PENRITH CITY COUNCIL

# Policy Document

## POLICY NAME
Public Interest Disclosure Policy

## DATE ADOPTED
25 September 2023

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25 September 2029

## COUNCIL MINUTE NUMBER
ORD311

## POLICY TYPE
Council Policy

## RESPONSIBLE DEPARTMENT
Governance

## RELATED DOCUMENTS
PID Internal reporting Form
Code of Conduct
People and Culture policies (including Grievance Policy, Disciplinary Policy etc)
Complaints Management Policy
Fraud and Corruption Prevention Policy

### Purpose

All agencies in NSW are required to have a Public Interest Disclosure (PID) Policy under section 42 of the *Public Interest Disclosures Act 2022* (PID Act).

At Penrith City Council we take reports of serious 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 our agency relies upon our staff, volunteers, contractors and subcontractors speaking up when they become aware of wrongdoing.

This policy sets out:

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

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

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

In NSW, that framework is the PID Act.

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

- Code of Conduct

- People and Culture policies (including Grievance Policy, Disciplinary Policy etc)
- Core Values and Behaviours
- Complaints Management Policy
- Fraud and Corruption Prevention Policy, and
- other relevant policies available on Council's Policy Register.

## Policy statement

Penrith City Council encourages employees (and the relevant volunteers, contractors and subcontractors) to report serious wrongdoing and other misconduct.

Penrith City Council is committed to supporting and protecting people that report serious wrongdoing. Detrimental action against reporters will not be tolerated.

Everyone within Council has a responsibility to speak up and act in the public interest by doing so, and Council will in turn, ensure that reporters are protected.

## Scope

This Policy applies to all public officials associated with Penrith City Council including employees, councillors, contractors, sub-contractors, volunteers and staff of an entity that exercise functions on behalf of Council.

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### Accessibility of this policy

This policy is available on Penrith City Council's publicly available website, and internally on iConnect and the Policy Register.

A copy of the policy is also sent to all staff of Penrith City Council on their commencement. A hard copy of the policy can be requested from the Governance Department.

### Who does this policy apply to?

This policy applies to, and for the benefit of, all public officials in Penrith City Council (Council). You are a public official if you are:

- a person employed in or by Council or otherwise in the service of Council
- a Councillor
- a person providing services or exercising functions on behalf of Council, including a contractor, subcontractor or volunteer, and
- staff of an entity that exercise functions on behalf of Council.

The General Manager, other nominated disclosure officers and People Leaders have specific responsibilities under the PID Act. This policy also provides information on how people in these roles will fulfil their responsibilities. Other public officials who work in and for the public sector, but do not work for Council may use this policy if they want information on who they can report wrongdoing to within Council.

### Who does this policy not apply to?

This policy does not apply to:

- people who have received services from Council and want to make a complaint about those services
- people, such as contractors, who provide services to Council. For example, employees of a company that sold computer software to an agency, and
- consultants engaged by Council to assist Council with its work.

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

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

- by phone - 4732 7777 between 8:30am and 4:00pm weekdays
- by email – council@penrith.city, or
- via Council's customer self-service portal - my.penrith.city

### Compliance with the PID Act

This policy will be reviewed at 2-year intervals or if changes are made to the PID Act, whichever occurs first.

The Governance Department is responsible for reviewing and updating this policy and will monitor the policy to consider whether it is meeting its purpose.

If there are any errors or issues found in the policy, please contact the Head of Governance, Governance Coordinator or the Governance Officer.

### What is contained in this policy?

This policy will provide you with information on the following:

- ways you can make a voluntary PID to Council under the PID Act
- the names and contact details for the nominated disclosure officers in Council
- the roles and responsibilities of people who hold particular roles under the PID Act and who are employees of Council
- what information you will receive once you have made a voluntary PID
- protections available to people who make a report of serious wrongdoing under the PID Act and what we will do to protect you
- Council's procedures for dealing with disclosures
- Council's procedures for managing the risk of detrimental action and reporting detrimental action
- Council's record-keeping and reporting requirements for PIDs, and
- how Council will ensure it complies with the PID Act and this policy.

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

- confidentially contact a nominated disclosure officer within Council
- contact the PID Advice Team within the NSW Ombudsman by phone: (02) 9286 1000 or email: pidadvice@ombo.nsw.gov.au, or
- access the NSW Ombudsman's PID guidelines which are available on its website.

