Public Interest Disclosures Policy

Section 1 - Purpose

(1) 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"). "Agencies" are NSW public sector agencies and other public authorities and includes the University of Newcastle ("University").

(2) The University takes reports of serious wrongdoing seriously, and is committed to building a 'speak up' culture where public officials are encouraged to report any conduct that they reasonably believe involves serious wrongdoing.

(3) The integrity of the University relies upon our staff, contractors, subcontractors, and volunteers speaking up when they become aware of serious wrongdoing.

(4) This policy sets out:

a. how the University will support and protect a person who makes a report which is, or may be, a PID;
b. how the University will deal with the report and our other responsibilities under the PID Act;
c. who to contact and how to make a report of serious wrongdoing; and
d. the protections which are available under the PID Act.

(5) This policy also documents the University's 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 serious wrongdoing by:

a. protecting those who speak up from detrimental action; and
b. imposing duties on those who receive reports of serious wrongdoing to take appropriate action to investigate or otherwise deal with them.

(6) In NSW, that framework is the PID Act.

(7) This policy should be read in conjunction with the PID Act and the Fraud and Corruption Framework.

Section 2 - Accessibility of this policy

(8) This policy is available on the University's publicly available website here.

(9) Information about where this policy is available is provided to staff at the commencement of their employment. In addition, a hard copy of the policy can be requested from the PID team (which sits within Legal & Compliance, Resources Division). The PID team's contact details are available on the PID webpage.

Section 3 - Who does this policy apply to?

(10) This policy applies to, and for the benefit of, all public officials in NSW. A public official is defined in section 14 of the PID Act, and in the context of the University, includes persons who:

a. are employed in or by the University or otherwise in the service of the University;
b. provide services, or exercise functions, on behalf of the University, including any contractors, subcontractors or volunteers that provide services, or exercise functions, on behalf of the University; or
c. are an employee, partner or officer of an entity that provides services, under contract, subcontract or other arrangement, on behalf of the University or exercises functions of the University, and are involved in providing those services or exercising those functions.

(11) To the extent permitted under sections 80 and 81 of the PID Act, each of the University's controlled entities have arranged for the University to exercise their functions under the PID Act on their behalf. To this end:

a. this policy will apply to controlled entities and its public officials; and
b. when applying this policy in the context of a controlled entity, a reference to the University may be read as a reference to the relevant controlled entity (context permitting).

(12) The Vice-Chancellor, Disclosure Coordinator, Disclosure Officers, and managers within the University have specific responsibilities under the PID Act. This policy also provides information on how people in these roles will fulfil their responsibilities.

Section 4 - Who does this policy not apply to?

(13) This policy does not apply to people who are not public officials, such as:

a. people who have received services from the University and want to make a complaint about those services; and
b. individuals or employees of entities who provide services to the University. For example, employees of a company that sold computer software to the University.

(14) This means that if a person is not a public official, this policy will not apply to their report of serious wrongdoing (there are some circumstances where this can be deemed to be a voluntary PID, see clauses (50) to (53) of this policy for more information). A person who is not a public official may still be able make a complaint about wrongdoing in accordance with other University processes, see the University's complaints webpage for further detail.

Section 5 - Compliance with the PID Act

(15) The University's PID team will regularly monitor this policy to consider whether it is meeting its purpose.

Section 6 - What is contained in this policy?

(16) This policy contains information on the following:

a. ways to make a voluntary PID to the University under the PID Act;
b. the names and contact details of the Disclosure Coordinator and Disclosure Officers at the University;
c. the roles and responsibilities of people who have responsibilities under the PID Act and who are employees of the University;
d. what happens when someone makes a voluntary PID;
e. what protections are available to people who report serious wrongdoing under the PID Act and how the University will ensure these protections are applied;
f. the University's procedures for dealing with a report of serious wrongdoing;
g. the University's procedures for managing the risk of detrimental action and reporting detrimental action;

h. the University's record-keeping and reporting requirements; and
i. how the University will ensure it complies with the PID Act and this policy.

