

Cessnock City Council Public Interest Disclosure Policy

Date Adopted: **18/10/2023** Revision: **4**

Contents

ORGANISATIONAL COMMITMENT	2
PART A – ABOUT THIS POLICY	3
1. POLICY OBJECTIVES.....	3
2. POLICY SCOPE	3
3. POLICY GUIDANCE	4
PART B – PUBLIC INTEREST DISCLOSURES	5
4. REPORTING A SERIOUS WRONGDOING	5
5. PROTECTIONS	10
6. REPORTING DETRIMENTAL ACTION	11
7. GENERAL SUPPORT.....	12
PART C – ROLES AND RESPONSIBILITIES OF CESSNOCK CITY COUNCIL	13
8. ROLES AND RESPONSIBILITIES.....	13
PART D – DEALING WITH PIDs.....	15
9. HOW WE WILL DEAL WITH VOLUNTARY PIDs.....	15
10. REPORT NOT A VOLUNTARY PID	16
11. CEASE DEALING WITH REPORT AS VOLUNTARY PID.....	16
PART E – PID ADMINISTRATION.....	21
12. REVIEW AND DISPUTE RESOLUTION	21
13. OTHER AGENCY OBLIGATIONS.....	21
14. POLICY DEFINITIONS AND ABBREVIATIONS.....	23
15. POLICY ADMINISTRATION.....	24
16. POLICY AUTHORISATIONS.....	25
17. POLICY HISTORY	26
18. APPENDIX A.....	27
19. APPENDIX B.....	27

ORGANISATIONAL COMMITMENT

At Cessnock City Council we take reports of wrongdoing seriously. We are committed to building a 'speak up' culture where public officials are encouraged to report any conduct that they reasonably believe involves wrongdoing.

The integrity of Council relies upon our staff, volunteers, contractors and subcontractors speaking up when they become aware of wrongdoing. Council is committed to supporting and protecting people that report serious wrongdoing. Detrimental action against reporters will not be tolerated.

Everyone at Council has a responsibility to speak up and act in the public interest. This policy 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; and
- Imposing duties on Council to take appropriate action to investigate or otherwise deal with reports of wrongdoing.

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**). Our policy sets out:

- How Council 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; and
- The protections which are available to you under the PID Act.

PART A – ABOUT THIS POLICY

1. POLICY OBJECTIVES

1.1. The objectives of this policy are to:

- 1.1.1. facilitate the disclosure by Public Officials of serious wrongdoing in or affecting Council by establishing an internal reporting system for Public Officials to report wrongdoing without fear of reprisal,
- 1.1.2. clearly state who can receive reports of wrongdoing in Council, what can be reported and how reports of wrongdoing will be dealt with,
- 1.1.3. complement normal communication channels between supervisors and staff,
- 1.1.4. encourage Public Officials to raise matters of concern at any time with their supervisors, but also have the option of making a report about a public interest issue in accordance with this policy and the Public Interest Disclosures Act 2022 (NSW) (PID Act),
- 1.1.5. align with existing processes in place to detect serious wrongdoing;
- 1.1.6. strengthen public perceptions about the integrity of Council and the public sector in general,
- 1.1.7. identify management practices or procedures that need improving, and
- 1.1.8. avoid embarrassment for the government, Council and our staff.

2. POLICY SCOPE

2.1. This policy applies to:

- 2.1.1. Councillors;
- 2.1.2. Council staff (permanent, temporary or casual, full-time or part-time);
- 2.1.3. individual contractors working for Council;
- 2.1.4. employees of contractors providing services on behalf of Council;
- 2.1.5. other people who perform Council official functions whose conduct and activities could be investigated by an investigating authority, including volunteers.

2.2. This policy also applies to Public Officials of another council or agency, who do not work for Cessnock City Council, may use this policy to report wrongdoing relating to Cessnock City Council.

2.3. This policy does not apply to complaints made by the general public. Complaints about Cessnock City Council can be made through Council's Complaint Handling Policy and Procedure.

