

Public Interest Disclosures

Summary This Policy Directive encourages staff to report serious wrongdoing, and provides procedures for receiving, assessing and managing public interest disclosures in compliance with the Public Interest Disclosures Act 2022 (NSW); and that staff, witnesses and other persons are protected from detriment or liability as a result of making public interest disclosures.

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Public Interest Disclosures

POLICY STATEMENT

NSW Health encourages staff to report serious wrongdoing. Any reports of wrongdoing will be assessed, and appropriate action will be taken in response to the report. Staff, witnesses, and other persons will be protected from detrimental action that might arise from reporting that serious wrongdoing.

SUMMARY OF POLICY REQUIREMENTS

All NSW Health organisations must establish and maintain procedures within their organisation that facilitate the disclosure of serious wrongdoing; 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.

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 a NSW Health organisation, and to provide support for those staff when they make, or are suspected of making, a disclosure.

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, and ensuring that any verbal reports that have been received are recorded in writing.

All NSW Health organisations must clearly identify disclosure officers who are responsible for managing public interest disclosures. All NSW Health organisations must notify the Ministry of Health of any updates or amendments to their disclosure officers within five working days, via email to MOH-PID@health.nsw.gov.au.

Chief executives, people managers and disclosure officers must complete the mandatory training module, *Public Interest Disclosures Training for People Managers* in My Health Learning by 31 March 2024 and then once every three years thereafter. Disclosure officers must also complete the module, *Public Interest Disclosures Training for Disclosure Officers*.

The Secretary, NSW Health (or nominated delegate) may determine that a report is a voluntary public interest disclosure (PID), even if the requirements of a voluntary disclosure are not met.

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

If a decision is made to investigate the disclosure, the reporter is to be provided with regular updates on the investigation, and at least every three months. More frequent updates can be requested by the reporter.

Staff may choose to keep their identity anonymous and/ or the fact they made a voluntary disclosure confidential. Identifying information about the reporter must not be disclosed unless it is necessary or authorised under the *Public Interest Disclosures Act 2022* (NSW) [PID Act].

When an investigator issues a notice to, or interviews, a witness during an investigation of serious wrongdoing, the witness is to be informed that they have protections under the PID Act. Where a witness has made a disclosure, they are to be offered the same protections afforded as a voluntary PID.

Where a person has made a PID, the NSW Health organisation must ensure that person is protected from detrimental action arising as a result of making, or who is suspected of making, a PID. It is a criminal offence for someone to take detrimental action against a person because they have made or may make a PID.

Once the NSW Health organisation becomes aware that a PID by a person employed by, or otherwise associated with, NSW Health has been made, a risk assessment must be completed, and the organisation must take steps to mitigate the risk of detrimental action occurring against the person who made the PID.

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 PID Act.

If an investigation finds that serious wrongdoing or other misconduct has occurred, the NSW Health organisation is to take the most appropriate corrective action to address that wrongdoing or misconduct.

A NSW Health organisation must notify the NSW Ombudsman in writing as soon as practicable if it decides to deal with a voluntary PID by:

- neither investigating the serious wrongdoing itself nor referring it elsewhere for investigation, or
- commencing an investigation and stopping before the investigation is complete, and not referring it elsewhere for investigation.

Under section 60 of the PID Act, a person who has made a report of serious wrongdoing may request an internal review of certain decisions made by a NSW Health organisation. The request must be in writing, within 28 days of being informed of the decision, and provide reasons why they consider the decision should not have been made.

The person who conducts an internal review is to have had no prior involvement with either managing or determining the outcome of the disclosure.

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 by no later than 31 July that same year.

