

## Public Interest Disclosures Direction

### Document Management

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## 1. Relevant Legislation, Policy Directives and Guidelines

### Legislation:

- *Public Interest Disclosures Act 2022 NSW* (the PID Act)
- *Independent Commission Against Corruption Act 1988*
- *Government Information (Public Access) Act 2009*
- *Privacy and Personal Information Protection Act 1998*
- *Health Records and Information Privacy Act 2002*
- *State Records Act 1998*

### Policy:

NSW Health Policy Directives:

- *NSW Health Public Interest Disclosures Policy Directive* ([PD2023\\_026](#))
- *NSW Health Code of Conduct* ([PD2015\\_049](#))
- *Corrupt Conduct - Reporting to the Independent Commission Against Corruption (ICAC)* ([PD2016\\_029](#))
- *Managing Misconduct* ([PD2018\\_031](#))

### HI Direction:

- *Fraud and Corruption Control Direction*

## 2. Introduction

Health Infrastructure (HI) is committed to building a ‘speak up’ culture whereby public officials (persons employed in or by HI) are encouraged to report conduct that they reasonably believe involves wrongdoing. Reports of serious wrongdoing are taken seriously.

Any HI public official who has knowledge of, or who has witnessed serious wrongdoing should make a confidential report about the wrongdoing. A strong culture of reporting promotes integrity, accountability and transparent management within HI.

This document sets out the process for identifying and reporting the disclosure of serious wrongdoing in HI, that reports are assessed, and appropriate action is taken in response to a report, and that ensure public officials, witnesses and other persons are protected from detriment that may arise as a result of making public interest disclosures. This Direction should be read in conjunction with the [NSW Health Policy Directive on Public Interest Disclosure \(PD2023\\_026\)](#).

## 3. Definitions

For purposes of this document the following definitions will apply.

| Term                       | Definition   |
|----------------------------|--|
| Public Interest Disclosure | <p>A report of serious wrongdoing within HI (whether or not the wrongdoing occurred), and there is an:</p> <ul style="list-style-type: none"> <li>• allegation of the serious wrongdoing</li> <li>• indication of serious wrongdoing.</li> </ul>   |
| Public Official            | <p>A public official is a person employed in or by HI who provides services for, or exercises functions on behalf of, HI.</p> <p>This includes all permanent, temporary, and casual employees of HI, and all contingent workers, design consultants, building contractors, Audit and Risk Committee Members and Board members.</p> <p>A public official may also include any other person similarly engaged in any</p> |

| Term                | Definition   |
|---------------------|--|
|                     | other NSW Government agency.   |
| Disclosure Officers | <p>Disclosure officers are responsible for receiving reports from public officials, ensuring reports are dealt with appropriately, and ensuring that any verbal reports that have been received are recorded in writing.</p> <p>In HI, the disclosure officers are:</p> <ul style="list-style-type: none"> <li>• the Chief Executive,</li> <li>• the Chief Operating Officer, and</li> <li>• the Director, Legal.</li> </ul>   |
| People Manager      | <p>A people manager includes any person who directly or indirectly supervises a public official.</p> <p>For external contractors, subcontractors and consultants supplying services or exercising functions on behalf of HI, their manager is the public official who oversees those services or functions, or who manages the relevant contract.</p>  |
| Staff               | Any person working in a casual, temporary, or permanent capacity in HI, including contingent workers and any person performing a public official function and whose conduct could be investigated by an investigating agency.  |
| Serious wrongdoing  | <p>A serious wrongdoing is defined as one or more of the following:</p> <ul style="list-style-type: none"> <li>• corrupt conduct</li> <li>• a government information contravention</li> <li>• serious maladministration</li> <li>• a privacy contravention</li> <li>• serious and substantial waste of public money.</li> </ul> <p>Detailed definitions are provided in Section 8.1 of <a href="#">Ministry of Health Policy Directive on Public Interest Disclosure (PD2023_026)</a>.</p> |

## 4. Responsibilities

### 4.1 The Chief Executive

Under the PID Act, the Chief Executive is responsible for:

- promoting a workplace culture which encourages and supports staff who report serious wrongdoing,
- receiving disclosures from public officials, and
- ensuring processes are in place for:
  - assessing disclosures of serious wrongdoing,
  - managing compliance with the PID Act,
  - supporting public officials who make voluntary public interest disclosures (PIDs), including minimising the risk of detrimental action,
  - implementing corrective actions should serious wrongdoing be identified and has occurred,
  - complying with reporting requirements for allegations or findings of detrimental action, and
  - compliance with annual reporting requirements to the NSW Ombudsman.