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

## 1. How to make a report of serious wrongdoing

### (a) Reports, complaints and grievances

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

Some internal complaints or internal grievances may also be PIDs, 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 relevant policies (such as those referred to in the Purpose Section of this policy).

It is important that we quickly recognise that we have received a PID. This is because once a PID is received, the person who has made the report is entitled to certain protections and we have certain decisions that we have to make on how we will deal with the PID and how we will protect and support the person who has made the report.

Public officials are encouraged to report all wrongdoing and misconduct even when it is not a PID (as defined by the PID Act). Reports of wrongdoing or misconduct, complaints and grievances will be responded to in accordance with Council's relevant policies (such as those referred to in the Purpose Section of this policy). Those policies are available on Council's Policy Register. If needed, public officials can obtain further information and guidance on these by:

- speaking with their People Leader
- contacting the Governance Department, or

- contacting the People and Culture Department (for People and Culture Policies and Procedures).

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

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

1. ***Voluntary PID***: This is a PID where a report has been made by the public official because they decided, of their own accord, to come forward and disclose what they know.
2. ***Mandatory PID***: This is a PID where the public official has made a report about serious wrongdoing because they have a legal obligation to make that report, or because making that report is an ordinary aspect of their role or function in an agency.
3. ***Witness PID***: This is a PID where a person discloses information during an investigation of serious wrongdoing following a request or requirement of the investigator.

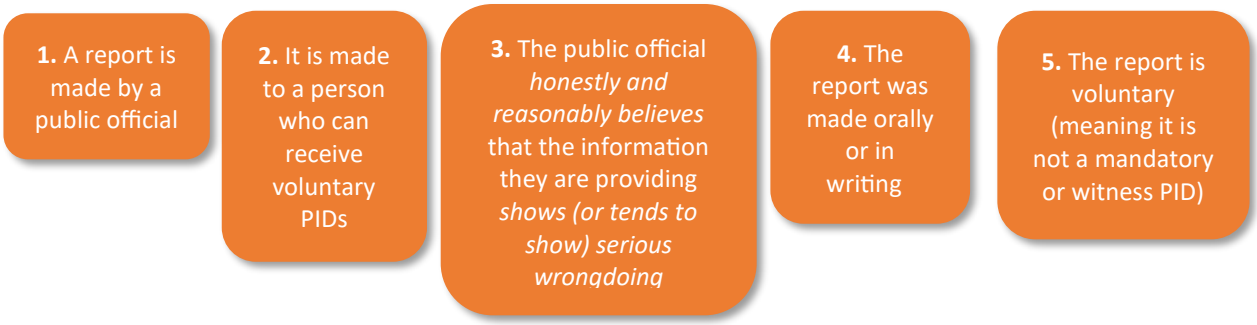
This policy mostly relates to making a voluntary PID and how we will deal with voluntary PIDs. People who make a mandatory PID or a witness PID are still entitled to protection. More information about protections is available in section 2 of this policy.

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

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

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

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




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

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

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

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

If you make a report and believe we have made an error by not identifying that you have made a voluntary PID, you should raise this with a nominated disclosure officer or your contact officer for the report. If you are still not satisfied with this outcome, you can seek an internal review, or we may seek to conciliate the matter. You may also contact the NSW Ombudsman. Further information on rights to internal review and conciliation is found in section 7 of this policy.

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

Any public official can make a voluntary PID — see 'Who this policy applies to' for more information. You are a public official if:

- you are employed by the Council or are a Councillor
- you are a contractor, subcontractor or volunteer who provides services, or exercises functions, on behalf of the Council, or
- 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.

A consultant engaged by Council to assist Council with its work is not considered a public official under the PID Act and cannot make a voluntary PID.

A public official can make a PID about serious wrongdoing relating to *any* agency, not just the Council. 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.

### (d) What is serious wrongdoing?

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

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

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

Further information about the types of serious wrongdoing that can be reported under the PID Act is contained in the NSW Ombudsman's Guideline "What is serious wrongdoing?". The Guideline provides

direction on how to identify whether a report is a report of serious wrongdoing. Council will have regard to the Ombudsman's Guideline when assessing and responding to reports of serious wrongdoing.

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

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

*Making a report to a public official who works for Council*

You can make a report inside Council to:

- the General Manager
- a Disclosure Officer (including Council's Disclosure Coordinator) — a list of Disclosure Officers for Council and their contact details can be found at Annexure A of this policy, or
- your People Leader — this is the person who directly, or indirectly, supervises you (for example, your Director, Head of Department, Coordinator, Team Leader etc). It can also be the person who you directly, or indirectly, report to. You may have more than one people leader. Your people leader 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.