REVISION HISTORY

Version	Approved By	Amendment Notes
PD2023_026 October 2023	Deputy Secretary, People, Culture & Governance	Updated to reflect changes in legislation arising from the commencement <i>Public Interest Disclosures Act 2022</i> (NSW). Includes addition of 'Witness' as public interest disclosure (PID) type and Privacy Contravention as a category of serious wrongdoing.
PD2016_027 July 2016	Deputy Secretary, Governance, Workplace, Corporate	Policy updated to provide further information on managing risks and workplace conflict. Replaces PD2015_027. Clarifies rights and responsibilities of people involved in a PID.
PD2015_027 August 2015	Deputy Secretary, Governance, Workplace, Corporate	Policy updated to reflect changes in legislation. Replaces PD2011_061. Clarifies rights and responsibilities of people involved in a PID.
PD2011_061 September 2011	Deputy Director-General, Health System Support	Policy update to reflect changes in legislation. Replaces PD2005_134 and PD2005_263
PD2005_263 October 2002	Director-General	Protected Disclosures policy for the Department of Health. Originally issued as Circular 2002/95
PD2005_134 November 2002	Director-General	Protected Disclosures policy for health services. Originally issued as Circular 98/101

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1. BACKGROUND

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

Any NSW Health staff member 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 NSW Health.

The *Public Interest Disclosures Act 2022* (NSW) [the PID Act] relates to reports of serious wrongdoing in, or affecting, public sector organisations.

NSW Health has procedures in place which support the reporting of wrongdoing as part of a 'speak up' culture. These procedures have been designed to assist NSW Health in ensuring that the workplace is an environment where:

- Staff who speak out about serious wrongdoings are protected.
- Processes are in place to ensure confidentiality of reports is maintained.
- Employees are encouraged to disclose wrongdoing without fear of reprisal.
- Disclosures of wrongdoing are assessed and dealt with in a fair and efficient manner.
- Responsibilities exist that ensure appropriate action is taken to investigate reports of serious wrongdoing that have been received.

1.1. About this document

This Policy Directive outlines the minimum requirements across all NSW Health organisations to support a workplace environment where:

- All staff (including contractors, sub-contractors, and volunteers) speak up and report serious wrongdoing and other misconduct without fear of reprisal.
- Key contacts are identified to whom staff can report serious wrongdoing.
- Clear, documented processes exist for staff to report serious wrongdoing.
- Processes are in place to assess and manage reports of serious wrongdoing in a fair and timely manner.
- Support and protection is provided to all staff when reports of serious wrongdoing are received.
- Detrimental action against reporters is not tolerated, and protections available under the PID Act are provided for reporters of serious wrongdoing.

NSW Health organisations may adopt this Policy Directive as a local policy, or develop their own policy document, so long as the local policy is consistent with the requirements of this Policy Directive and the PID Act.

1.2. Legal and legislative framework

Public Interest Disclosures Act 2022

The objects of the [PID Act 2022](#) include, to:

- Facilitate the disclosure by public officials of serious wrongdoing in or affecting the public sector.
- Promote a culture in which public interest disclosures are encouraged.
- Protect public officials, witnesses and other persons from detriment that may arise as a result of making public interest disclosures.
- Ensure the interests of all persons affected by public interest disclosures are taken into account in dealing with the disclosures.

Independent Commission Against Corruption Act 1988

The *Independent Commission Against Corruption Act 1988* (NSW) [[ICAC Act](#)] aims to promote the integrity and accountability of public administration. The Independent Commission Against Corruption is an independent and accountable body established under the ICAC Act to:

- Investigate, expose and prevent corruption involving or affecting public authorities and public officials.
- Educate public authorities, public officials and members of the public about corruption and its detrimental effects on public administration and on the community.

Government Information (Public Access) Act 2009

The *Government Information (Public Access) Act 2009* (NSW) [[GIPA Act](#)] establishes a proactive, open approach to gaining access to government information in NSW. The objects of the GIPA Act are to maintain and advance a system of responsible and representative democratic Government that is open, accountable, fair and effective.

Privacy and Personal Information Protection Act 1998

The *Privacy and Personal Information Protection Act 1998* (NSW) [[PPIP Act](#)] outlines the way in which NSW public sector agencies manage personal information, including why the information is being collected, how it will be used and who it will be disclosed to. It also allows members of the public to make a complaint about a NSW public sector agency if their personal information is misused.