2.4. This policy cannot be used for staff grievances, which should be raised through the Workplace Grievance Notification Form. If a staff member makes a report under this policy which is determined to be a grievance, the matter will be referred to the People and Culture team to be dealt with in accordance with the Workplace Grievance Notification Form.

2.5. This policy should be read in conjunction with Council's Code of Conduct, documents articulating Council's values and principles, internal policies on

3. POLICY GUIDANCE

3.1. This Policy will provide you with information on the following:

- 3.1.1 ways you can make a voluntary PID to Council under the PID Act (refer to section 4);
- 3.1.2 the names and contact details for the nominated Disclosure Officers in Council (refer to Appendix A);
- 3.1.3 the roles and responsibilities of people who hold particular roles under the PID Act and who are employees of council (refer to section 8);
- 3.1.4 what information you will receive once you have made a voluntary PID (refer to section 9);
- 3.1.5 protections available to people who make a report of serious wrongdoing under the PID Act and what we will do to protect you (refer to section 5);
- 3.1.6 Council procedures for dealing with disclosures (refer to Part D);
- 3.1.7 Council procedures for managing the risk of detrimental action and reporting detrimental action (refer to section 5 and 6);
- 3.1.8 Council record-keeping and reporting requirements (refer to section 13); and
- 3.1.9 How Council will ensure it complies with the PID Act and this policy (refer to section 13).

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

- 3.2.1 Confidentially contact a nominated Disclosure Officer within Council (see list at Appendix A);
- 3.2.2 contact the PID Advice Team within the NSW Ombudsman by phone: (02) 9286 1000 or email: pidadvice@ombo.nsw.gov.au; or
- 3.2.3 access the NSW Ombudsman's PID guidelines which are available on its website.

3.3. If you require legal advice with respect to the PID Act or to your obligations under the PID Act, you may need to seek independent advice.

PART B – PUBLIC INTEREST DISCLOSURES

4. REPORTING A SERIOUS WRONGDOING

- 4.1.1. When a Public Official reports suspected or possible wrongdoing in the public sector, their report will be a PID if it has certain features which are set out in the PID Act.
- 4.1.2. Some internal complaints or internal grievances may also be PIDs, as long as they have the features of a PID. If an internal complaint or grievance is a report of serious wrongdoing, we will consider whether it is a PID. If it is a PID, we will deal with it as set out in this policy, but we will also make sure we follow our other policies if they are relevant.
- 4.1.3. It is important that we quickly recognise that we have received a PID. This is because once a PID is received, the person who has made the report is entitled to certain protections and we have certain decisions that we have to make on how we will deal with the PID and how we will protect and support the person who has made the report.
- 4.2. When will a report be a PID?
 - 4.2.1. There are three types of PIDs in the PID Act. 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 in an agency.
 - c) **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.
- 4.3. Voluntary PIDs
 - 4.3.1. This policy mostly relates to making a voluntary PIDs 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 5 of this policy.
 - 4.3.2. You can find more information about mandatory and witness PIDs in the Ombudsman's guidelines 'Dealing with mandatory PIDs' and 'Dealing with witness PIDs'.
 - 4.3.3. Voluntary PIDs are the kind of PIDs most people have in mind when they think about public interest reporting and 'whistleblowing'.
 - 4.3.4. 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.
 - 4.3.5. 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:
 - a) A report is made by a Public Official;

- b) It is made to a person who can receive voluntary PIDs (refer to the list of nominated disclosures officers at Appendix A;
- c) The Public Official *honestly and reasonably believes* that the information they are providing shows (or tends to show) serious wrongdoing; and
- d) The report was made orally or in writing, and
- e) 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.