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; of an entity that provides services on behalf of Council or exercises functions of Council — their 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.

*Making a report to a recipient outside of Council*

You can also make your report to a public official in another agency (meaning an agency you do not work for) or an integrity agency. These include:

- the head of another agency — this means the head of any public service agency
- an integrity agency — a list of integrity agencies is located at Annexure B of this policy
- a disclosure officer for another agency — ways to contact disclosure officers for other agencies is located in an agency's PID policy which can be found on their public website
- a Minister or a member of a Minister's staff but the report must be made in writing.

If you choose to make a disclosure outside of Council, it is possible that your disclosure will be referred back to us so that appropriate action can be taken.

*Making a report to a Member of Parliament or journalist*

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

- You must have first made substantially the same disclosure (described here as a 'previous disclosure') to someone who can receive disclosures.
- The previous disclosure must be substantially true.
- You did not make the previous disclosure anonymously.
- You did not give a written waiver of your right to receive information relating to your previous disclosure.
- You did not receive the following from Council:

- notification that Council will not investigate the serious wrongdoing and will also not refer the previous disclosure to another agency, or
- the following information at the end of the investigation period:
  - notice of Council's decision to investigate the serious wrongdoing
  - a description of the results of an investigation into the serious wrongdoing
  - details of proposed or recommended corrective action as a result of the previous disclosure or investigation.

Investigation period means:

- after six (6) months from the previous disclosure being made, or
- after twelve (12) months if you applied for an internal review of the Council's decision within six (6) months of making the disclosure.

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

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

You can make a voluntary PID:

- in writing — this could be an email, letter to a person who can receive voluntary PIDs, or completing Council's Internal Reporting Form.
- orally — have a private discussion with a person who can receive voluntary PIDs. This can be face-to-face, via telephone or virtually, or
- anonymously — write an email or letter or call a person who can receive PIDs to make a report without providing your name or anything that might identify you as the maker of the report. A report will only be considered anonymous if there is no reasonable or practical way of communicating with the person making the report. Even if you choose to remain anonymous, you will still be protected under the PID Act. It may be difficult, however, for us to investigate the matter(s) you have disclosed if we cannot contact you for further information.

Council's Internal Reporting Form is also available for public officials to use to make a report, which is located at Annexure C of this policy and also available on iConnect here.

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

You should provide as much information as possible so we can deal with the report effectively. The type of information you should include is:

- date, time, and location of key events
- names of person(s) involved in the suspected wrongdoing, their role, title and how they are involved
- your relationship with the person(s) involved, such as whether you work closely with them
- your explanation of the matter you are reporting
- how you became aware of the matter you are reporting
- possible witnesses, and
- other information you have that supports your report.

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

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

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

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

The General Manager (or Disclosure Coordinator as their delegate) can, in certain circumstances, determine that a report is a voluntary PID even if the report does not otherwise have all the features of a voluntary PID. This is known as the 'deeming power'.

By deeming that a report is a voluntary PID, it ensures that reporters are provided with protections under the PID Act.

If you make a report that has not met all the requirements of a voluntary PID, you can refer your matter to the General Manager or Disclosure Coordinator as their delegate to request that they consider deeming your report to be a voluntary PID. Such reports will be deemed a voluntary PID if the General Manager or the Disclosure Coordinator believe honestly and on reasonable grounds that the disclosure shows or tends to show serious wrongdoing in addition to the General Manager or the Disclosure Coordinator forming a view that it would be appropriate to deem their disclosure as a PID.

A decision to deem a report to be a voluntary PID is at the discretion of the General Manager or Disclosure Coordinator. For more information about the deeming power, see the Ombudsman's guideline 'Deeming that a disclosure is a voluntary PID'.

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

Should you wish to speak to someone if you have any concerns or questions, you may choose to contact:

- a Disclosure Officer,
- the Disclosures Coordinator,
- your People Leader, or
- the Governance Department (for general enquiries).

This can be done anonymously via telephone if preferred. Alternative methods can also be used, however it may be difficult to respond to the query or concern if a contact method is not provided.

## 2. Protections

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

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

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.

We will not tolerate any type of detrimental action being taken against you because you have made a report, might make a report or are believed to have made a report.