Health Records and Information Privacy Act 2002

The *Health Records and Information Privacy Act 2002* (NSW) [[HRIP Act](#)] establishes rules for both public and private sector agencies that handle health information; the intent is to protect the privacy of a person's health information which is held in either the public or private sectors, including health service providers that collect, hold or use health information. The Act allows for individuals access to their records as well as providing a framework to enable complaint resolution regarding the handling of health information.

State Records Act 1998

The [State Records Act 1998](#) (NSW) sets rules for the management of government records by making provisions for the creation, management and protection of records in NSW public sector offices, and to provide public access to those records.

1.3. Key definitions under the PID Act

Public Interest Disclosure	<p>A report of serious wrongdoing within the NSW Health Service (whether or not the wrongdoing occurred), and there is an:</p> <ul style="list-style-type: none"> • allegation of the serious wrongdoing • indication of serious wrongdoing.
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>Under the PID Act, disclosure officers are:</p> <ul style="list-style-type: none"> • the chief executive of the NSW Health organisation • the most senior ongoing employee who ordinarily works at a permanently maintained worksite where more than one employee works • board members of Board-governed organisations. This includes board members appointed by the Minister to a Board of a local health district, specialty health network, or Board-governed statutory health corporation. <p>The chief executive (or the Secretary, for the Ministry of Health) may nominate additional disclosure officers for their organisation, given consideration for the size, structure, functions and number of sites maintained by the organisation.</p>
NSW Health organisation	<p>The NSW Ministry of Health, a local health district, specialty health network, statutory health corporation, the Health Administration Corporation (including the NSW Ambulance Service, HealthShare NSW, eHealth NSW, Health Infrastructure and NSW Health Pathology), and any other organisation subject to the direction and control of the Minister for Health, and other health bodies established under their own statute, including the Cancer Institute of NSW.</p>

People Manager	<p>A people manager includes any person who directly or indirectly supervises a public official.</p> <p>For individual contractors, subcontractors and volunteers supplying services or exercising functions on behalf of NSW Health, their manager is the public official who oversees those services or functions, or who manages the relevant contract.</p>
Public Official	<p>A public official is a person employed in or by a NSW Health organisation who provides services for, or exercises functions on behalf of NSW Health.</p> <p>This includes all permanent, temporary, and casual staff members of NSW Health, including those engaged under contracts (including sub-contractors), visiting medical officers, volunteers, and Board members.</p> <p>A public official may also include any other person similarly engaged in any other NSW Government agency.</p>
Serious wrongdoing	<p>A serious wrongdoing is defined as one or more of the following:</p> <ul style="list-style-type: none"> • corrupt conduct • a government information contravention • serious maladministration • a privacy contravention • serious and substantial waste of public money. <p>Detailed definitions are provided in Section 8.1.</p>
Staff member	<p>Any person working in a casual, temporary, or permanent capacity in NSW Health, including consultants, contractors, and any person performing a public official function and whose conduct could be investigated by an investigating agency.</p>

1.4. Related NSW Health policies

NSW Health Policy Directives:

- *NSW Health Code of Conduct* ([PD2015 049](#))
- *Corrupt Conduct - Reporting to the Independent Commission Against Corruption (ICAC)* ([PD2016 029](#))
- *Managing Misconduct* ([PD2018 031](#))

2. ESTABLISHING AND MAINTAINING PROCEDURES

All NSW Health organisations must establish and maintain procedures within their organisation that facilitate the disclosure of serious wrongdoing, 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.

2.1. Key responsibilities under the PID Act

All staff, including the Health Secretary, chief executives, people managers, and disclosures officers have responsibilities under the *Public Interest Disclosures Act 2022* (NSW) [PID Act].