- 4.3.6. 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.
 - 4.3.7. 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.
 - 4.3.8. 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.
 - 4.3.9. 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.
- 4.4. Who can make a voluntary PID?
- 4.4.1. Any Public Official can make a voluntary PID – see ‘Who this policy applies to’. You’ are a Public Official if:
 - a) You are employed by Cessnock City Council,
 - b) You are a Councillor elected to the Cessnock City Council,
 - c) You are a contractor, subcontractor or volunteer who provides services, or exercises functions, on behalf of Council,
 - d) You work for an entity (such as a non-government organisation) who is contracted by the Council to provide services or exercise functions on behalf of the Council – if you are involved in undertaking that contracted work.
 - 4.4.2. Council sometimes engages consultants to assist Council with our work. These consultants are not considered Public Officials under the PID Act.
 - 4.4.3. 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 Council. It also means that you can make a PID to any agency, including an integrity agency like the Independent Commission Against Corruption (ICAC) and the NSW Ombudsman. Annexure B of this policy has a list of integrity agencies.
- 4.5. What is serious wrongdoing?
- 4.5.1. 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:
 - a) *Corrupt conduct* — such as a Public Official accepting a bribe;

- b) *Serious maladministration* — such as Council systemically failing to comply with proper recruitment processes when hiring staff;
- c) *A government information contravention* — such as destroying, concealing or altering records to prevent them from being released under a Government Information Public Access application;
- d) *A local government Pecuniary Interest contravention* — such as a senior Council staff member recommending a family member for a Council contract and not declaring the relationship;
- e) *A privacy contravention* — such as unlawfully accessing a person's personal information on Council's database; and
- f) *A serious and substantial waste of public money* — such as Council not following a competitive tendering process when contracting with entities to undertake Council work.

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

4.6. Who can I make a voluntary PID to?

4.6.1. For a report to be a voluntary PID, it must be made to certain Public Officials.

Making a report to a Public Official who works for The Council

4.7. You can make a report inside Council to:

- 4.7.1. the General Manager;
- 4.7.2. the Disclosures Coordinator;
- 4.7.3. a nominated Disclosure Officer for Council — a list of nominated Disclosure Officers for Council and their contact details can be found at Annexure A of this policy; and
- 4.7.4. Your Manager — this is the person who directly, or indirectly, supervises you. It can also be the person who you directly, or indirectly, report to. You may have more than one manager. Your Manager will make sure that the report is communicated to a Disclosure Officer on your behalf or may accompany you while you make the report to a Disclosure Officer.

Note 1: For the purposes of making a PID, a 'Manager' may be different to the person Council has identified as your immediate supervisor or business unit manager. For example, this may include a shift supervisor.

Note 2: For a Public official who is a person providing services or exercising functions on behalf of Council (including a contractor, subcontractor or volunteer) or an employee, partner or officer or an entity that provides services on behalf of Council or exercises functions on behalf of Council – your Manager is taken to be the Public Official in Council who oversees those services or functions, or who manages the relevant contract or volunteering arrangement. For example, a section 355 Committee volunteer should consider the relevant Committee Facilitator their 'Manager' for the purposes of making a PID.

Making a report to a recipient outside of The Council

4.8. 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:

- 4.8.1. The *head of another agency* — this means the head of any public service agency;
 - 4.8.2. An *integrity agency* — a list of integrity agencies is located at Annexure B of this policy;
 - 4.8.3. 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
 - 4.8.4. A *Minister or a member of a Minister's staff* but the report *must be made in writing*.
- 2.5.1.1. If you choose to make a disclosure outside of Council it is possible that your disclosure will be referred back to Council so that appropriate action can be taken.