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

- *Protection from detrimental action*
  - A person cannot take detrimental action against another person because they have made a voluntary PID or are considering making a PID. Detrimental action includes bullying, harassment, intimidation, or dismissal.
  - Once we become aware that a voluntary PID by a person employed or otherwise associated with 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.
  - It is a criminal offence for someone to take detrimental action against a person because they have made or may make a voluntary PID. It is punishable by a maximum penalty of 200 penalty units or imprisonment for five years or both.
  - A person may seek compensation where unlawful detrimental action has been taken against them.
  - A person can apply for a court order (injunction) where detrimental action is threatened or has occurred (for example, an order to prevent dismissal or to require reinstatement).

    Note that a person who makes a PID can still be subject to reasonable management action (such as ordinary performance reviews and performance management). Provided such action is not taken because of the PID, it is not detrimental action under the PID Act.

- *Immunity from civil and criminal liability*

  Some public officials are often subject to a duty of confidentiality that prevents them disclosing certain information that they obtain or become aware of at work. Sometimes, in order to make a PID, public officials will need to breach or disregard such confidentiality duties. If that happens, a public official cannot be disciplined, sued or criminally charged for breaching confidentiality.

- *Confidentiality*

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

- *Protection from liability for own past conduct*

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

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

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

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

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

| Protection | Mandatory PID | Witness PID |
|---|---|---|
| Detrimental action — It is an offence to take detrimental action against a person based on the suspicion, belief or awareness that a person has made, may have made or may make a PID. | ✓ | ✓ |
| Right to compensation — A person can initiate proceedings and seek compensation for injury, damage or loss suffered as a result of detrimental action being taken against them. | ✓ | ✓ |
| Ability to seek injunction — An injunction can be sought to prevent the commission or possible commission of a detrimental action offence against a person. For example, an order to prevent dismissal or to require reinstatement. | ✓ | ✓ |
| Immunity from civil and criminal liability — a person will not incur civil or criminal liability if the person breaches a duty of confidentiality while making a disclosure. This means that legal action cannot be taken against a person for:<br>• breaching a duty of secrecy or confidentiality, or<br>• breaching another restriction on disclosure. | ✓ | ✓ |

## 3. Reporting detrimental action

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

Reports of detrimental action can be made to:

- a Disclosure Officer,
- the Disclosure Coordinator,
- your People Leader, or
- the Mayor, for reports of detrimental action taken by the General Manager if the reporter is unwilling or unable to make the report to their People Leader, a Disclosure Officer or the Disclosure Coordinator.

Reports of detrimental action can be made verbally or in writing (including by email).

All People Leaders must notify the Disclosure Coordinator, a Disclosure Officer, or the General Manager if they suspect that detrimental action against a staff member is occurring, is imminent, or has occurred, or if any such allegations are made to them.

## 4. General Support

Support is available to public officials that make reports of serious wrongdoing. This includes:

- access to Council's free and confidential Employee Assistance Program (EAP for employees and their immediate family members)
- the appointment of a Disclosure Officer as their key contact person during management of their PID. This appointment is made by the Disclosure Coordinator (and may be at the request of the public official that made the report)
- guidance from Disclosure Officers on how to contact an external integrity agency if required, and
- all the rights, privileges, and processes afforded by Council's other policies and procedures (such as those referred to in the Purpose Section of this policy).

You can also contact the PID Advice Team at NSW Ombudsman by phone: (02) 9286 1000 or email: pidadvice@ombo.nsw.gov.au, or access the NSW Ombudsman's PID guidelines which are available on its website.

## 5. Roles and Responsibilities of Council Employees and the Mayor

Certain people within Council have responsibilities under the PID Act.

### (a) The General Manager

The General Manager is responsible for:

- fostering a workplace culture where reporting is encouraged
- receiving disclosures from public officials
- ensuring there is a system in place for assessing disclosures
- assessing reports received to determine if the report should be treated as a PID. The General Manager may delegate this function to the Disclosure Coordinator for reports not relating to the Disclosure Coordinator
- receiving and assessing reports from public officials for matters regarding the Disclosure Coordinator (and assume the role of Disclosure Coordinator for that matter or assign an alternative officer to act as the Disclosure Coordinator for that matter)
- determining whether 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 deeming power). The General Manager may delegate this function to the Disclosure Coordinator for reports not relating to the Disclosure Coordinator
- ensuring Council complies with this policy and the PID Act
- ensuring that Council has appropriate systems for:
  - overseeing internal compliance with the PID Act
  - supporting public officials who make voluntary PIDs, including by minimising the risk of detrimental action
  - implementing corrective action if serious wrongdoing is found to have occurred
  - complying with reporting obligations regarding allegations or findings of detrimental action, and
  - complying with yearly reporting obligations to the NSW Ombudsman.
- nominating Disclosure Officers and authorising amendments to the list of Disclosure Officers attached to this Policy (this will generally occur on the advice of the Disclosure Coordinator), and
- approving immaterial/administrative changes to this policy.