2.1.1. The Health Secretary and Chief Executives

Under the PID Act, the Health Secretary, and chief executives in their respective organisations, are responsible for:

- promoting a workplace culture which encourages and supports staff who report serious wrongdoing
- receiving disclosures from public officials
- 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
 - compliance with annual reporting requirements to the NSW Ombudsman.

2.1.2. 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 a NSW Health organisation, 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
- notifying disclosure officers if they consider a staff member is being subjected to reprisal as a result of reporting serious wrongdoing.

2.1.3. 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.

All NSW Health organisations must clearly identify disclosure officers and provide training on how to manage a public interest disclosure. Under the PID Act, disclosure officers are:

- the chief executive of the NSW Health organisation
- the most senior ongoing employee who ordinarily works at a permanently maintained worksite where more than one employee works
- board members of Board-governed organisations. This includes board members appointed by the Minister to a Board of a local health district, specialty health network, or Board-governed statutory health corporation.

Additional disclosure officers may be nominated by their organisation, given consideration for the size, structure, functions and number of sites maintained by the organisation.

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

All NSW Health organisations must notify the Ministry of Health of any updates or amendments to their disclosure officers within five working days, via email to MOH-PID@health.nsw.gov.au.

2.1.4. Staff members

Any NSW Health 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
- 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
- knowingly make false or misleading reports of wrongdoing.

2.2. Mandatory Training required by the PID Act

Chief executives, people managers and disclosure officers are to receive training in relation to their specific responsibilities. 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.

2.2.1. 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.

2.2.2. Module 2 Public Interest Disclosures Training for Disclosure Officers

A module specifically for disclosures officers, *Public Interest Disclosures Training for Disclosure Officers* is also available in My Health Learning. Disclosure officers may self-enrol in this module, or this may be done as a bulk enrolment by a Learning Management System (LMS) administrator from the organisation.

2.2.3. Reporting on compliance with mandatory training

NSW Health organisations must report completion rates for the *Public Interest Disclosures Training for People Managers* at least annually to the organisation's executive team and to its Audit and Risk Committee.

2.3. Records management in connection with a report

All NSW Health organisations must have processes in place to ensure full and accurate records with respect to all information received in connection with the report are maintained and stored securely to prevent inappropriate and/ or unauthorised access.

3. REPORTING WRONGDOING

3.1. Serious wrongdoing

Under the *Public Interest Disclosures Act 2022* (NSW) [PID Act], serious wrongdoing includes:

- corrupt conduct
- serious maladministration
- a privacy contravention
- a serious and substantial waste of public money
- a government information contravention.

Definitions of these types of wrongdoing are included in [Section 8.1](#).

Some reports may be more than one type of serious wrongdoing. When this occurs, there is no need for the reporter to state the category of serious wrongdoing. Reports that do not meet at least one of the definitions of serious wrongdoing may still be required to be dealt with in accordance with other relevant NSW Health Policy Directives, such as *Prevention and Management of Bullying in NSW Health* ([PD2021_030](#)), or *Resolving Workplace Grievances* ([PD2016_046](#)).

3.2. 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
- any other information which will support your report.

3.3. 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.

3.3.1. Characteristics of a voluntary public interest disclosure

To be considered a PID, a report of serious wrongdoing must meet all the following criteria.

1. Is made by a public official.

2. Is made (reported) to one of the following:

- a manager/supervisor of the public official making the report
- the head of any NSW Government agency
- a disclosure officer of any NSW Government agency
- an integrity agency (see [Section 8.2](#))
- in writing, to a Minister, or Minister's office
- to a journalist or Member of Parliament (MP) in very limited circumstances (see [Section 8.3](#))

***Note:** If a report is made to an agency outside NSW Health, the disclosure may still be referred to NSW Health so appropriate action can be taken.*

3. Discloses information that the person honestly and on reasonable grounds believes, shows, or tends to show serious wrongdoing.
4. Is made in writing, or verbally (however, a report to a Minister or ministerial staff, will be a voluntary PID only if made in writing).
5. Is voluntary, in the sense of not being a mandatory or witness PID.