Making a report to a Member of Parliament or Journalist

- 4.9. 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:
 - 4.9.1. You must have first made substantially the same disclosure (described here as a 'previous disclosure') to someone who can receive disclosures;
 - 4.9.2. The previous disclosure must be substantially true;
 - 4.9.3. You did not make the previous disclosure anonymously;
 - 4.9.4. You did not give a written waiver of your right to receive information relating to your previous disclosure; and
 - 4.9.5. You did not receive the following from Council:
 - a) notification that Council will not investigate the serious wrongdoing and will also not refer the previous disclosure to another agency; or
 - b) the following information at the end of the investigation period:
 - i. notice of Council decision to investigate the serious wrongdoing;
 - ii. a description of the results of an investigation into the serious wrongdoing; and
 - iii. details of proposed or recommended corrective action as a result of the previous disclosure or investigation.
 - 4.9.6. 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 Council's decision within six months of making the disclosure.
 - 4.9.7. If all the above requirements are met, your disclosure to an MP or journalist may be a voluntary PID.
- 4.10. What form should a voluntary PID take?
 - 4.10.1. You can make a voluntary PID:
 - a) *In writing* — this could be 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.
- c) *Anonymously* — write an email (to publicofficer@cessnock.nsw.gov.au) or letter or call a person who can receive PIDs to make a report without providing your name or anything that might identify you as the maker of the report. A report will only be considered anonymous if there is no reasonable or practical way of communicating with the person making the report. Even if you choose to remain anonymous, you will still be protected under the PID Act. It may be difficult, however, for Council to investigate the matter(s) you have disclosed if we cannot contact you for further information.

4.11. What should I include in my report?

- 4.11.1. You should provide as much information as possible so we can deal with the report effectively. The type of information you should include is:
- 4.11.2. Date, time and location of key events;
- 4.11.3. Names of person(s) involved in the suspected wrongdoing, their role, title and how they are involved;
- 4.11.4. Your relationship with the person(s) involved, such as whether you work closely with them;
- 4.11.5. Your explanation of the matter you are reporting;
- 4.11.6. How you became aware of the matter you are reporting;
- 4.11.7. Possible witnesses; and
- 4.11.8. Other information you have that supports your report.

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

- 4.12.1. You should report all wrongdoing you become aware of regardless of whether you think it is serious wrongdoing. It is important for Council to understand what is or may be occurring.
- 4.12.2. We are then responsible for making sure your report is handled appropriately under the PID Act, or if it is not a PID, in line with our other procedures. Even if your report is not a PID, it may fall within another one of Council's policies for dealing with reports, allegations or complaints.

4.13. Deeming that a report is a voluntary PID

- 4.13.1. The Disclosures Coordinator 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'.
- 4.13.2. By deeming that a report is a voluntary PID, it ensures that reporters are provided with protections under the PID Act.
- 4.13.3. If you make a report that has not met all the requirements of a voluntary PID, you can refer your matter to Council to request that they consider deeming your report to be a voluntary PID.
- 4.13.4. A decision to deem a report to be a voluntary PID is at the discretion of the Disclosures Coordinator. For more information about the deeming power, see the Ombudsman's guideline 'Deeming that a disclosure is a voluntary PID'.

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

- 4.14.1. You can contact the Disclosures Coordinator, or the Governance and Council Support Coordinator to provide further information so that concerns can be

addressed. You can contact them confidentially by using the contact details at Annexure A.

5. PROTECTIONS

5.1. How is the maker of voluntary PID protected? When you make a voluntary PID you receive special protections under the PID Act.

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

5.1.3. 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.

5.1.4. The maker of a voluntary PID is protected in the following ways:

a) Protection from detrimental action

- i. 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.
- ii. Once we become aware that a voluntary PID by a person employed or otherwise associated with Council that concerns serious wrongdoing relating to Council has been made, Council will undertake a risk assessment and take steps to mitigate the risk of detrimental action occurring against the person who made the voluntary PID.
- iii. 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.
- iv. A person may seek compensation where unlawful detrimental action has been taken against them.
- v. 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).
- vi. 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.

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

5.2.1. 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:

5.2.2. *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.

5.2.3. *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.

5.2.4. 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.	Yes	Yes
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.	Yes	Yes
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.	Yes	Yes
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. 	Yes	Yes

6. REPORTING DETRIMENTAL ACTION

- 6.1. If you experience adverse treatment or detrimental action, such as bullying or harassment, you should report this immediately to the Disclosures Coordinator or a nominated disclosures officer. You can report any experience of adverse treatment or detrimental action directly to Council, or to an integrity agency. A list of integrity agencies is located at Annexure B of this policy.

7. GENERAL SUPPORT Council will allocate to you a person who will be your key contact person and who will take steps to protect your interests; for example, if you are at risk of detrimental action.