(17) Anyone requiring further information about this policy, how PIDs will be handled, or the PID Act can:

a. visit the University's PID webpage;
b. confidentially contact a Disclosure Officer within the University;
c. contact the PID Advice Team within the NSW Ombudsman by phone: (02) 9286 1000 or email: pidadvice@ombo.nsw.gov.au; or
d. access the NSW Ombudsman's PID guidelines which are available on its website.

(18) 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.

Section 7 - How to make a report of serious wrongdoing

Reports and complaints

(19) A report of suspected or possible serious wrongdoing occurring at the University will be a PID if it has certain features which are set out in the PID Act.

(20) Some complaints or concerns may also be PIDs, if they have the features of a PID. If a complaint or concern is a report of serious wrongdoing, the University will consider whether it is a PID and:

a. if it is a PID, the University will deal with it as set out in this policy, and follow any other policies or processes which may also apply, for example the Fraud and Corruption Framework, Privacy Management Plan, or processes outlined in an applicable Enterprise Agreement; and
b. if it is not a PID, for example because it has not been made by a public official or does not meet the threshold of serious wrongdoing, it will not be dealt with under this policy but other relevant University policies or processes may still apply.

(21) It is important that the University acknowledges the receipt of a PID within a reasonable timeframe. This is because once a PID is received, the person who has made the report is entitled to certain protections. Also, the University has certain decisions to make on how it will deal with the PID and how it will protect and support the person who has made the report.

(22) For further information about making a complaint, visit the University's complaints webpage.

When will a report be a PID?

(23) The PID Act sets out three types of PIDs. These are:

a. 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.
b. Mandatory PID: This is a PID where the public official has made a report about serious wrongdoing because they have a legal obligation to make that report, or because making that report is an ordinary aspect of their role or function at the University.
c. Witness PID: This is a PID where the public official discloses information during an investigation of serious wrongdoing following a request or requirement of the investigator.

(24) This policy mostly relates to making a voluntary PID and how the University will deal with voluntary PIDs. Persons who make a mandatory PID or a witness PID are still entitled to protection. More information about protections is available in Section 8.

(25) More information about mandatory and witness PIDs can be found in the Ombudsman's 'Dealing with mandatory PIDs' and 'Dealing with witness PIDs' guidelines published on the NSW Ombudsman website.

(26) 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.

(27) 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:

	Features of PID
1	A report is made by a public official.
2	The report 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).

(28) To be treated as a voluntary PID, a report must be about serious wrongdoing as defined in the PID Act, however the person making a PID is not expected to prove that what they reported actually happened or is serious wrongdoing. They do have to honestly believe, on reasonable grounds, that the information they are reporting shows or tends to show serious wrongdoing.

(29) Even though a person making a PID does not have to prove the serious wrongdoing happened or provide evidence, a mere allegation with no supporting information is unlikely to meet this test.

(30) In accordance with section 26 of the PID Act, a report will not be treated as a voluntary PID if the information reported concerns only a grievance about a matter relating to the employment of the person making the PID and does not have significant implications beyond matters personally affecting or tending to personally affect the person making the PID.

(31) If the University makes an error and does not identify that a person has made a voluntary PID, the person will still be entitled to the protections under the PID Act.

(32) If a person makes a report and believes the University has made an error by not identifying that they have made a voluntary PID, they should raise this with a Disclosure Officer or contact officer for the report.

Who can make a voluntary PID?

(33) Any person who is a public official can make a voluntary PID — see Section 3.

What is serious wrongdoing?

(34) 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:

Category of serious wrongdoing	Meaning
Corrupt conduct	The “What is serious wrongdoing” guidelines published on the NSW Ombudsman website provides more information on what constitutes corrupt conduct.
Serious maladministration	Conduct (other than conduct of a trivial nature) relating to a matter of administration that is unlawful; unreasonable, unjust, oppressive or improperly discriminative; or based wholly or partly on improper motives.
Government information contravention	A failure to exercise functions in accordance with: a. the Government Information (Information Commissioner) Act 2009; or b. the Government Information (Public Access) Act 2009; or c. the State Records Act 1998.
A local government pecuniary interest contravention	This is applicable to local governments only.
Privacy contravention	A failure (other than a trivial failure) to exercise functions in accordance with: a. the Privacy and Personal Information Protection Act 1998; or b. the Health Records and Information Privacy Act 2002.