3.3.2. Deeming a report to be a voluntary public interest disclosure

The Health Secretary (or nominated delegate) can, in certain circumstances, determine that a report is a voluntary PID, even if the requirements of a voluntary PID are not met. For further information, please contact the Regulation and Compliance Unit at the Ministry of Health (via MOH-PID@health.nsw.gov.au).

3.3.3. 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 NSW Health deals with the report.
- Provide clear instruction on how the NSW Health Public Interest Disclosures policy can be accessed.
- Provide details of a contact person and available support.

3.3.4. 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).

- The NSW Health organisation 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.

3.3.5. 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.

Corrective actions may be managed in line with multiple NSW Health policies, including those listed on the NSW Health website [Help for a workplace issue](#).

A summary of the information to be provided to a reporter of serious wrongdoing is listed in [Section 8.4](#).

3.3.6. 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 NSW Health 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
- if it is in the public interest to disclose the identifying information.

3.4. 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 NSW Health 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
- A chief executive, or the Health Secretary makes a report under section 11 of the *Independent Commission Against Corruption Act 1988* (NSW).

3.5. 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, and
- 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.

3.5.1. Identifying witness public interest disclosures

When an investigator issues a notice to, or interviews, a witness during an investigation of serious wrongdoing, the witness is to be informed that the information they provide will be protected under the PID Act and will be considered a witness PID.

Staff members, or third-party contractors, who are conducting an investigation into serious wrongdoing on behalf of a NSW Health organisation, are to ensure that when a witness PID has been made, it is identified and documented. Where a witness has made a disclosure, they are to be offered the same protections afforded as a voluntary PID (as outlined in [Section 5](#)), including confidentiality. This means records relating to the PIDs must be securely maintained.

4. MANAGING A PUBLIC INTEREST DISCLOSURE

4.1. Approaches for managing a disclosure

When a disclosure has been received, the NSW Health organisation 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 NSW 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, the NSW Health organisation 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 NSW Health policy directives.

5. 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. The NSW Health organisation 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 the NSW Health organisation becomes aware that a PID has been made, a risk assessment must be completed, and the organisation 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](#).

5.1. Other protections

Some public officials may be subject to a duty of confidentiality that prevents them disclosing certain information that they obtain or become aware of at work. At times, in order to make a PID, public officials may need to breach or disregard such confidentiality duties.

If this happens, a public official cannot be disciplined, sued, or criminally charged for breaching confidentiality.

5.2. Assessment and minimising the risk of detrimental action

A documented PID Risk Assessment must be undertaken done for all voluntary and witness PIDs by either the disclosure officer who received the voluntary PID, or by the investigator

who interviewed the witness. A documented PID Risk Assessment may also be done for any mandatory PIDs where there are concerns regarding the potential for reprisal action.

A PID Risk Assessment template is available from the [NSW Health intranet](#).

Key considerations in the risk assessment include whether:

- The reporter's expectations are reasonable.
- The reporter's identity is known or may become known.
- The reporter is at risk of detrimental action.
- The subject(s) of the report of serious wrongdoing are at risk of adverse consequences.
- There is a risk to the organisation's services, functions, and/ or reputation.
- There are known mitigating factors or potential risks in the workplace for the reporter and/ or subject officer(s).

Once these factors are considered, the assessor must consider the potential impact of these risks to the reporter, subject officer(s) and the organisation, and the likelihood of risks occurring, particularly if confidentiality cannot be maintained.

Additional controls must be put in place to reduce the risk of reprisal action to be as low as reasonably practicable.

5.3. Reporting detrimental action

Reporters are encouraged to immediately notify any experience of adverse treatment or detrimental action directly to the contact person, to another disclosure officer within their organisation, to the Ministry of Health via MOH-PID@health.nsw.gov.au, or to an integrity agency (as listed in [Section 8.2](#)), such as the NSW Ombudsman or Independent Commission Against Corruption.

