC or the NSW Ombudsman) to the Attorney General.

7.2 Protections for people who make mandatory and witness PIDs

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

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

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

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

8. 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 the Art Gallery (consider your assigned Key Contact person or the Disclosure Coordinator, or any other Disclosure Officer, see the list in **Annexure A**), or to an integrity agency. A list of integrity agencies is located at **Annexure B** of this policy.

9. General support

Speaking up about serious wrongdoing can be intimidating. There are a number of resources, both internal and external, which you can turn to for support.

- *Key Contact Person* – when a disclosure is received, depending on the type of disclosure, the Art Gallery will allocate a person (who has no connection to the matter reported) to be your key contact so you can seek updates and have a direct line to report actual or suspected detrimental action for example, changes in behaviour of other staff or any different or unfair treatment you experience, especially if you are concerned that your identity as the maker of a disclosure is no longer confidential.
- *Learn more about the PID Act* - the [NSW Ombudsman](#) has a suite of resources available for anyone who has questions about the PID Act and reporting generally
- *Employee Assistance Program* - the Art Gallery has engaged Converge EAP as our employee assistance program provider. Converge provide confidential and short-term counselling support for home or work. The service can be used by all Art Gallery staff and their immediate family for support with a range of personal and work related issues, including making reports under the PID Act. Sessions can be face-to-face, via video, phone or live chat. Details about the Converge EAP service are on the Staff Hub.

10. Roles and responsibilities of Art Gallery employees

A number of positions within the Art Gallery have particular responsibilities under the PID Act.

10.1 Director of the Art Gallery

As the head of the agency, the Director of the Art Gallery is responsible for:

- fostering a workplace culture where reporting is encouraged
- receiving disclosures from public officials
- ensuring there is a system in place for assessing disclosures
- ensuring the Art Gallery complies with this policy and the PID Act
- ensuring that the Art Gallery 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.

10.2 Art Gallery Disclosure Officers

Changes to the PID Act in 2022 have increased the number of positions within an organisation to whom reports of serious wrongdoing can be made. Under the PID Act, these roles are called 'Disclosure Officers' and for the Art Gallery, the list is set out in **Annexure A**. Each Disclosure Officer is responsible for:

- receiving reports from public officials
- receiving reports when they are passed on to them by Managers

- ensuring reports are dealt with appropriately and in a timely fashion, including by referring the matter to the appropriate complaint unit (if relevant)
- ensuring that any oral reports that have been received are recorded in writing
- liaise with the Disclosure Coordinator

10.3 Art Gallery Disclosure Coordinator

As the most senior Disclosure Officer, the Chief Operating Officer has all the responsibilities of a Disclosure Officer but must also:

- Conduct a timely assessment of whether a report is a PID for the purposes of the PID Act
- Refer any matter that does not qualify as a voluntary PID under the PID Act to the appropriate internal grievance and dispute resolution policy and, where appropriate, oversee that process
- If appropriate, refer the matter to the appropriate integrity agency or the police if it is a criminal matter
- Coordinate reporting back to the person who made the disclosure
- Liaise with the nominated Key Support Person (section 9) allocated to the person who made the disclosure to proactively try to prevent detrimental action being taken against the person
- Make referrals about alleged detrimental action offences
- Coordinate any internal investigations into the matters raised
- Keep necessary records and compile statistics on the Art Gallery's performance under the PID Act
- Report back to the Art Gallery's Finance, Audit and Risk Committee regarding the Art Gallery's compliance with the PID Act
- Inform the NSW Ombudsman as required regarding actions taken by the Art Gallery with respect to any investigations
- Coordinate the required annual return (reporting) to the NSW Ombudsman and other agencies as required

10.4 Managers' responsibilities

- receiving reports from persons that report to them or that they supervise
- passing on reports they receive to a Disclosure Officer as soon as possible
- if asked by the person who made the disclosure, accompany them to any formal meeting with a Disclosure Officer
- work with the Key Support Person and Disclosure Coordinator to ensure that no detrimental action is taken against the person who made the disclosure.

10.5 All Art Gallery staff

All staff (whether employed or volunteers) 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 the Art Gallery
- treat any person dealing with, or investigating reports of, serious wrongdoing with respect.