(35) A person making a PID does not need to state to the University what category of serious wrongdoing they are reporting or that they are reporting serious wrongdoing.

(36) Examples of wrongdoing that may fall under the definition of serious wrongdoing can be found in the “What is serious wrongdoing” guidelines published on the NSW Ombudsman website. They include:

a. a public official accepting financial benefit from someone in exchange for ensuring a particular outcome for that person;
b. contravening procurement processes when engaging contractors;
c. procedures that are discriminatory;
d. misappropriation or misuse of public property; and
e. a public official accessing personal information for personal use.

Who can I make a voluntary PID to?

(37) For a report to be a voluntary PID, it must be made to certain public officials outlined in clauses (38) to (44) below. Persons are encouraged to report a voluntary PID within the University but there are other options for reporting outside the University.

Making a report to a public official who works for the University

(38) A person can make a voluntary PID inside the University to:

a. a University Disclosure Officer — a list of disclosure officers and their contact details can be found at Appendix A of this policy or on the University's PID webpage;
b. their (indirect or direct) manager, if the person making the voluntary PID is an employee of the University. This may be the person who directly, or indirectly, supervises them. It can also be the person who they directly, or indirectly, report to. This may be more than one person;
c. a public official who is engaged by the University to oversee a service or function, or who manages a relevant contract or volunteering arrangement. This pathway is for voluntary PIDs by persons providing services or exercising functions on behalf of the University (such as a contractor, subcontractor or volunteer) or an employee, partner or officer of an entity that provides services, or exercises functions, on behalf of the University; or
d. any other person provided for in the PID Act.

(39) Persons who can receive reports as described in clause (38)(b) to (c) are referred to as “managers” in this policy.

Making a report to a recipient outside of the University

(40) A person can also make a voluntary PID to a public official in another agency (meaning an agency you do not work for) or an integrity agency. These include:

a. the head of another agency — this means the head of any public service agency;
b. an integrity agency — a list of integrity agencies is located at Appendix B of this policy;
c. 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; and
d. a Minister or a member of a Minister’s staff but the report must be made in writing.

(41) If a person chooses to make a report outside of the University, it is possible that the report will be referred back to the University so that appropriate action can be taken.

Making a report to a Member of Parliament (MP) or journalist

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

a. they must have first made substantially the same disclosure (described here as a ‘previous disclosure’) to someone who can receive disclosures;
b. the previous disclosure must be substantially true;
c. they did not make the previous disclosure anonymously;
d. they did not give a written waiver of their right to receive information relating to their previous disclosure;
e. they did not receive the following from the University:
    i. notification that the University will not investigate the serious wrongdoing and will also not refer the previous disclosure to another agency; or
    ii. the following information at the end of the investigation period:
        - notice of the University's decision to investigate the serious wrongdoing;
        - a description of the results of an investigation into the serious wrongdoing; and
        - details of proposed or recommended corrective action as a result of the previous disclosure or investigation.

(43) In the context of this policy, investigation period means:

a. after six months from the previous disclosure being made; or
b. after 12 months if you applied for an internal review of the University's decision within six months of making the disclosure.

(44) If all the above requirements and any other requirements set out in the PID Act are met, the disclosure to an MP or journalist may be a voluntary PID.

What form should a voluntary PID take?

(45) A voluntary PID can be made:

a. in writing — write an email or letter to a person who can receive voluntary PIDs;
b. orally — have a private discussion with a person who can receive voluntary PIDs. This can be face-to-face, via

telephone or virtually; or

c. anonymously — write an email or letter or call a person who can receive PIDs to make a report without providing identifying details. 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 a report is made anonymously, it will still be protected under the PID Act. However, it may be difficult for the University to investigate the matter(s) disclosed if the person making the report cannot be contacted for further information.

(46) The University encourages persons to make a PID by filling out the PID form available on the University's PID webpage.

What should be included in a report?