### 4.2 People managers

All staff members who have other staff members report directly (and indirectly) to them have a responsibility for encouraging staff to report known or suspected wrongdoing within HI, and to provide support for those staff when they make, or are suspected of making, a disclosure.

Under the PID Act, people managers are obliged to:

- receive and pass on voluntary PIDs that they receive from staff who report to them, or staff they supervise,
- ensure staff are protected from detrimental action when they have either made or are suspected of making a voluntary PID, by:
  - maintaining confidentiality, and offering support through programs such as the Employee Assistance Program,
  - implementing local management strategies to minimise the risk of reprisal or workplace conflict in relation to the report, and
  - notifying disclosure officers if they consider a staff member is being subjected to reprisal as a result of reporting serious wrongdoing.

### 4.3 Disclosure officers

Disclosure officers are responsible for receiving reports from public officials, receiving reports when they are passed on to them by managers, ensuring reports are dealt with appropriately, including by referring the matter to the appropriate complaint unit (if relevant), and ensuring that any verbal reports that have been received are recorded in writing.

In HI, the disclosure officers are:

- the Chief Executive,
- the Chief Operating Officer, and
- the Director, Legal.

The name, contact email and location for each disclosure officer must be published and maintained on HI's intranet site. This information is also published on the [NSW Health webpage](#).

The Ministry of Health must be notified of any updates or amendments to their disclosure officers within five working days, via email to [MOH- PID@health.nsw.gov.au](mailto:MOH-PID@health.nsw.gov.au).

### 4.4 Staff members

Any HI staff member who has knowledge of, or who has witnessed, serious wrongdoing is encouraged to make a report about the wrongdoing. Where a report of wrongdoing has been made, all staff are required to:

- support those who have made reports of wrongdoing,
- assist the people manager and/or disclosure officer, if requested, including providing information about the request, cooperating with any investigations and maintaining confidentiality,
- respect the rights of people who are the subject of reports and treat them fairly,
- treat any staff member or other person dealing with a report of wrongdoing with courtesy and respect, and
- not take reprisal action against any individual in relation to a report of wrongdoing.

Staff must not:

- victimise or harass anyone in connection with a report, or
- knowingly make false or misleading reports of wrongdoing.

## 5. Identifying Public Interest Disclosures

### 5.1 Definition of Serious Wrongdoing

Under the PID Act, serious wrongdoing includes:

- corrupt conduct,
- serious maladministration,
- a privacy contravention,
- a serious and substantial waste of public money, and

- a government information contravention.

Detailed definitions are provided in Section 8.1 of [NSW Health Policy Directive on Public Interest Disclosure \(PD2023\\_026\)](#).

## 5.2 Mandatory public interest disclosures

There are some public officials who have a legal duty to report certain types of serious wrongdoing, there are others (public officials) who hold a position where it is an ordinary requirement of their role or function to report serious wrongdoing. When a HI public official makes a report about serious wrongdoing because of these obligations (under legislation or otherwise), they may meet the criteria of a 'mandatory PID'.

The PID Act affords many of the same protections as a voluntary PID. For a disclosure to be considered a mandatory PID, it must:

- be made by a public official,
- be about serious wrongdoing, and
- made either:
  - while meeting the requirements of the public official's role or functions, or
  - under a statutory requirement.

The PID Act makes it a legal duty for people managers who receive a voluntary PID to convey that PID to a disclosure officer. When people managers do this, they have made a mandatory PID.

The following situations are examples of a mandatory PID, when:

- an auditor discovers (during an audit or review) and reports there has been a serious mishandling of government funds,
- serious wrongdoing is identified by an investigator while undertaking an internal investigation, and includes this information as part of their findings,
- a people manager discovers a serious privacy breach by a staff member and reports this as part of their obligations and responsibilities under this Policy Directive, and
- The Chief Executive makes a report under section 11 of the *Independent Commission Against Corruption Act 1988* (NSW).