### (b) Disclosure Coordinator

Council has a designated Disclosure Coordinator. The Disclosure Coordinator is responsible for:

- assessing reports to determine if a report should be treated as a PID
- deciding how reports should be dealt with,
- determining whether 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 deeming power and is delegated by the General Manager)
- coordinating Council's response to a report,
- acknowledging reports and providing updates and feedback to the reporter (unless a key contact person is appointed for that matter)
- assessing the risk of detrimental action and workplace conflict related to or likely to arise out of a report, and develop strategies to manage those risks
- where required, providing or coordinating support to a public official involved in the reporting or investigation process, including protecting the interests of any public officer the subject of a report
- determining to appoint a Disclosure Officer as the key contact person for the maker of a report and providing advice to the Disclosure Officers during the management of that PID
- making referrals about alleged detrimental action offences
- receiving findings of an investigation; however, this may change due to the complexity of the investigation and will be set out in the Terms of Reference or Investigation Plan
- ensuring Council complies with the PID Act
- responsible for Council's reporting obligations required by the PID Act (for example, annual returns to the NSW Ombudsman)
- making recommendations to the General Manager on the nomination of Disclosure Officers and making administrative amendments to the list of Disclosure Officers attached to this Policy (such as those resulting from staff movements, changes to position titles, or general administrative processes)
- If a decision is made to cease dealing with a report as a voluntary PID, the Disclosure Coordinator is responsible for advising the maker of the report of that decision and will provide the reasons for that decision
- recommending to the General Manager changes to this policy, and
- other administrative functions relating to the management of reports of wrongdoing as deemed necessary.

### (c) Disclosure officers

Disclosure Officers are responsible for:

- receiving reports from public officials
- receiving reports when they are passed on to them by People Leaders
- ensuring reports are dealt with appropriately, including by referring the matter to the Disclosure Coordinator or appropriate complaint unit (such as Governance, People and Culture etc) if relevant and on the advice of the Complaints Coordinator
- ensuring that any oral reports that have been received are recorded in writing, and

- acting as the key contact person for the maker of a report (as appointed by the Disclosure and Coordinator or the General Manager).

### (d) People Leaders

The responsibilities of people leaders include:

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

### (e) All employees

All employees must:

- report suspected serious wrongdoing or other misconduct
- use their best endeavours to assist in an investigation of serious wrongdoing if asked to do so by a person dealing with a voluntary PID on behalf of Council, and
- treat any person dealing with or investigating reports of serious wrongdoing with respect

### (f) The Mayor

The Mayor is responsible for:

- receiving disclosures from public officials for matters regarding the General Manager
- assessing reports regarding the General Manager to determine if the report should be treated as a PID. The Mayor may seek advice from the Disclosure Coordinator to assist with this assessment and receive advice on how the PID should be treated, and
- referring reports regarding the General Manager to an integrity agency or investigator where appropriate. The Mayor may seek advice from the Disclosure Coordinator on referrals to external agencies and investigators, and may instruct the Disclosure Coordinator to administer the referral on the Mayor's behalf.

## 6. How we will deal with voluntary PIDs

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

When a Disclosure Officer in Council receives a report which is a voluntary PID, or looks like it may be a voluntary PID, the person who made the report will receive the following information. (Note: the method of communication may vary at the discretion of the Disclosure Coordinator depending on an assessment of the risks at the time but will generally involve written communication).

- You will receive an acknowledgment that the report has been received. This acknowledgement will:
    - state that the report will be assessed to identify whether it is a PID
    - state that the PID Act applies to how we deal with the report
    - provide clear information on how you can access this PID policy, and
    - provide you with details of a contact person and available supports (including who to approach if you are at risk of detrimental action or need support networks to be put in place).