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

11. How we will deal with voluntary PIDs

11.1 How the Art Gallery will acknowledge that we have received a report and keep the person who made it informed

When a Disclosure Officer in the Art Gallery 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, informing you of the likely steps the Art Gallery will take in the event it is not assessed to be a PID (Section 11.2)
 - state that the PID Act applies to how the Art Gallery deals with the report
 - provide clear information on how you can access this PID policy
 - provide you with details of a Key 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 Key Contact Person who was nominated when you made the report.
 - If we investigate the serious wrongdoing, we will provide you with the following information once the investigation is complete:
 - a description of the results of the investigation — that is, we will tell you whether we found that serious wrongdoing took place.
 - information about any corrective action as a result of the investigation/s — this means we will tell you what action we took in relation to the person who engaged in the serious wrongdoing or if the serious wrongdoing was by our agency, what we have put in place to address that serious wrongdoing.
 - Corrective action could include taking disciplinary action against someone or changing the practices, policies and procedures that we have in place which led to the serious wrongdoing.
- There may be some details about both the findings made as a result of the investigation and the corrective action taken that cannot be revealed to you. We will always balance the right of a person who makes a report to know the outcome of that report, with other legal obligations we have.

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

11.2 How the Art Gallery will deal with voluntary PIDs

Once a report purporting to be a voluntary PID is received, the Art Gallery 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.

11.2.1 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 our grievance and dispute resolution 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 person who has communicated the outcome to you or a Disclosure Officer, request an internal review or request that the matter be conciliated. The Art Gallery can, but does not have to, request the NSW Ombudsman to conciliate the matter.

11.2.2 Cease dealing with the report as a voluntary PID

The Art Gallery 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).

11.2.3 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.

11.3 How the Art Gallery will protect the confidentiality of the maker of a voluntary PID

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

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

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

- where the person consents in writing to the disclosure of their identity
- 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 the Art Gallery reasonably considers it necessary to disclose the identifying information to protect the discloser from detriment
- where it is necessary for the identifying information be disclosed to a person whose interests are affected by the disclosure
- where the identifying information has previously been lawfully published
- when the identifying information is disclosed to a medical practitioner or psychologist for the purposes of providing medical or psychiatric care, treatment or counselling to the discloser
- when the identifying information is disclosed for the purposes of proceedings before a court or tribunal
- when the disclosure of the identifying information is necessary to deal with the disclosure effectively
- if it is otherwise in the public interest to disclose the identifying information.

The Art Gallery 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 discloser, 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 discloser can be identified. We will do this by:

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

If confidentiality cannot be maintained or is unlikely to be maintained, the Art Gallery:

- will advise the person whose identity may become known
- will implement strategies to minimise the risk of detrimental action
- may provide additional supports to the person who has made the PID as appropriate

- will remind persons who become aware of the identity of the person making the report 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

11.4 How the Art Gallery will assess and minimise the risk of detrimental action

The Art Gallery will not tolerate any detrimental action being taken by any Art Gallery staff or volunteers against a person who has made a PID, investigators, witnesses or the person the report is about. In the case of disclosures made by public officials who are not employees or volunteers of the Art Gallery, where the Art Gallery is made aware of the voluntary PID, we will remind the discloser's employer of their obligation to take steps to assess and minimise the risk of detrimental action against the discloser.

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

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

- explaining the process
- explaining how the Art Gallery will communicate with the discloser (including where the discloser is employed by a contractor or sub-contractor to the Art Gallery) to identify risks of detrimental action in relation to their work circumstances
- listing the protections that will be offered, that is, the Art Gallery will discuss protection options with the discloser which may including remote working or approved leave for the duration of the investigation
- outlining what supports will be provided if they differ from Section 9

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.

11.5 How the Art Gallery will deal with allegations of a detrimental action offence

If the Art Gallery become(s) aware of an allegation that a detrimental action offence has occurred or may occur, the Art Gallery will:

- take all steps possible to stop or prevent the action and protect the discloser
- take appropriate disciplinary action against anyone that has taken detrimental action, which may include referral to integrity agencies or disciplinary 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.

11.6 What the Art Gallery 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, the Art Gallery 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 and others where required
- taking employment action against persons involved in the wrongdoing (such as termination of employment, relocation, a caution or reprimand, contractual remedy)
- payment of compensation to people who have been affected by serious wrongdoing or other misconduct.

12. Review and dispute resolution

12.1 Internal review

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

- that the Art Gallery 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.

The Art Gallery will ensure internal reviews are conducted in compliance with the PID Act. Internal reviews are administrative matters where the decision maker at the Art Gallery reviews all the materials gathered in the matter to effectively re-make the decision. Under administrative law principles, decisions must be made reasonably, objectively, lawfully, affording parties procedural fairness, independently, impartially, transparently, efficiently and rationally.

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

12.2 Voluntary dispute resolution

If a dispute arises between the Art Gallery 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 we and the maker of the report are willing to resolve the dispute.

13. Other agency obligations

13.1 Record-keeping requirements

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

Electronic information will be stored on Art Gallery systems subject to normal ICT security systems and access protocols (logins and multi-factor authentication), kept separately as much as possible with access granted only to the relevant Disclosure Officer, the Disclosure Coordinator and their administrative team, the General Counsel and other legal advisors as required and People and Culture team, and only such other individuals as considered appropriate by the Disclosure Coordinator, on the understanding that confidentiality is maintained.