7.2. You may also contact Council's Employee Assistance Program for support:

AusPsych

P: 02 4926 1688

E: admin@auspsych.com.au

PART C – ROLES AND RESPONSIBILITIES OF CESSNOCK CITY COUNCIL

8. ROLES AND RESPONSIBILITIES

- 8.1. Fostering a workplace culture where reporting is encouraged;
- 8.2. Receiving disclosures from Public Officials;
- 8.3. Ensuring there is a system in place for assessing disclosures;
- 8.4. Ensuring Council complies with this policy and the PID Act;
- 8.5. Ensuring that Council has appropriate systems for:
 - 8.1.1. overseeing internal compliance with the PID Act;
 - 8.1.2. supporting Public Officials who make voluntary PIDs, including by minimising the risk of detrimental action;
 - 8.1.3. implementing corrective action if serious wrongdoing is found to have occurred;
 - 8.1.4. complying with reporting obligations regarding allegations or findings of detrimental action; and
 - 8.1.5. complying with yearly reporting obligations to the NSW Ombudsman.

Disclosures Coordinator

- 8.6. Receiving reports from Public Officials;
- 8.7. Receiving reports when they are passed on to them by Managers and nominated Disclosure Officers;
- 8.8. Ensuring reports are dealt with appropriately, including by referring the matter to the appropriate complaint unit (if relevant); and
- 8.9. Ensuring that any oral reports that have been received are recorded in writing.

Disclosure Officers

- 8.10. Receiving reports from Public Officials;
- 8.11. Receiving reports when they are passed on to them by Managers;
- 8.12. Ensuring reports are dealt with appropriately, including by referring the matter to the Disclosures Coordinator; and
- 8.13. Ensuring that any oral reports that have been received are recorded in writing.

Managers

- 8.14. Receiving reports from persons that report to them or that they supervise; and
- 8.15. Passing on reports they receive to a Disclosure Officer or the Disclosures Coordinator.

All Employees

- 8.16. Report suspected serious wrongdoing or other misconduct;

- 8.17. Use their best endeavours to assist in an investigation of serious wrongdoing if asked to do so by a person dealing with a voluntary PID on behalf of Council;
- 8.18. Treat any person dealing with or investigating reports of serious wrongdoing with respect; and
- 8.19. All employees must not take detrimental action against any person who has made, may in the future make, or is suspected of having made, a PID.

Governance team

- 8.20. Ensure this policy is available on Council's publicly available website as well as on the intranet.

People and Culture team

- 8.21. Ensure a copy of the policy is sent to all staff of Council on their commencement.

PART D – DEALING WITH PIDs

9. HOW WE WILL DEAL WITH VOLUNTARY PIDs

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

9.1. When a Disclosure Officer in Council receives a report which is a voluntary PID, or looks like it may be a voluntary PID, the Disclosure Officer will refer the matter to the Disclosures Coordinator. The Disclosures Coordinator will ensure that the person who made the report will receive the following information:

9.1.1. You will receive an acknowledgment that the report has been received. This acknowledgement will:

- a) State that the report will be assessed to identify whether it is a PID;
- b) State that the PID Act applies to how Council deals with the report;
- c) Provide clear information on how you can access this PID policy; and
- d) Provide you with details of a contact person and available supports.

9.1.2. 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:

- a) That we are investigating the serious wrongdoing;
- b) 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; and
- c) 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.

9.1.3. If we decide to investigate the serious wrongdoing, we will provide you with updates on the investigation at least every three months. During this time, if you would like more frequent updates, you should contact the contact person who was nominated when you made the report.

- a) If we investigate the serious wrongdoing, we will provide you with the following information once the investigation is complete:
 - i. A description of the results of the investigation — that is, we will tell you whether we found that serious wrongdoing took place.
 - ii. 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 Council, what we have put in place to address that serious wrongdoing.
- b) 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.

9.1.4. 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.

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

9.2. How the Council will deal with voluntary PIDs

- 9.2.1. Once a report that may be a voluntary PID is received Council will look at the information contained in the report to see if it has the features of a voluntary PID. This assessment is undertaken to identify whether the report is a voluntary PID or another type of disclosure, and to make sure that the right steps are followed. If it is a voluntary PID, we will ensure that we comply with the requirements in the PID Act.