- If the report is a voluntary PID, we will inform you as soon as possible how we intend to deal with the report. This may include:
  - that we are investigating the serious wrongdoing
  - that we will refer the report to a different agency (if appropriate) to deal with the voluntary PID. If we do this, we will provide you with details of this referral
  - If we decide to not investigate the report and to not refer it to another agency for it to be investigated, we will tell you the reasons for this decision. We will also notify the NSW Ombudsman of this decision.
- If we decide to investigate the serious wrongdoing, we will provide you with updates on the investigation at least every three (3) months. During this time, if you would like more frequent updates, you should contact the contact person who was nominated when you made the report.
  - If we investigate the serious wrongdoing, we will provide you with the following information once the investigation is complete:
    - a description of the results of the investigation — that is, we will tell you whether we found that serious wrongdoing took place
    - information about any corrective action as a result of the investigation/s — this means we will tell you what action we took in relation to the person who engaged in the serious wrongdoing or if the serious wrongdoing was by our agency, what we have put in place to address that serious wrongdoing
  - Corrective action could include taking disciplinary action against someone or changing the practices, policies and procedures that we have in place which led to the serious wrongdoing.
- There may be some details about both the findings made as a result of the investigation and the corrective action taken that cannot be revealed to you. We will always balance the right of a person who makes a report to know the outcome of that report, with other legal obligations we have.
- If you have made an anonymous report, in many cases we may not be able to provide this information to you.

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

Once a report that may be a voluntary PID is received we 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.

The assessment will generally be carried out by the Disclosure Coordinator but may be carried out by the General Manager, or by the Mayor for reports relating to the General Manager. (See Roles and Responsibilities of Council employees and the Mayor for further information.)

The Disclosure Coordinator may appoint a Disclosure Officer to be the ongoing contact for the maker of a report.

*Report not a voluntary PID*

Even if the report is not a voluntary PID, it will still need to be dealt with in a manner consistent with our other relevant policies (such as those mentioned in the Purpose Section of this Policy) or through an alternate process.

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

If you are not happy with this assessment or otherwise disagree with it, you can raise it with the person who has communicated the outcome 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.

*Cease dealing with report as voluntary PID*

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).

If Council decides to cease dealing with a report as a voluntary PID, the Disclosure Coordinator will advise the maker of the report of that decision and provide the reasons for that decision.

*Where the report is a voluntary PID*

If the report is a voluntary PID:

- In most cases we will conduct an investigation to make findings about whether the serious wrongdoing disclosed in the report occurred, who was involved, who was responsible, and whether the people involved, or the agency engaged, in serious wrongdoing. There may be circumstances where we believe an investigation is not warranted — for example, if the conduct has previously been investigated.
- There may also be circumstances where we decide that the report should be referred to another agency, such as an integrity agency. For example, reports concerning possible corrupt conduct may be required to be reported to the ICAC in accordance with section 11 of the *Independent Commission Against Corruption Act 1988*.
- Before referring a matter, we will discuss the referral with the other agency, and we will provide you with details of the referral and a contact person within the other agency.
- If we decide not to investigate a report and to not refer the matter to another agency, we must let you know the reasons for this and notify the NSW Ombudsman.

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

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

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

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

- where the person consents in writing to the disclosure

- where it is generally known that the person is the maker of the voluntary PID because of their voluntary self-identification as the maker
- when the public official or Council reasonably considers it necessary to disclose the information to protect a person from detriment
- where it is necessary the information be disclosed to a person whose interests are affected by the disclosure
- where the information has previously been lawfully published
- when the information is disclosed to a medical practitioner or psychologist for the purposes of providing medical or psychiatric care, treatment or counselling to the individual disclosing the information
- when the information is disclosed for the purposes of proceedings before a court or tribunal
- when the disclosure of the information is necessary to deal with the disclosure effectively, and
- if it is otherwise in the public interest to disclose the identifying information.

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

We will put in place steps to keep the identifying information of the 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:

- limiting the number of people who are aware of the maker's identity or information that could identify them
- If we must disclose information that may identify the maker of the PID, we will still not disclose the actual identity of the maker of the PID, unless we have their consent to do so
- ensuring 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
- ensuring that only authorised persons have access to emails, files or other documentation that contain information about the identity of the maker.
- undertaking 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
- providing 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.