5.4. Dealing with allegations of a detrimental action offence

Where a NSW Health organisation becomes aware of an allegation that a detrimental action offence has occurred, or may occur, the organisation must:

- 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 Independent Commission Against Corruption (ICAC) or the Law Enforcement Conduct Commission (whichever is applicable) and notify the NSW Ombudsman about the allegation of a detrimental action offence being committed.

6. OUTCOMES FROM REPORTS OF SERIOUS WRONGDOING

6.1. Finding that serious wrongdoing has occurred

If an investigation finds that serious wrongdoing or other misconduct has occurred, the NSW Health organisation is to take the most appropriate corrective action to address that wrongdoing or misconduct.

Corrective actions may 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 action per NSW Health policy directives such as *Managing Misconduct* ([PD2018_031](#)) and *Service Check Register for NSW Health* ([PD2021_017](#))
- payment of compensation to people who have been affected by serious wrongdoing or other misconduct.

6.2. A finding that serious wrongdoing is not substantiated

In some cases, the outcome from an investigation into a report of serious wrongdoing may be that an allegation of wrongdoing is not substantiated.

This may be because of one or more of the following:

- there is no evidence that misconduct has occurred
- there is evidence that it did not occur
- the information available is insufficient or inconclusive.

6.3. Other outcomes

The *Public Interest Disclosures Act 2022* (NSW) [PID Act] also allows for a NSW Health organisation to decide to deal with a voluntary public interest disclosure (PID) by:

- neither investigating the serious wrongdoing itself nor referring it elsewhere for investigation (with the result that there will be no investigation), or
- commencing an investigation and stopping before the investigation is complete, and not referring it elsewhere for investigation (with the result that there will be no completed investigation, and no findings in relation to the serious wrongdoing).

This may occur when the serious wrongdoing has already undergone comprehensive investigation, and is historical, and considered to not to be either practical or in the public interest to investigate.

If the NSW Health organisation decides on either of these two outcomes regarding the disclosure, they must notify the NSW Ombudsman with a written explanation for the decision

as soon as practicable. Any such notification must also be briefed to the Secretary, NSW Health via email at MOH-PID@health.nsw.gov.au.

6.4. Internal review of certain decisions

Under section 60 of the PID Act, a person who has made a report of serious wrongdoing may request an internal review of certain decisions made by a NSW Health organisation, including a decision:

- that NSW Health is not required to deal with the report as a voluntary PID
- to stop dealing with the report because NSW Health 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.

A reporter who requests an internal review of the decision made relating to their voluntary PID must do so in writing, within 28 days of being informed of the decision, and provide reasons why they consider the decision should not have been made.

When an internal review is requested, the reviewer must consider any relevant material supporting the reporter's request for review. Once a reviewer has considered all the relevant material, they may confirm the decision made by a NSW Health organisation; or determine that the disclosure is to be dealt with, or continue to be managed, as a voluntary PID and be managed accordingly.

The person who conducts the internal review is to have had no prior involvement with either managing or determining the outcome of the disclosure.

The outcome of the internal review is to be communicated to the reporter who requested the internal review. While there is no set timeframe for completing the internal review, it is recommended that it be completed within 45 days of the request. Where it cannot be completed within this timeframe, the NSW Health organisation must notify the requestor and provide an expected timeframe for finalisation of the review.

6.5. Voluntary dispute resolution

If a dispute arises between a NSW Health organisation and a person who has made a report which is, or may be, a voluntary PID, the NSW Health organisation may request the NSW Ombudsman to conciliate the dispute.

Conciliation is a voluntary process and will only be suitable for disputes where the NSW Health organisation and the maker of the report are willing to resolve the dispute.

7. REPORTING OBLIGATIONS

7.1. Annual return to the NSW Ombudsman

Under the *Public Interest Disclosures Act 2022* (NSW) [PID Act], each NSW Health organisation is to:

-
- Report public interest disclosures data¹ 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 by no later than 31 July that same year.