## 5.3 Voluntary public interest disclosures

A voluntary public interest disclosure (PID) is a report of known, or suspected, serious wrongdoing made by a public official who is not under a legal obligation to make that report, and it is not an ordinary part of their role to report the wrongdoing.

## 5.4 Witness public interest disclosures

When investigating allegations of wrongdoing, irrespective of whether the matter is a PID, investigators may ask a witness to provide information. A disclosure will be considered a 'witness PID' when:

- the person (whether a public official or not), discloses information during an investigation,
- that investigation is into serious wrongdoing, and,
- they disclosed the information following a request of the investigator.

All information provided by a person in these conditions is a witness PID (so long as the person is not providing false information).

It is important to note, witness PIDs can be made by a person who is not a public official.

## 5.5 Information to include when reporting serious wrongdoing

Public officials are encouraged to provide as much information as possible. This may include:

- date, time and location of key events,
- name 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, if you work closely with them,
- an explanation of the matter you are reporting,
- how you became aware of the matter being reported,
- names of possible witnesses, and
- any other information which will support your report.

## 6. Reporting Public Interest Disclosures

**Any public official may report of known, or suspected, serious wrongdoing either directly to a disclosure officer or to their people manager within HI.**

Public officials can also report the wrongdoing to the Disclosures Officers in another Health organisation. The full list of Public Interest Disclosure Officers in NSW Health can be found in the [NSW Health Disclosure Officers Webpage](#).

## 7. Assessing Public Interest Disclosures

### 7.1 Approaches for managing a disclosure

When a disclosure has been received, HI may manage the disclosure in one or more of the following ways:

- by investigating the serious wrongdoing in accordance with relevant policy, procedure, laws or Acts
- by conducting an audit, inquiry or assessment or investigation
- by referring the disclosure to an integrity agency
- by referring the disclosure to a person or body authorised by another Act or law to investigate the serious wrongdoing
- by arranging for another agency to carry out tasks on its behalf
- by directing the disclosure to the relevant Health organisation or other NSW Government agency.

Where a report of serious wrongdoing has been assessed as being either a voluntary, mandatory, or witness public interest disclosure, HI is to:

- Conduct a risk assessment (including potential risks for the Manager).
- Take steps to mitigate the risk of detrimental action to the person who made the voluntary public interest disclosure (PID) report.
- Maintain the confidentiality of the person who made the disclosure.
- Provide feedback on the progress and outcome of any investigation to the voluntary PID maker.
- Consider providing information on the progress and outcome of the matter.

If a report does not meet the requirements of a PID, the matter is to be managed in accordance with any other applicable HI policy directions.

## 8. Responding to Public Interest Disclosures Received

### 8.1 Acknowledging receipt of a report

When a disclosure officer receives a report of serious wrongdoing, the person who made the report, if known, is to receive an acknowledgement that the report has been received.

The acknowledgement is to:

- Indicate the report will be assessed to determine if it meets the requirements of a PID.
- State that the PID Act governs how HI deals with the report.
- Provide clear instruction on how the HI Public Interest Disclosures Direction can be accessed.
- Provide details of a contact person and available support.

### 8.2 Advice on intended actions

If the report is a voluntary PID, the contact person is to provide the reporter with timely advice regarding action to be taken, which may include advising the reporter that:

- An assessment and/or investigation into the serious wrongdoing will be undertaken.
- The PID will be referred to another appropriate agency for action (if necessary).
- HI has chosen not to investigate or refer the PID to another agency for investigation. An explanation for the decision must be provided to the reporter and the NSW Ombudsman must also be notified of such a decision.

### 8.3 Updating the reporter where there is a decision to investigate

If a decision is made to investigate the PID, the reporter is to be provided with regular updates on the investigation - at least every three months. More frequent updates can be requested from the designated contact person by the reporter. On occasion, there may be times where privacy requirements limit the information that can be disclosed.

Information is also to be provided to the reporter once the investigation into the serious wrongdoing is complete. This is to include:

- a description of the results of the investigation; and
- details of any corrective action taken, proposed, or recommended.

Where there are privacy considerations, the PID maker is to be provided with as much information as reasonably practicable, without breaching those privacy obligations.

A summary of the information to be provided to a reporter of serious wrongdoing is listed in Section 4 of the [NSW Health Policy Directive on Public Interest Disclosure \(PD2023\\_026\)](#).