If confidentiality cannot be maintained or is unlikely to be maintained, we will:

- advise the person whose identity may become known
- assess the risks and consider implementing a risk management plan
- implement strategies to minimise the risk of detrimental action
- providing additional supports to the person who has made the PID, and
- reminding persons who become aware of the identifying information of the consequences for failing to maintain confidentiality and that engaging in detrimental action is a criminal offence and may also be a disciplinary matter.

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

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.

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.

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

- Carrying out a risk assessment and establishing a risk management plan (including reassessing the risk throughout the entirety of the matter).
    - The Disclosure Coordinator is responsible for risk assessments and may rely on the assistance of Disclosure Officers (or the advice of other technical experts, provided that confidentiality requirements can be maintained).
    - The Disclosure Coordinator is responsible for approving risk management plans.
    - The Disclosure Coordinator (or a Disclosure Officer nominated as the key contact person) may communicate with the maker of the report to identify risks.
- Discussing the protection options with the maker of the report. This may include considering a range of options such as remote working or leave for the duration of the investigation and is dependent on the circumstances. (note: some options may require consultation with the General Manager and/or Head of People and Culture).
- Informing the maker of the report what supports will be provided.

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'.

Detrimental action against a person is an act or omission that causes, comprises, involves or encourages detriment to a person or a threat of detriment to a person (whether express or implied). Detriment to a person includes:

- injury, damage or loss
- property damage
- reputational damage
- intimidation, bullying or harassment
- unfavourable treatment in relation to another person's job
- discrimination, prejudice or adverse treatment
- disciplinary proceedings or disciplinary action, or
- any other type of disadvantage.

Detrimental action does not include:

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

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

If we become aware of an allegation that a detrimental action offence has occurred or may occur, we will:

- take all steps possible to stop the action and protect the person(s)
- take appropriate disciplinary action against anyone that has taken detrimental action
- refer any evidence of a detrimental action offence to the Commissioner of Police and the ICAC or the Law Enforcement Conduct Commission (whichever is applicable)
- notify the NSW Ombudsman about the allegation of a detrimental action offence being committed.

The Disclosure Coordinator is responsible for making referrals about alleged detrimental action offences.

The victim of detrimental action should speak to a Disclosure Officer or the Disclosure Coordinator to report that detrimental action. The Disclosure Coordinator (or nominated key contact person) will provide updates to the victim and provide information on any additional supports to be provided (as determined by the Disclosure Coordinator).

### (f) What Council will do if an investigation finds that serious wrongdoing has occurred

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

Corrective action can include:

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

The Disclosure Coordinator is responsible for receiving findings of an investigation however this may change depending on the complexity of the investigation and will be set out in the Terms of Reference or Investigation Plan.

The Disclosure Coordinator will make recommendations to the General Manager on steps that should be taken to address any recommendations in the findings.

The Disclosure Coordinator (or nominated key contact person) will notify the maker of the report, the proposed corrective action(s).

## 7. Review and Dispute Resolution

### (a) Internal review

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

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

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

If you would like to make an application for an internal review, you must apply in writing within 28 days of being informed of our decision. The application should state the reasons why you consider

Council's decision should not have been made. You may also submit any other relevant material with your application.

Requests for an internal review should be made to the Disclosure Coordinator in first instance. The Disclosure Coordinator will inform the General Manager of the request, and the General Manager will instruct which Council officer will be responsible for the internal review. Internal Reviews will generally be completed within 28 days of the request being received by the Disclosure Coordinator.

### (b) Voluntary dispute resolution

If a dispute arises between the 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 the Council and the maker of the report are willing to resolve the dispute.

## 8. Other Agency Obligations

### (a) Record-keeping requirements

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*.

Records relating to PIDs will be recorded in a restricted area of Council's Document Management System. The Disclosure Coordinator may determine the level of access provided to relevant officers. Access breaches will be dealt with according to Council's relevant disciplinary policies.

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

Each year Council provide an annual return to the NSW Ombudsman which includes:

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

The Disclosure Coordinator is responsible for compliance with reporting requirements.

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

The Disclosure Coordinator will ensure all disclosure officers and people leaders attend training to ensure compliance with the PID Act and this policy.

Reports on the compliance with the policy will be provided to the General Manager annually (in July each year) and to the Audit, Risk and Improvement Committee at its first meeting after July each year.

Internal Audit will consider the need to include compliance reviews in its Strategic Internal Audit Plan, which is developed in consultation with the Audit, Risk and Improvement Committee.