13.2 Reporting of voluntary PIDs and the Art Gallery annual return to the Ombudsman

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

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

13.3 How the Art Gallery will ensure compliance with the PID Act and this policy

Embedding a speak up culture at the Art Gallery is an ongoing process that includes training, periodic updates and refresher training, having resources and guides (including this policy) available to all public officials and eligible contractors.

The Art Gallery's People and Culture team will have prime responsibility to roll out training modules for the updated PID Act, develop induction modules for new staff, ensure this policy is updated as required and develop a suite of other resources that public officials can refer to to supplement their knowledge and ensure compliance.

The Disclosure Coordinator for the Art Gallery will have responsibility for monitoring compliance within the Art Gallery and ensuring regular reports about compliance are prepared for the Art Gallery's Finance, Audit and Risk Committee and the NSW Ombudsman's office as required, including preparation of the annual report to the NSW Ombudsman.

The Art Gallery's Legal Department will ensure that from 1 October 2023, all identified contracts with contractors include provisions which require contractors (and their subcontractors) to understand their obligations under the PID Act and this policy and be able to access prepared resources.

Annexure A - List of Disclosure Officers for the Art Gallery

PID Act position	Role* – see Section 10 for responsibilities
Head of agency	Director, Art Gallery of New South Wales
Disclosure Coordinator	Chief Operating Officer (as most senior Disclosure Officer)
Disclosure officers	<p>Chief Operating Officer (designated person responsible for receiving voluntary PIDs)</p> <p>Most senior Art Gallery staff member on site</p> <ul style="list-style-type: none"> • Domain campus • Leichhardt • Brett Whiteley Studio • Riverwood • Lilyfield • Padstow (until mid 2024) <p>President of the Board of Trustees</p> <p>Member of the Board of Trustees</p> <p>Head of People and Culture</p>
Managers (must communicate a disclosure to a Disclosure Officer)	<ul style="list-style-type: none"> • Any role which supervises staff or volunteers, • includes Art Gallery personnel who act as points of contact for key contractor relationships covered under the PID Act.
Managers of key Art Gallery contractual relationships	<p>Art Gallery Society</p> <p>Security Contractors</p> <p>Cleaning services</p> <p>Food and beverage (catering)</p> <p>Other service providers who meet the criteria of 'public officials' described in Section 3</p>

* See Staff Hub for list of current names against these positions

Annexure B – List of integrity agencies

Integrity agency	What they investigate	Contact information
The NSW Ombudsman	Most kinds of serious maladministration by most agencies and public officials (but not NSW Police, judicial officers or MPs)	Telephone: 1800 451 524 between 9am to 3pm Monday to Friday Writing: Level 24, 580 George Street, Sydney NSW 2000 Email: info@ombo.nsw.gov.au
The Auditor-General	Serious and substantial waste of public money by auditable agencies	Telephone: 02 9275 7100 Writing: GPO Box 12, Sydney NSW 2001 Email: governance@audit.nsw.gov.au
Independent Commission Against Corruption	Corrupt conduct	Telephone: 02 8281 5999 or toll free on 1800 463 909 (callers outside Sydney) between 9am and 3pm, Monday to Friday Writing: GPO Box 500, Sydney NSW 2001 or faxing 02 9264 5364 Email: icac@icac.nsw.gov.au
The Inspector of the Independent Commission Against Corruption	Serious maladministration by the ICAC or the ICAC officers	Telephone: 02 9228 3023 Writing: PO Box 5341, Sydney NSW 2001 Email: oiicac_executive@oiicac.nsw.gov.au
The Law Enforcement Conduct Commission	Serious maladministration by the NSW Police Force or the NSW Crime Commission	Telephone: 02 9321 6700 or 1800 657 079 Writing: GPO Box 3880, Sydney NSW 2001 Email: contactus@lecc.nsw.gov.au
The Inspector of the Law Enforcement Conduct Commission	Serious maladministration by the LECC and LECC officers	Telephone: 02 9228 3023 Writing: GPO Box 5341, Sydney NSW 2001 Email: oilc_executive@oilc.nsw.gov.au
Office of the Local Government	Local government pecuniary interest contraventions	Email: olg@olg.nsw.gov.au
The Privacy Commissioner	Privacy contraventions	Telephone: 1800 472 679 Writing: GPO Box 7011, Sydney NSW 2001 Email: ipcinfo@ipc.nsw.gov.au
The Information Commissioner	Government information contraventions	Telephone: 1800 472 679 Writing: GPO Box 7011, Sydney NSW 2001 Email: ipcinfo@ipc.nsw.gov.au