

## Public Interest Disclosures

### *Implementation Guide to NSW Health Policy directive PD2016\_027 Public Interest Disclosures*

**Policy Number** 2.140

**Policy Function** Leadership and Management

**Issue Date** 6 July 2018

**Summary** To establish Justice Health & Forensic Mental Health Network (JH&FMHN) procedures for making public interest disclosures in accordance with the [Public Interest Disclosures Act 1994](#), and relevant NSW Health policies.

To outline JH&FMHN's internal reporting processes for reporting allegations of corruption, maladministration or serious and substantial waste.

**Responsible Officer** Executive Director Performance & Planning

**Applicable Sites**

- Administration Centres
- Community Sites (e.g. Court Liaison Service, Community Integration Team, etc.)
- Health Centres (Adult Correctional Centres or Police Cells)
- Health Centres (Juvenile Justice Centres)
- Long Bay Hospital
- The Forensic Hospital

**Previous Issue(s)** Policy 2.140 (Jul 2015; Nov 2011)

**Change Summary**

- Inclusion of Fraudsec;
- Further information on managing risks and workplace conflict; and
- Further clarifications on rights and responsibilities of people involved in a PID.

**TRIM Reference** POLJH/2140

**Authorised by** Chief Executive, Justice Health & Forensic Mental Health Network

## 1. Preface

The [Public Interest Disclosures Act 1994](#) (hereafter, the **Act**) encourages and facilitates the disclosure, in the public interest, of corrupt conduct, maladministration, serious and substantial waste and government information contravention in the public sector by:

- Enhancing procedures for making disclosures;
- Providing disclosures to be properly investigated and dealt with; and
- Protecting persons from reprisals for making disclosures.

This implementation guide outlines Justice Health & Forensic Mental Health Network (JH&FMHN) procedures regarding public interest disclosures, in accordance with NSW Health policy directive [PD2016 027 Public Interest Disclosures](#). This policy directive applies to all public officials in NSW Health, including any person working part time, casual or full time. This includes Board members, Visiting Medical Officers, contractors, agency nurses and people working on projects funded by the Ministry of Health. This policy also applies to activities undertaken in NSW Health settings by public officials from other agencies. Staff members should refer to the [PD2016 027 Public Interest Disclosures Policy](#) as a guide in the first instance.

## 2. Procedure Content

Staff members are encouraged and managers are required to report known or suspected incidents of corruption, maladministration and serious or substantial waste in accordance with procedures outlined in [section 3](#) of this implementation guide. Any member of staff wishing to make further enquiries regarding this implementation guide may contact the Director Clinical & Corporate Governance (DCCG).

### 2.1 Mandatory Requirements

- All staff must protect and maintain the confidentiality of persons they know or suspect to have made disclosures. Staff must abstain from any activity that is, or could be perceived to be, victimisation or harassment of persons who make disclosures.
- The rights of staff making a public interest disclosure as well as the rights of staff who are the subject of the disclosure must be maintained in accordance with [section 3.3](#) of this implementation guide.
- New staff should be made aware of this implementation guide as part of their orientation program.
- A failure to properly fulfil functions under the [Government Information \(Public Access\) Act 2009](#) (the GIPA Act) may constitute a Government Information Contravention under the [Public Interest Disclosures Act 1994](#). For example, destroying, concealing or altering records to prevent them from being released, knowingly making decisions contrary to the [GIPA Act](#) or directing another person to make a decision contrary to the [GIPA Act](#).
- All documentation created for the purpose of making or investigating a public interest disclosure must be retained, managed and disposed of in accordance with JH&FMHN policy [2.014 Corporate Records Management](#).

#### 2.1.1 Forms of disclosure where the [Public Interest Disclosures Act 1994](#) applies

A disclosure is protected if it is made by a public official and relates to:

- **Corrupt conduct** (defined in sections [8](#) and [9](#) of the [Independent Commission against Corruption Act 1988](#), can take many forms and involves the dishonest use of power or position to benefit an

individual or cause advantage over others. It includes taking or offering bribes, blackmail, fraud, theft of property, violence, use of public resources for private purposes (e.g. unauthorised use of JH&FMHN motor vehicles, and conducting private business during business hours).