# Annexure A — Names and contact details of disclosure officers for Penrith City Council

General Manager
Mr Andrew Moore
4732 7777
Andrew.Moore@penrith.city

Mayor (for reports about the General Manager only)
Mayor of the Day
4732 7777

**Disclosure Coordinator**
Adam Beggs
Head of Governance
02 4732 7597
adam.beggs@penrith.city

Stuart Benzie
Governance Manager
02 4732 8209
stuart.benzie@penrith.city

Avanthi Fernando
Governance Officer
02 4732 8263
Avanthi.Fernando@penrith.city

Andrew Avery
Head of Legal Services
02 4732 7599
Andrew.Avery@penrith.city

Anthony Robinson
Risk and Audit Manager 02 4732 7692
anthony.robinson@penrith.city

Joshua Fayle
Head of People and Culture
02 4732 8130
joshua.fayle@penrith.city

Christine Woodbury
Human Resources Manager
02 4732 7609
christine.woodbury@penrith.city

Linda Ross
Head of City Presentation

02 4732 7468
Linda.ross@penrith.city

**Other**

As prescribed by the PID Act 2022, the most senior ongoing employee who ordinarily works at the site that is permanently maintained by the Council and at which more than 1 person is employed:

- a PCC Children's Services Centre
- the Depot (St Marys and Kingswood)
- a Library (St Marys and St Clair)
- Ripples (St Marys and Penrith)
- the Nursery
- Penrith Performing & Visual Arts (entity)

## Annexure B — List of integrity agencies

| Integrity agency | What they investigate | Contact information |
|---|---|---|
| The NSW Ombudsman | Most kinds of **serious maladministration** by most agencies and public officials (but not NSW Police, judicial officers or MPs) | **Telephone**: 1800 451 524 between 9am to 3pm Monday to Friday<br>**Writing**: Level 24, 580 George Street, Sydney NSW 2000<br>**Email**: info@ombo.nsw.gov.au |
| The Auditor-General | **Serious and substantial waste of public money** by auditable agencies | **Telephone**: 02 9275 7100<br>**Writing**: GPO Box 12, Sydney NSW 2001<br>**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<br>**Writing:** GPO Box 500, Sydney NSW 2001 or faxing 02 9264 5364<br>**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<br>**Writing**: PO Box 5341, Sydney NSW 2001<br>**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<br>**Writing**: GPO Box 3880, Sydney NSW 2001<br>**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<br>**Writing**: GPO Box 5341, Sydney NSW 2001<br>**Email**: oilecc_executive@oilecc.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<br>**Writing**: GPO Box 7011, Sydney NSW 2001<br>**Email**: ipcinfo@ipc.nsw.gov.au |
| The Information Commissioner | **Government information contraventions** | **Telephone**: 1800 472 679<br>**Writing**: GPO Box 7011, Sydney NSW 2001<br>**Email**: ipcinfo@ipc.nsw.gov.au |

# Annexure C - Internal Reporting Form

## INTERNAL REPORT FORM

To be completed by a reporter and submitted to a nominated Disclosure Officer (Refer to the Public Interest Disclosure Policy or iConnect for further details).

### Details of reporter

(You can make an anonymous report by leaving this section blank)

Name

Position

Department

Telephone

Email

Preferred method of contact ☐ Telephone ☐ Email ☐ Post

### Details of the wrongdoing being reported

Description:
- What happened?
- Where did this happen?
- When did this happen?
- Is it still happening?
- Your relationship with the person

[Attach an additional page if required]

How did you become aware of this?

### Name and position of people involved in the wrongdoing:

| Name | Position |
|---|---|
| | |
| | |
| | |

Attach any additional relevant information or indicate where supporting evidence may be found:
Supporting evidence.

☐ Attached

☐ Attached

☐ Attached

### Name and position of other people who may have additional information:

| Name | Position |
|---|---|
| | |
| | |
| | |

### Statement

I honestly believe that the above information shows or tends to show wrongdoing.

Name of Reporter

Date report submitted

(Do not sign if you want to make an anonymous report)

PENRITH CITY COUNCIL

## DOCUMENT CONTROL

| Policy History | Approving Authority | Date |
|---|---|---|
| Adoption of the policy at Ordinary meeting - ORD311 | Council | 25 September 2023 |
| Review and made administrative changes to the policy in line with Council's organisational restructure | Head of Governance | 05 March 2025 |
| Review. Minor administrative changes made to the Policy | Head of Governance | 1 October 2025 |