(47) A person making a report should provide as much information as possible so the University can deal with the report effectively. Types of information that should be included is as follows:

a. date, time and location of key events;
b. names of person(s) involved in the suspected serious wrongdoing, their role, title and how they are involved;
c. relationship with the person(s) involved, such as whether the person making the report works closely with them;
d. explanation of the matter being reported;
e. how the person became aware of the matter being reported;
f. possible witnesses; and
g. any other information that supports the report (for example, this could include why the person thinks the report is a PID).

What if I am not sure if my report is a PID?

(48) A public official should report all wrongdoing they become aware of regardless of whether they think it is serious wrongdoing. It is important for the University to understand what is or may be occurring.

(49) The University is then responsible for making sure a report is handled appropriately under the PID Act, or if it is not a PID, in line with any other applicable University process.

Deeming that a report is a voluntary PID

(50) The Disclosure Coordinator can, in certain circumstances, determine that a report is a voluntary PID even if the report does not have all the features of a voluntary PID. This is known as the ‘deeming power’.

(51) By deeming that a report is a voluntary PID, it ensures that the person who made the report is provided with protections under the PID Act.

(52) If a report has been made that has not met all the requirements of a voluntary PID, the person who has made the report can refer the matter to the Disclosure Coordinator to request that they consider deeming the report to be a voluntary PID. The contact details of the Disclosure Coordinator is available on the University's PID webpage.

(53) A decision to deem a report to be a voluntary PID is at the discretion of the Disclosure Coordinator. For more information about the deeming power, see the ‘Deeming that a disclosure is a voluntary PID’ guideline published on the NSW Ombudsman website.

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

(54) Should persons have any questions or concerns about making a report of serious wrongdoing, they can contact

the University's PID team or the Disclosure Coordinator. Further detail is provided on the University's PID webpage, including contact details and how questions or concerns can be raised confidentially.

Section 8 - Protections

How is the maker of a voluntary PID protected?

(55) When a person makes a voluntary PID they will receive special protections under the PID Act, as described in this Section 8.

(56) The University is committed to taking all reasonable steps to protect a person from detriment as a result of having made a voluntary PID and to maintaining the person's confidentiality as much as possible while the voluntary PID is being dealt with.

(57) The University will not tolerate any type of detrimental action being taken against a person because they have made a voluntary PID, might make a voluntary PID or are believed to have made a voluntary PID.

(58) A person who makes a voluntary PID is protected in the following ways:

a. Protection from detrimental action:
    i. A person cannot take detrimental action against the PID maker because they have made a voluntary PID or are considering making a voluntary PID. Detrimental action includes bullying, harassment, intimidation, or dismissal.
    ii. Within a reasonable timeframe from when the University becomes aware that a voluntary PID has been made, the University will undertake a risk assessment and take steps to mitigate the risk of detrimental action occurring against the PID maker.
    iii. It is a criminal offence for someone to take detrimental action against a PID maker 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.
    iv. A PID maker may seek compensation where unlawful detrimental action has been taken against them.
    v. A PID maker 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).
    vi. Note that a PID maker 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.
b. Immunity from civil and criminal liability:
    i. 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 voluntary 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.
c. Confidentiality:
    i. The University 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.
d. Protection from liability for own past conduct:
    i. If the report is about the person's own conduct, in certain circumstances the Attorney General may give to a person who makes a voluntary PID, an undertaking that the PID or the fact of the PID, will not be used in evidence against them (other than in proceedings relating to the falsity of the disclosure).

Protections for people who make mandatory and witness PIDs

(59) Protections for makers of mandatory and witness PIDs are detailed below:

a. 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. a person can initiate proceedings and seek compensation for injury, damage, or loss suffered as a result of detrimental action being taken against them;
c. 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; and
d. a person will not incur civil or criminal liability if the person breaches a duty of confidentiality while making a mandatory or witness PID.

Section 9 - Reporting detrimental action

(60) If a person experiences adverse treatment or detrimental action as a result of making a PID, such as bullying or harassment, they should report this immediately. They can do so by:

a. making a report to the staff member managing your PID or the contact person you have been provided for your PID (for example a Disclosure Officer, Disclosure Coordinator or a member of the PID team) by phone or email; or
b. make a report to an integrity agency, see Appendix B for list of integrity agencies and their contact details.