10. REPORT NOT A VOLUNTARY PID

- 10.1. Even if the report is not a voluntary PID, it will still need to be dealt with in a manner consistent with our processes for receiving reports of wrongdoing or through an alternate process.
- 10.2. 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.
- 10.3. 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 with you or a Disclosure Officer, request an internal review or request that the matter be conciliated. Council can, but do not have to, request the NSW Ombudsman to conciliate the matter.

11. CEASE DEALING WITH REPORT AS VOLUNTARY PID

- 11.1. Council may stop dealing with a voluntary PID because it is not actually a voluntary PID (meaning it does not have all the features of a PID).

Where the report is a voluntary PID

- 11.2. 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.
- 11.3. 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*.
- 11.4. 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.
- 11.5. 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.
- 11.6. How the Council will protect the confidentiality of the maker of a voluntary PID
- 11.6.1. We understand that people who make voluntary PIDs may want their identity and the fact that they have made a report to be confidential.

- 11.6.2. 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.
- 11.6.3. 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 Public Official or [we/agency] reasonably considers it necessary to disclose the information to protect a person from detriment;
 - d) Where it is necessary the information 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 individual disclosing the information;
 - 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
 - i) If it is otherwise in the public interest to disclose the identifying information.
- 11.6.4. We will not disclose identifying information unless it is necessary and authorised under the PID Act.
- 11.6.5. We will put in place steps to keep the identifying information of the maker and the fact that a report has been made confidential. It may not be possible for us to maintain complete confidentiality while we progress the investigation, but we will do all that we practically can to not unnecessarily disclose information from which the maker of the report can be identified. We will do this by:
- a) Limiting the number of people who are aware of the maker's identify or information that could identify them;
 - b) 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;
 - c) 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 their identity confidential;
 - d) We will ensure that only authorised persons have access to emails, files or other documentation that contain information about the identity of the maker;
 - e) 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 maker or impede the progress of the investigation; and
 - f) We will provide information to the maker of 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.

11.6.6. If confidentiality cannot be maintained or is unlikely to be maintained, Council may:

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

11.7. How the Council will assess and minimise the risk of detrimental action

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

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

11.7.3. Council will take steps to assess and minimise the risk of detrimental action by:

- a) explaining that a risk assessment will be undertaken, and a risk management plan will be created (including reassessing the risk throughout the entirety of the matter;
- b) providing details of the unit/role that will be responsible for undertaking a risk assessment;
- c) explaining the approvals for risk assessment and the risk management plan, that is, rank or role of the person who has final approval;
- d) explaining how Council will communicate with the maker to identify risks;
- e) listing the protections that will be offered, that is, Council will discuss protection options with the maker which may including remote working or approved leave for the duration of the investigation;
- f) outlining what support will be provided; and
- g) Further information on assessing the risk of detrimental action is found in the Ombudsman's guideline 'Agencies — assessing and managing the risk of detrimental action'.

11.7.4. 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.

11.7.5. 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; and
- 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 a PID maker's work performance.

11.8. How the Council will deal with allegations of a detrimental action offence

11.8.1. If Council become(s) aware of an allegation that a detrimental action offence has occurred or may occur, Council will:

- a) take all steps possible to stop the action and protect the person(s);
- b) Take appropriate disciplinary action against anyone that has taken detrimental action;
- c) 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
- d) Notify the NSW Ombudsman about the allegation of a detrimental action offence being committed.

11.9. What the Council will do if an investigation finds that serious wrongdoing has occurred

11.9.1. If, after an investigation, it is found that serious wrongdoing or other misconduct has occurred, Council will take the most appropriate action to address that wrongdoing or misconduct. This is also known as corrective action.

11.9.2. Corrective action can include:

- 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
- e) Payment of compensation to people who have been affected by serious wrongdoing or other misconduct.