- **Maladministration** (defined in [section 11](#) of the [Act](#)), is conduct that involves action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory, or based wholly or partly on improper motives.
- **Serious and substantial waste**, refers to any uneconomical, inefficient or ineffective use of public resources, authorised or unauthorised, that results in significant loss or waste.
- **Government information contravention**, is conduct of a kind that constitutes a failure to exercise functions in accordance with any provision of [GIPA Act](#).

### 2.1.2 Forms of Disclosure that will not be protected

Disclosures will not be protected if they are not in the public interest and where the [Act](#) does not apply. This includes disclosures that:

- primarily question the merits of government policy or
- are made in an attempt to avoid dismissal or disciplinary action or

It is an offence to wilfully make a false or misleading statement when making a disclosure.

## 2.2 Implementation - Roles & Responsibilities

### 2.2.1 All Employees

Staff at all levels in the organisation have a responsibility to:

- Familiarise themselves with the requirements of all relevant policies and practices concerning public interest disclosures and corruption prevention listed in [section 5](#) of this implementation guide.
- Identify areas where opportunities for corruption, maladministration and serious and substantial waste may occur and/or management systems are inadequate.
- Maintain high ethical standards.
- Report all known or suspected wrongdoing.

### 2.2.2 Managers

Managers are responsible for:

- Protecting public officials who report suspected incidents of serious wrongdoing from detrimental action.
- Contributing to an organisational culture that overtly encourages and values staff making disclosures.
- Establishing clear lines of authority and accountability.
- Ensuring all staff are aware of the internal reporting system for serious wrongdoing.
- Enabling staff awareness and access to training on public interest disclosures.
- Implementing system improvements if a disclosure relates to their area of responsibility.

## 3. Procedure Content

### 3.1 Internal Disclosures

Any JH&FMHN employee or public official may make a public interest disclosure via FRAUDSEC or to one of the designated Disclosure Officers.

FRAUDSEC is a secure, online two-way communication platform that allows a person to report a fraud or concern to an organisation and remain anonymous. FRAUDSEC enables a secure flow of information between people and the organisation. In the case of JH&FMHN, the communication would be between the discloser and the DCCG, who is the JH&FMHN nominated PIDC.

FRAUDSEC provides staff reporting a fraud with the confidence that their identity will remain anonymous.

For more details visit: <http://intranetjh/Pages/FRAUDSEC.aspx>.

The list of designated Disclosure Officers:

- The Principal Officer: Chief Executive
- Chairperson of the Board
- Public Interest Disclosure Coordinator (PIDC): Director Clinical & Corporate Governance
- A Nominated Disclosure Officer (NDO)
  - Executive Directors
  - Executive Medical Director
  - Director, Workforce
  - Network Director of Nursing & Midwifery Services
  - Co-Directors

The role of NDO is positional and not related to individuals.

Any person contemplating making a disclosure who is concerned about publicly approaching a NDO may contact a NDO and request a meeting in a discreet location away from the workplace. Staff making a disclosure should be aware that they may be interviewed. Confidentiality will be protected where possible. Anonymous disclosures can also be received. Staff involved in conducting investigations must understand the principles of the [Act](#), in particular, the Confidentiality Guidelines as outlined in [section 22](#) of the [Act](#) and [section 3.3.3](#) of this implementation guide.

The act of disclosure should not necessarily shield public officials from the reasonable consequences of their own involvement in misconduct, dishonesty, incompetence or negligence. However, when a public official discloses misconduct that implicates themselves, an admission may be a mitigating factor when considering disciplinary or other action, provided such action does not constitute beneficial treatment for the purpose of influencing the public official to make the disclosure.

#### Procedure

1. When a JH&FMHN employee or public official discloses information via FRAUDSEC or to one of the Disclosure Officers listed above, the Disclosure Officer must:
  - Make arrangements to ensure disclosures can be made privately and discreetly (if necessary away from the workplace).