8. APPENDICES

1. Definitions of serious wrongdoing
2. Disclosures to Members of Parliament or journalists
3. Summary of information to be provided to a reporter of wrongdoing
4. Reasonable management action

¹ See [section 78](#) of the PID Act and [section 5](#) and [section 6](#) of Schedule 3 *Public Interest Disclosures Regulation 2022* (NSW)

8.1. Appendix 1: Definitions of serious wrongdoing

8.1.1. Corrupt conduct

Corrupt Conduct is broadly defined in Section 7, 8 and 9 of the *Independent Commission Against Corruption Act 1988* (NSW) [ICAC Act]. The core element of corruption is the misuse of public office, which commonly involves the dishonest or partial use of power or position resulting in one person being advantaged over another. There are many forms of corruption (including but not limited to):

- a public official improperly using the knowledge, power, or resources of their position for personal gain
- a public official dishonestly or improperly exercises their functions, breaches public trust, or misuses information or resources acquired during the course of their official functions
- a member of the public influences, or tries to influence, a public official to use their position in a way that is dishonest, biased or breaches public trust.

For conduct to be considered corrupt, it must be serious enough to involve a criminal or disciplinary offence or be grounds for dismissal.

8.1.2. Government information contravention

The failure of an agency or public official to properly fulfil functions in accordance with the *Government Information (Public Access) Act 2009* (NSW) [GIPA Act] or the *State Records Act 1998* (NSW).

Examples of failure to exercise functions under the GIPA Act, include:

- intentionally overlooking documents that should clearly be included in a response to an access application
- destroying, concealing, or altering records to prevent them from being released

Examples of a failure to exercise functions under the *State Records Act 1998* (NSW) include:

- intentionally disposing of records that must be retained under the *State Records Act 1998* (NSW)
- systemic issues with the record keeping system resulting in information not being stored appropriately.

8.1.3. Privacy contravention

The privacy contravention refers to a violation or breach of privacy laws and regulations which are in place to protect an individuals' personal information. It occurs when a public sector agency or private organisation fails to handle personal information in accordance with established privacy principles and laws.

This breach could involve unauthorised access, use or disclosure of personal or health data, or any action that compromises an individual's privacy.

Examples of privacy contravention(s) include:

Personal information

Where:

- a public official unlawfully accessing a person's personal information for personal use or other non-work-related matter
- poor data and record keeping practices which lead to the disclosure of personal information about an individual to another agency without reason.

Health information

Where:

- unlawfully accessing an individual's health information and releasing this to another agency (without reason)
- agencies that retain health information for one purpose and disclose that information internally to another area to be used for another purpose (that is, not as intended).

8.1.4. Serious maladministration

Serious maladministration is the action (or inaction) by a public agency or public official relating to issues that are:

- contrary to law
- unreasonable, unjust, oppressive, or improperly discriminatory, or
- based wholly or partly on improper motives.

These actions or inactions may also be motivated by improper intentions of the agency or a public official.

8.1.5. Serious and substantial waste

A serious and substantial waste of public money is any uneconomical, inefficient, or ineffective use of resources, whether authorised or unauthorised, which results in a serious and substantial loss of public funds or resources. Waste can result from:

- failure to follow a competitive tendering process
- having poor or no processes in place when administering large amounts of public funds
- lack of appropriate precautions to prevent theft or misuse of public property
- purchasing procedures and/ or practices which fail to ensure that goods and services are necessary and suitable for their intended purpose, and the lowest price is not acquired for comparable goods and services (without reason).

8.2. Appendix 2: Integrity Agencies

Under the *Public Interest Disclosures Act 2022* (NSW) [PID Act], an integrity agency means one of the following:

- a) the Ombudsman,
- b) the Auditor-General,
- c) the Independent Commission Against Corruption,
- d) the Inspector of the Independent Commission Against Corruption,
- e) the Law Enforcement Conduct Commission,
- f) the Inspector of the Law Enforcement Conduct Commission,
- g) the Secretary of the Department of Planning, Industry and Environment when exercising functions under the following provisions of the [Local Government Act 1993](#)—
 - i. Chapter 13, Part 5, Division 1,
 - ii. Chapter 14, Part 1, Division 3,
 - iii. Chapter 14, Part 3, Division 1,
 - iv. section 734A,
- h) the Privacy Commissioner,
- i) the Information Commissioner,
- j) a person or body declared by the regulations to be an integrity agency for the purposes of this Act.