Section 10 - General support

(61) If a person who makes a PID requires assistance at any stage of the reporting or investigation process, they are encouraged to seek independent advice and support. Support persons may attend interviews or meetings if the PID maker has given the University prior notice. In addition, the University will allocate a key contact person for a PID and the PID maker is encouraged to contact that person at any time should they have questions about the process, this policy, or the PID Act.

(62) The University offers all staff members and their immediate family members confidential counselling services through its Employee Assistance Program, for further information visit the University's Employee Assistance Program webpage.

(63) If any person has questions about the PID Act and reporting generally, they can contact the NSW Ombudsman, whose contact details are listed at Appendix B.

Section 11 - Roles and responsibilities of University employees

(64) Certain people within the University have responsibilities under the PID Act.

Vice-Chancellor

(65) The Vice-Chancellor is responsible for:

a. fostering a workplace culture where reporting PIDs is encouraged;

b. ensuring there is a system in place for assessing disclosures that are or may be PIDs;
c. ensuring the University complies with this policy and the PID Act;
d. ensuring that the University has appropriate systems for:
    i. overseeing internal compliance with the PID Act;
    ii. supporting people who make voluntary PIDs, including by minimising the risk of detrimental action;
    iii. implementing corrective action where appropriate;
    iv. complying with reporting obligations regarding allegations or findings of detrimental action; and
    v. complying with yearly reporting obligations to the NSW Ombudsman.

Disclosure Coordinator

(66) The Disclosure Coordinator is the General Counsel, or any other staff member appointed by the Vice-Chancellor to act as Disclosure Coordinator in accordance with clause 121.

(67) The Disclosure Coordinator, with the support of the PID team, is responsible for:

a. receiving voluntary PIDs from Disclosure Officers;
b. ensuring such disclosures are dealt with appropriately, including in accordance with this policy and the PID Act; and
c. supporting the Vice-Chancellor to fulfill their responsibilities under this policy and the PID Act.

Disclosure Officers

(68) Disclosure Officers are responsible for receiving voluntary PIDs and passing them on to the Disclosure Coordinator in accordance with this policy.

Managers

(69) Managers are responsible for receiving voluntary PIDs from persons that report to them or that they supervise, and passing them on to a Disclosure Officer in accordance with this policy.

All employees

(70) All employees must:

a. report suspected serious wrongdoing or other misconduct;
b. 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 University; and
c. treat any person dealing with or investigating reports of serious wrongdoing with respect.

(71) 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.

Section 12 - How the University deals with voluntary PIDs

When a report has been received by the University

(72) If a report that is or may be a voluntary PID is made to a manager (who is not a Disclosure Officer), then that manager must, as soon as reasonably practicable, communicate the report to a Disclosure Officer who is associated

with either the manager or person making the report.

(73) Upon receiving a report that is or might be a voluntary PID, the Disclosure Officer, will:

a. ensure the report, if made orally, has been recorded in writing; and
b. provide the report to the Disclosure Coordinator to manage and assess.

How the University will acknowledge the receipt of a report and keep the person who made it informed

(74) When the Disclosure Coordinator receives a report which is or may be a voluntary PID, they, or a member of the PID team, will, within a reasonable timeframe, send the person who made the report the following:

a. an acknowledgment that the report has been received. This acknowledgment will:
    i. state that the report will be assessed to identify whether it is a voluntary PID;
    ii. state that the PID Act applies to how the University deals with the report;
    iii. provide clear information on how the person can access this policy; and
    iv. provide the person with details of a contact person and available supports (refer Section 10 for support available to a person making a report).

(75) If the University assesses the report and determines it is a voluntary PID, the University will inform the person who made the report, within a reasonable timeframe, how the University intends to deal with the report. Examples of ways the University might deal with a report are:

a. investigate the serious wrongdoing (which may include engaging an external investigator);
b. refer the report to a different agency (if appropriate). If the University does this, it will provide the person who made the report with details of this referral; and
c. if the University decides to not investigate the report and not refer it to another agency for it to be investigated, the reasons for this decision will be provided to the person who made the report. The University will also notify the NSW Ombudsman of this decision if required under the PID Act.