PART E – PID ADMINISTRATION

12. REVIEW AND DISPUTE RESOLUTION

Internal Review

- 12.1. People who make voluntary PIDs can seek internal review of the following decisions made by Council:
- 12.1.1. That Council is not required to deal with the report as a voluntary PID;
 - 12.1.2. To stop dealing with the report because Council decided it was not a voluntary PID;
 - 12.1.3. To not investigate the serious wrongdoing and not refer the report to another agency; and
 - 12.1.4. To cease investigating the serious wrongdoing without either completing the investigation or referring the report to another agency for investigation.
- 12.2. Council will ensure internal reviews are conducted in compliance with the PID Act.
- 12.3. If you would like to make an application for an internal review, you must apply in writing within 28 days of being informed of Council decision. The application should state the reasons why you consider Council decision should not have been made. You may also submit any other relevant material with your application.

Voluntary Dispute Resolution

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

13. OTHER AGENCY OBLIGATIONS

Record-Keeping Requirements

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

Report of voluntary PIDs and the Council Annual Return to the Ombudsman

- 13.2. Each year Council provide an annual return to the NSW Ombudsman which includes:
- 13.2.1. Information about voluntary PIDs received by Council during each return period (yearly with the start date being 1 July);
 - 13.2.2. Action taken by Council to deal with voluntary PIDs during the return period; and
 - 13.2.3. How Council promoted a culture in the workplace where PIDs are encouraged.

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

- 13.3. It is important for Council to have mechanisms in place for monitoring the effectiveness of our PID policy and for ensuring compliance with the PID Act. Council ensures compliance by:

13.3.1. Ensuring the General Manager has oversight arrangements in place including measures to address non-compliance and

13.3.2. Regular reporting to Council's Audit and Risk Committee.

Complaints

13.4. Complaints regarding any aspect of this policy should be lodged in accordance with Council's Complaints Handling policy.

13.5. When a complaint is lodged it is first assessed by administrative staff to determine the nature of the complaint and the appropriate Council Official to consider matter.

13.5.1. This assessment can occur prior to the specified addressee receiving the complaint unless a complaint is clearly marked '*confidential and for the addressee only*'.

13.6. If you wish to make a complaint regarding the handling of your personal information this should be lodged as a privacy complaint in accordance with Council's Privacy Management Plan.

13.7. Complaints lodged in accordance with Council's Complaints Handling policy may still be assessed and deemed to be a privacy complaint.

13.7.1. Such deemed privacy complaints will be referred to the appropriate Council Official and dealt with in accordance with Council's Privacy Management Plan.

14. POLICY DEFINITIONS AND ABBREVIATIONS

Act	means the <i>Local Government Act 1993</i> (NSW).
Agency	means public service agencies, local government authorities, public universities, integrity agencies, statutory bodies and local aboriginal land councils.
Council	means Cessnock City Council.
Council Official	includes Councillors, members of staff (permanent, casual or temporary), Council advisors, administrators, Council committee members, volunteers and delegates of Council.
Public Official	includes: <ul style="list-style-type: none"> • A person employed in or by an agency or otherwise in the service of an agency; • A person having Public Official functions or acting in a Public Official capacity whose conduct or activities an integrity agency is authorised by another Act or law to investigate; • An individual in the service of the Crown; • A statutory officer; • A person providing services or exercising functions on behalf of an agency, including a contractor, subcontractor or volunteer; • An employee, partner or officer of an entity that provides services, under contract, subcontract or other arrangement, on behalf of an agency or exercises functions of an agency, and are involved in providing those services or exercising those functions; • A judicial officer; • A Member of Parliament (MP), including a Minister; • A person employed under the <i>Members of Parliament Staff Act 2013</i>
Government Information Public Access application	means the and application made in accordance with the <i>Government Information (Public Access) Act 2009</i> (NSW).
Manager	means 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 nominated Disclosure Officer on your behalf or may accompany you while you make the report to a nominated Disclosure Officer.
Pecuniary Interest	means interest(s) that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person.