### 8.4 Communicating the outcomes from reports of serious wrongdoing

When a disclosure officer receives a report of serious wrongdoing, the person who made the report, if known, is to receive communication on the outcomes of the investigation, including the outcome of:

- Finding that serious wrongdoing has occurred,
- Finding that serious wrongdoing is not substantiated, and
- Other outcomes has outlined in section 6.3 of the [NSW Health Policy Directive on Public Interest Disclosure \(PD2023\\_026\)](#).

### 8.5 Maintaining confidentiality

Staff may choose to keep their identity anonymous and/ or the fact they made a voluntary PID confidential. Identifying information about the reporter must not be disclosed unless it is necessary or allowed under the PID, specifically in circumstances:



- where the person consents to disclosure in writing,
- where it is known that the person is the maker of a voluntary PID as they identified themselves (as the maker),
- when a public official or HI reasonably considers it necessary to disclose the information to protect the 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 been lawfully published previously,
- when the information is disclosed to a medical practitioner or psychologist for the purposes of providing medical or psychiatric care, treatment, or counselling to the person disclosing the information,
- when the information is disclosed for the purposes of a court or tribunal hearing,
- when the disclosure of information is necessary to deal with the disclosure effectively, and
- if it is in the public interest to disclose the identifying information.

## 9. Protection from Detrimental Action

It is a criminal offence for someone to take detrimental action against a person because they have made, are believed to have made, may make, or proposes to make a public interest disclosure (PID), or that the person is, have been or may be investigating, or proposes to investigate serious wrongdoing. HI must ensure that someone who has made a public interest disclosure (PID) is protected from 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.

Once HI becomes aware that a PID has been made, a risk assessment must be completed. HI must take steps to mitigate the risk of detrimental action occurring against the person who made the PID.

A person may seek compensation where unlawful detrimental action has been taken against them or apply for a court order to prevent detrimental action that is threatened or has occurred (for example, an order to prevent dismissal or to require reinstatement).

Note: A public official 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 Public Interest Disclosures Act 2022 (NSW) [PID Act]. Reasonable management action is outlined in Section 8.5 of the [NSW Health Policy Directive on Public Interest Disclosure \(PD2023\\_026\)](#).

## 10. Mandatory Training Requirement

HI Chief Executive, people managers and disclosure officers are to receive training in relation to their specific responsibilities. There are separated mandatory trainings for the Disclosure Officers and People Managers. These mandatory trainings are available via [My Health Learning](#).

Training must be completed by 31 March 2024 and then once every three years thereafter. People managers who commence with NSW Health after 31 March 2024 must complete the module as part of their orientation and within 28 days of commencement, and then once every three years thereafter.

### 10.1 Module 1 Public Interest Disclosures Training for People Managers

To support training for people managers, an e-learning module, *Public Interest Disclosures Training for People Managers* is available in My Health Learning. The module is flagged as mandatory training for NSW Health people managers. Staff who may have people management responsibilities from time to time, but not as an ongoing role, such as staff who may be placed in a short-term acting manager role to cover leave or vacancy, are encouraged to self-enrol and complete this training as part of their professional development.

### 10.2 Module 1 Public Interest Disclosures Training for People Managers

A module specifically for disclosures officers, *Public Interest Disclosures Training for Disclosure Officers* is also available in My Health Learning.

### 10.3 Reporting on compliance with mandatory training

The completion rates for the *Public Interest Disclosures Training for People Managers* is to be reported to the Executive Leadership Team and the Audit and Risk Committee at least annually.

## 11. Reporting Obligations

### 11.1 Annual return to the NSW Ombudsman

Under the PID Act, each NSW Health organisation is to:

- Report public interest disclosures data to the NSW Ombudsman for the 12-month period ending 30 June, by 30 July that year.
- Provide a copy of those reports to [MOH-PID@health.nsw.gov.au](mailto:MOH-PID@health.nsw.gov.au) by no later than 31 July that same year.

In HI, Manager, Audit, is to coordinate the public interest disclosures data in HI and lodge a return to the NSW Ombudsman via the NSW Ombudsman online portal.

## 12. Advice and Support

**General enquiries:** Manager, Audit

**Contract queries:** Chief Operating Officer