8.3. Appendix 3: Disclosures to Members of Parliament or journalists

Disclosures to Members of Parliament (MP) or journalists differ to other reports. Reports of wrongdoing can only be reported as a voluntary public interest disclosure (PID) when:

- The reporter has first made substantially the same disclosure to someone who can receive disclosures.
- The previous disclosure is substantially true.
- The reporter did not make the previous disclosure anonymously.
- The reporter did not give a written waiver of their right to receive information relating to their previous disclosure.
- The reporter did not receive the following from a NSW Health organisation:
 - notification that NSW Health will not investigate the serious wrongdoing and will also not refer the previous disclosure to another agency, or
 - at the end of the investigation period²:
 - notice of NSW Health 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.

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

² Investigation period means:

- After six months of the previous disclosure being made, or
- After 12 months, if there was an application submitted by requestor for an internal review of the decision within six months of making the disclosure.

8.4. Appendix 4: Summary of information to be provided to a reporter of wrongdoing

When the identity or contact details of a reporter of serious wrongdoing has been provided, NSW Health is required to provide the following timely information to reporter:

- either a copy of the policy, or directions for accessing the policy, via the NSW Health website or intranet
- details of how the disclosure is being actioned (including proposed actions)
- the decision not to investigate or refer the disclosure
- of the decision to stop investigating the serious wrongdoing without completing the investigation or referring the disclosure to another agency
- details of the referral agency (where relevant)
- when an investigation of the serious wrongdoing is in progress, updates on the status of the investigation are to be provided
- at the completion of the investigation, a details of the results and any corrective actions taken, proposed or recommended
- provide updates on the progress of the investigation each three months during the period of investigation
- the reason why the disclosure is not being dealt with as a voluntary public interest disclosure.

The above does not apply for disclosures which have been made anonymously, or when the discloser forgoes their rights (in writing) to receive information.

8.5. Appendix 5: Reasonable management action

The *Public Interest Disclosures Act 2022* (NSW) [PID Act] does not prevent reasonable management action from being taken in relation to a public official. Reasonable management action taken in relation to a public official include:

- a reasonable appraisal of the public official's work performance
- a reasonable counselling action, whether formal or informal, taken in relation to the public official's employment
- a reasonable suspension of the public official from the public official's workplace
- a reasonable decision to investigate serious wrongdoing or other misconduct alleged or suspected to have been committed by the public official
- a reasonable disciplinary action, whether formal or informal, taken in relation to the public official's employment
- a reasonable action to transfer, deploy or redeploy the public official
- a reasonable action to terminate the public official's employment by redundancy or retrenchment
- a reasonable action to suspend, terminate or review a contract under which the public official provides services
- a reasonable action resulting in or relating to the public official's failure to obtain a promotion, reclassification, transfer or benefit, or to keep a benefit, in relation to the public official's employment, and
- a reasonable action relating to an action mentioned in any of the points listed above.

However, action taken in relation to a public official is not reasonable management action if:

- the way of taking the action is not reasonable
- the action is taken corruptly or fraudulently, or
- the action is taken to conceal, or avoid the consequences of, serious wrongdoing, or
- each of the following applies to the action:
 - the person taking the action, when taking the action, has a suspicion, belief or awareness, whether correct or mistaken, that a public interest disclosure has been made, may have been made, may be made or is proposed to be made,
 - the suspicion, belief or awareness is a contributing factor to the taking of the action,
 - the action is not taken for the purpose of reducing the risk of detrimental action being taken against the public official or another person.