

## Detrimental action fact sheet

People who disclose wrongdoing need to be confident they will be protected from detrimental action against them as a result of their Public Interest Disclosure (PID). Further information on detrimental action can be found in the NSW Ombudsman guideline [Protections in the PID Act](#).

Under [section 61\(2\)](#) of the *Public Interest Disclosures Act 2022 (PID Act)*, agencies have a duty to take steps to assess and minimise the risk of detrimental action (other than reasonable management action) being taken against any person. This includes the maker of a voluntary PID and a public official who is the subject of the PID.

Under [section 32](#) of the *Public Interest Disclosure Act 2022 (PID Act)*, 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:

1. injury, damage or loss
2. property damage
3. reputational damage
4. intimidation, bullying or harassment
5. unfavourable treatment in relation to another person's job
6. discrimination, prejudice or adverse treatment
7. disciplinary proceedings or disciplinary action, or
8. any other type of disadvantage.

Under [section 33](#) of the PID Act, it is a criminal offence to take detrimental action against both PID makers and investigators. The offence applies to detrimental action taken against:

- (a) a person who has made a public interest disclosure (PID), whether that be a voluntary PID, mandatory PID or witness PID,
  - (b) a person who others suspect or believe has made a PID (even if they have not) or who others suspect, believe or know may make a PID in the future, and
  - (c) a person who is, has been or may be investigating, or proposes to investigate, serious wrongdoing. This is not limited to an investigation that relates to or arises from a voluntary PID or constitutes dealing the voluntary PID.
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A person will have committed a detrimental action offence if the following 3 elements are proven:

1. the person has taken detrimental action, which includes dismissal, bullying, harassment or discrimination, and
2. the person suspected, believed or was aware when taking the detrimental action that the other person:
  - has made, may have made, may make or proposes to make a PID, or
  - is, has been or may be investigating, or proposes to investigate, serious wrongdoing, whether or not the investigation relates to or arises from a voluntary PID or constitutes dealing with the voluntary PID, and
3. this suspicion, belief or awareness is a contributing factor to the taking of the detrimental action.

Reasonable management action (such as justified performance appraisals) can continue to be taken against someone who has made a PID (provided the action is reasonable, and the PID itself is not a contributing factor for taking any such action)

Under [section 34](#) of the PID Act, there are specific reporting requirements for evidence or allegations involving detrimental action. Dependent upon the circumstances, these include mandatory referral to agencies such as the NSW Ombudsman, NSW Police Force or the ICAC. Significant penalties can apply for people who are found to have taken detrimental action against another person.

Further information about detrimental action can be found at the [NSW Ombudsman PID page](#).

The Office of Local Government's PID page can be found [here](#).

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