15. POLICY ADMINISTRATION

Business Group	Corporate and Community Services
Responsible Officer	General Manager
Author	Governance and Council Support Coordinator
Policy Review Date	Three years from date of adoption unless legislated otherwise
File Number / Document Number	DOC2022/123222 (previously known under DOC2018/093182)
Relevant Legislation (reference specific sections)	<p><i>Public Interest Disclosures Act 2022 (NSW)</i></p> <p>Section 11, <i>Independent Commission Against Corruption Act 1988 (NSW)</i></p> <p><i>Government Information (Public Access) Act 2009 (NSW)</i></p>
Relevant desired outcome or objectives	<p><i>Civic leadership and effective governance</i></p> <p>Objective 5.3 Making Council more responsive to the community</p>
Related Policies / Protocols / Procedures / Documents (reference document numbers)	<ul style="list-style-type: none"> ▪ Code of Conduct (DOC2018/086716) ▪ Procedures for the Administration of Code of Conduct (DOC2018/086682) ▪ Workplace Grievance Notification Form (DOC2013/046519) ▪ Records Management Policy (DOC2019/038769) ▪ Complaints Handling Policy (DOC2018/048382)

16. POLICY AUTHORISATIONS

No.	Authorised Function	Authorised Business Unit / Role(s)
	<ol style="list-style-type: none"> 1. Appoint Council's Disclosures Coordinator and Alternate Disclosures Coordinator in accordance with this policy. 2. Appoint staff members as nominated Disclosure Officers. 3. Assess reports of suspected wrongdoing received to determine whether or not they are public interest disclosures, and decide how the reports will be dealt with, in accordance with this policy. 	General Manager
	Assess reports of suspected wrongdoing received to determine whether or not they are public interest disclosures, and decide how the reports will be dealt with (either under delegation or in consultation with the General Manager), in accordance with this policy.	Disclosures Coordinator / Alternate Disclosures Coordinator
	<ol style="list-style-type: none"> 1. Receive reports of suspected wrongdoing in accordance with this policy. 2. Forward reports to the Disclosures Coordinator for assessment, in accordance with this policy. 	Disclosure Officers

17. POLICY HISTORY

Revision	Date Approved / Authority	Description Of Changes
1	19 October 2011 (PM60/2011 – 1773)	New policy adopted
2	16 November 2011 (PM71/2011 – 1825)	Amended
3	18 September 2013 (PM91/2013 – 581)	Reviewed
4	31 August 2016 (DOC2014/005250)	[no information provided]
5	18/09/2019 (CC79/2019-994)	Significant review
6	18/10/2023 (DO2022/123222)	New policy adopted. The Policy is based on the NSW Ombudsman Model Public Interest Disclosures Policy and replaces the Internal Reporting – Public Interest Disclosures Policy (2019). The new policy reflects the <i>Public Interest Disclosures Act 2022</i> (NSW) which superseded the <i>Public Interest Disclosures Act 1994</i> (NSW).

18. APPENDIX A

Names and contact details of Disclosure Officers for Cessnock City Council:

Note: This list is only external version of the policy. The internal version of the policy provides names and contact details of Disclosure Officers.

Position title	Role
General Manager	Head of agency
Director Corporate and Community Services	Disclosures Coordinator
Governance and Council Support Coordinator	Alternate Disclosures Coordinator
The following positions are appointed as disclosures officers (and includes those persons acting in those positions from time to time):	
Remaining Executive Leadership Team Members	
Managers at Level 3 RAA	
Senior Legal and Governance Officer	
Human Resources Operations Coordinator	
Risk and Safety Coordinator	
Internal Auditor	
Most senior person at permanent worksite: Depot	
Most senior person at permanent worksite: Libraries (Cessnock and Kurri Kurri)	
Most senior person at permanent worksite: Swimming pools	
Most senior person at permanent worksite: PACC (Performing Arts Centre Cessnock)	
Most senior person at permanent worksite: CYCOS	
Most senior person at permanent worksite: Visitor Information Centre	
Most senior person at permanent worksite: Waste Management Facility	

19. APPENDIX 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: olecc_executive@olecc.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