(76) If the University decides to investigate the serious wrongdoing, it will provide the person who made the PID with updates on the investigation at least every three months. During this time, if the PID maker would like more frequent updates, they should contact the contact person who was nominated when they made the report (or any updated contact person the PID maker has been advised of).

(77) If the University investigates the PID, it will provide the PID maker with the following information as soon as reasonably practicable once the investigation is complete:

a. a description of the results of the investigation — that is, the University will tell the PID maker whether it is found that serious wrongdoing has taken place; and
b. details of any corrective action taken, proposed, or recommended.

(78) 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 the PID maker. The University will always balance the right of a person who makes a report to know the outcome of that report, with other legal obligations.

(79) If the PID maker has made an anonymous report, in many cases the University may not be able to provide this information to them.

How the University will deal with voluntary PIDs

(80) Once a report that is or may be a voluntary PID is received by the Disclosure Coordinator, they, with the assistance of the PID team, 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.

(81) If it is a voluntary PID, the Disclosure Coordinator, with the assistance of the PID team, will be responsible for determining how the PID will be managed and ensuring ongoing compliance with the requirements in the PID Act.

When a report is not a voluntary PID

(82) Even if the report is not a voluntary PID, it may be dealt with in a manner consistent with an applicable alternate process, such as the Complaint Management Procedure.

(83) If the University makes an assessment that the report is not a voluntary PID, the University will let the person who made the report know that the PID Act does not apply to the report and how the University will deal with the concerns raised in the report.

(84) If the person is of the view that this assessment has been made other than in accordance with this Policy or any other applicable University policy or process, they may make a complaint under the Complaint Management Procedure.

(85) If the person is not happy with this assessment or otherwise disagrees with it, they may request an internal review (further information about the internal review process is set out at Section 13).

Cease dealing with a report as a voluntary PID

(86) The University may stop dealing with a voluntary PID because it is not actually a voluntary PID (meaning it does not have all the features of a PID). In these circumstances the University will notify the person who made the PID as soon as reasonably practicable, providing reasons for this decision.

Where the report is a voluntary PID

(87) If the Disclosure Coordinator determines the report is a voluntary PID, they may decide to do any one or more of the following:

a. conduct an investigation (or refer the report to an appropriate unit within the University to conduct an investigation). In many cases, the Disclosure Coordinator may approve the engagement of an external investigator with appropriate expertise to conduct the investigation. In this case the University will notify the PID maker, and a University contact person will continue to be made available to the PID maker;
b. refer the report to 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;
c. not conduct an investigation, where the Disclosure Coordinator believes an investigation is not warranted, and deal with the report by other means; and
d. do anything else permitted by the PID Act.

(88) Except where the Disclosure Coordinator directs otherwise or where the report is referred to an integrity agency, the Disclosure Coordinator, with the assistance of the PID team, will be responsible for the University's ongoing compliance with this policy and the PID Act (including during any investigation period).

(89) With respect to a voluntary PID, if the Disclosure Coordinator decides not to investigate (or ceases to investigate)

the serious wrongdoing nor refer the voluntary PID, then the Disclosure Coordinator will advise the NSW Ombudsman as soon as reasonably practicable, explaining this decision.

How the University will protect the confidentiality of the maker of a voluntary PID

(90) The University understands that people who make voluntary PIDs may want their identity and the fact that they have made a report to be confidential.

(91) 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.

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

a. where the person consents in writing to the disclosure;
b. where it is generally known that the person is the maker of the voluntary PID because of their voluntary self-identification as the maker;
c. when the University reasonably considers it necessary to disclose the information to protect a person from detriment;
d. where it is necessary for the information to be disclosed to a person whose interests are affected by the disclosure;
e. where the information has previously been lawfully published;
f. 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 person who made the PID;
g. when the information is disclosed for the purposes of proceedings before a court or tribunal;
h. when the disclosure of the information is necessary to deal with the disclosure effectively; and/or
i. if it is otherwise in the public interest to disclose the identifying information.

(93) The University will not disclose identifying information unless it is necessary and authorised under the PID Act.

(94) The University will put in place steps to keep identifying information and the fact that a voluntary PID has been made confidential. It may not be possible for the University to maintain complete confidentiality while the investigation progresses, but the University will do all that is practical to not unnecessarily disclose identifying information. The University may do this by:

a. limiting the number of people who have access to identifying information;
b. if the University discloses identifying information, the University will still not disclose the actual identity of the person who made the PID, unless it has their consent to do so;
c. ensuring that any person who does know the identity of the person who made the PID is reminded that they have a legal obligation to keep this confidential;
d. ensuring that only authorised persons have access to documentation that contains identifying information;
e. determining if anyone is aware of the identity of the person who made the PID and if those persons have a motive to cause detrimental action to be taken against the person who made the PID or impede the progress of an investigation; and/or
f. providing information to the person who made the PID about the importance of maintaining confidentiality and advising them how best to protect their identity, for example, by telling them not to discuss their report with other staff.

(95) If confidentiality cannot be maintained or is unlikely to be maintained, the University will:

a. advise the person whose identity may become known;
b. implement strategies to minimise the risk of detrimental action; and
c. 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.

How the University will assess and minimise the risk of detrimental action

(96) The University will not tolerate any detrimental action being taken by any person against a person who has made a voluntary PID, investigators, witnesses, or the person the report is about in the circumstances set out in section 33 of the PID Act.

(97) The University will assess and take steps to mitigate such detrimental action from being taken against the person who made a voluntary PID, the person whose conduct is the subject of a PID, investigators, and witnesses.

(98) The University will take steps to assess and minimise the risk of detrimental action by:

a. undertaking a risk assessment and (if any risks are identified) creating a risk management plan; and
b. consulting with the person who made the PID with respect to the risk assessment and risk management plan.

(99) 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:

a. injury, damage or loss;
b. property damage;
c. reputational damage;
d. intimidation, bullying or harassment;
e. unfavourable treatment in relation to another person's job;
f. discrimination, prejudice or adverse treatment;
g. disciplinary proceedings or disciplinary action; or
h. any other type of disadvantage.

(100) Detrimental action does not include:

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

How the University will deal with allegations of a detrimental action offence

(101) If the University becomes aware of an allegation that a detrimental action offence has occurred or may occur:

a. the University will:
    i. take all steps possible to stop the action and protect the person(s); and
    ii. consider whether disciplinary action is appropriate; and
b. the Disclosure Coordinator will:

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

(102) The University will notify the person who made the PID should any steps referred to in clause (101) be taken, will keep them updated on progress where appropriate, and determine whether they require additional support.

What the University will do if an investigation finds that serious wrongdoing has occurred

(103) If, after an investigation, it is found that serious wrongdoing or other misconduct has occurred, the University will take corrective action in accordance with the PID Act and any applicable University policies or processes. Corrective action could be:

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

Section 13 - Review and dispute resolution

Internal review

(104) Prior to seeking an internal review in accordance with this Section 13, persons who have made a report under this policy and disagree with a decision made by the University, are encouraged to communicate their concerns with the person who communicated the outcome of the report, and request they reassess their decision (this will usually be the Disclosure Coordinator). The person can, but does not have to, accept this request.

(105) People who make a report under this policy may apply for an internal review of the following decisions made by the University:

a. the report will not be dealt with, or will no longer be dealt with, as a voluntary PID;
b. a decision referred to in clause (75)c; or
c. any other decision that the PID Act specifies is subject to internal review.

(106) The University will ensure internal reviews are conducted in compliance with the PID Act.

(107) If a person would like to make an application for an internal review (the “applicant”), they must apply in writing to the Vice-Chancellor within 28 calendar days of being informed of the University's decision. The applicant should state the reasons why the University's decision should not have been made and may submit any other relevant material with the application.

(108) The Vice-Chancellor will:

a. decide whether it is appropriate to accept the request for an internal review; and
b. if it is accepted, allocate either themselves or a Disclosure Officer to complete the internal review (the “reviewer”). The reviewer must not have been substantially involved in making the original decision or dealing with the disclosure.

(109) The reviewer will conduct an internal review within 28 calendar days of receiving notice from the Disclosure Coordinator that they are responsible for the review (or any longer time period as is reasonable in the circumstances), which will include considering any relevant material submitted by the applicant. The internal review outcome determined by the reviewer may:

a. confirm the original decision;
b. advise that the report should be dealt with, or continue to be dealt with, as a voluntary PID; and/or
c. make any other decision they consider appropriate and that is not inconsistent with the PID Act.

(110) The reviewer will notify the applicant of their decision as soon as possible after making the decision.

Voluntary dispute resolution

(111) If a dispute arises between the University and a person who has made a report which is, or may be, a voluntary PID, either party may request the NSW Ombudsman to conciliate the dispute. Conciliation is a voluntary process and will only be suitable for disputes where both the University and the person who has made a report is willing to resolve the dispute.

Section 14 - Other University obligations

Record-keeping requirements

(112) The University must keep full and accurate records with respect to all information received in connection with the PID Act. This ensures that the University complies with its obligations under the Record and Information Management Policy.

(113) The University will ensure that any information and communications relating to a PID is kept secure and confidential, with appropriate security/access levels applied.

Reporting of voluntary PIDs and the University's annual return to the Ombudsman

(114) Each year the University provides an annual return to the NSW Ombudsman which includes:

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

(115) The University's PID team are responsible for collecting information captured in the annual return and preparing and submitting the annual return. Such information will be stored in accordance with the PID team's then-current document management system and record keeping requirements.

How the University will ensure compliance with the PID Act and this policy

(116) The PID team will regularly monitor the University's compliance with the PID Act and this policy.

(117) The PID team will conduct a review every two years of the University's compliance with the PID Act and this policy, and report findings of the review to the Disclosure Coordinator. The Disclosure Coordinator will implement any necessary measures to address non-compliance.

(118) Any incidents of non-compliance with the PID Act will be reported, managed, and treated in accordance with the University's Compliance Management Framework.

(119) The University may, at any time, engage an external entity to assist the University to fulfill its responsibilities to ensure staff are trained under the PID Act.

Section 15 - Miscellaneous

(120) If there is ambiguity in the meaning of the clauses in this policy, the University will interpret the clauses consistent with the PID Act.

(121) The Vice-Chancellor may appoint a person other than the General Counsel to the role of Disclosure Coordinator if the General Counsel is of the view that the General Counsel:

a. cannot (or may not be able to) exercise their functions under this policy independently;
b. have (or may have) a conflict, including in accordance with the University's Conflict of Interest Policy;
c. will or may act as legal advisor in relation to a PID.

(122) Persons with functions under this policy must at all times give consideration to and comply with the University's Conflict of Interest Policy when exercising those functions.

Section 16 - Appendices

(123) Appendix A - Names and contact details of Disclosure Officers for the University.

(124) Appendix B – List of integrity agencies.

Status and Details

Status	Historic
Effective Date	4th October 2023
Review Date	4th October 2026
Approval Authority	Vice-Chancellor
Approval Date	25th September 2023
Expiry Date	22nd November 2023
Responsible Executive	Alex Zelinsky Vice-Chancellor alex.zelinsky@newcastle.edu.au
Enquiries Contact	Daniel Bell General Counsel and Chief Governance Officer Legal and Governance Services

Glossary Terms and Definitions

"University" - The University of Newcastle, a body corporate established under sections 4 and 5 of the University of Newcastle Act 1989.

"Risk" - Effect of uncertainty on objectives. Note: An effect is a deviation from the expected, whether it is positive and/or negative.

"Risk management" - The co-ordination of activities to optimise the management of potential opportunities and reduce the consequence or impact of adverse effects or events.

"Risk assessment" - The overall process of risk identification, risk analysis, and risk evaluation.

"Controlled entity" - Has the same meaning as in section 16A of the University of Newcastle Act 1989.

"Personal information" - Has the same meaning as in the Privacy and Personal Information Protection Act 1998 (NSW).

"Disciplinary action" - When used in relation to staff of the University, this is as defined in the applicable and current Enterprise Bargaining Agreement, or the staff member's employment contract. When used in relation to students of the University, this refers to the range of penalties that may be applied under the Student Conduct Rule.

"Staff" - Means a person who was at the relevant time employed by the University and includes professional and academic staff of the University, by contract or ongoing, as well as conjoint staff but does not include visitors to the University.