- Deal with the disclosure impartially.
  - Commit the disclosure to paper (if it is made orally) and request the person making the disclosure to sign the document.
  - Ensure there is sufficient support to protect the discloser against reprisal action (refer to [section 3.3.1](#)). The disclosing officer will receive protection from reprisal under the [Act](#) if he/she shows or tends to show serious wrongdoing by JH&FMHN or any public official.
  - Maintain confidentiality in accordance with [section 3.3.3](#) of this implementation guide.
2. The Disclosure Officer responds to the person making the disclosure:
    - What will happen to the information, and
    - JH&FMHN procedures for dealing with the information.
  3. The Disclosure Officer notifies the PIDC who ensures that the person who has made a disclosure is provided with a copy of NSW Health policy directive [PD2016\\_027 Public Interest Disclosures](#) and a written acknowledgement of their disclosure as soon as possible, but within 45 days. The PIDC must promptly and impartially assess each disclosure to determine whether the disclosure appears to be a public interest disclosure within the meaning of the [Act](#). If so, he/she will convene a panel to conduct an assessment.
  4. The panel will assess the disclosure and determine follow up actions. Panel membership must consist of the DCCG, the Chief Executive and one of the following people:
    - Executive Director Corporate Services
    - Executive Director, Clinical Operations or
    - Director, Workforce.

The purpose of the assessment panel is to provide transparency while maintaining strict confidentiality. The assessment panel will review all current information and make recommendations to the Chief Executive, if he/she is not a member of the panel.

5. The PIDC will present recommendations to the Chief Executive which may include:
  - No action/decline
  - Conducting a preliminary investigation
  - Conducting a formal investigation
  - Referral for investigation or other appropriate action to an external investigating authority, such as the Auditor-General, [ICAC](#), or the [Ombudsman](#)
  - Referral to the [NSW Police Force](#), if the matter may constitute a criminal offence
  - Coordinating any internal investigation arising out of a disclosure, subject to the direction of the Chief Executive
  - Reporting to the Chief Executive the findings of any investigation and recommended remedial action; or
  - Reporting any actual or suspected corrupt conduct to the Chief Executive in a timely manner to allow the CE to comply with the [ICAC Act 1988](#).

6. The Chief Executive will decide what action should be taken and by whom. The CE will:
  - Implement organisational change necessary as a result of a disclosure, and
  - Report criminal offences to the [NSW Police Force](#) as well as actual or suspected corruption to the [ICAC](#).

The role of the CE as Principle Officer must not be delegated.

7. Corrective action will be implemented if required.
8. The person(s) who are the subject of the disclosure will be informed of the allegations at an appropriate time
9. Within six months, the nominated Disclosure Officer to whom the disclosure is made will notify the person who made the disclosure of the action taken or proposed.

The notification must contain sufficient information to demonstrate that adequate and appropriate action was taken, or is proposed, including a statement of the reasons for the decision made or action taken in response to the disclosure. Notification should include whether:

- A decision was made not to investigate the matter; or
  - A decision was made to investigate the matter, but the investigation was not completed within six (6) months of the original decision being made; or
  - The matter was investigated but no recommendation was made for the taking of any action in respect of the matter.
10. All documentation relating to the public interest disclosure is captured in the Hewlett Packard Records Manager (HPRM) with restricted access applied.

### 3.2 External Disclosures

Employees who wish to report suspected incidents of corruption, maladministration and serious and substantial waste may alternatively make a public interest disclosure to:

- The Secretary, NSW Health
  - [www.health.nsw.gov.au](http://www.health.nsw.gov.au)
  - Phone: (02) 9391 9000
- The Auditor-General ([section 12](#) of the [Act](#)) for issues related to serious and substantial waste of public money.
  - [www.audit.nsw.gov.au](http://www.audit.nsw.gov.au)
  - Phone: (02) 9275 7100
- ICAC ([section 10](#) of the [Act](#)) for issues involving suspected corrupt conduct. For the commission to become involved in an issue, the conduct must involve a criminal or disciplinary offence, or be serious enough to warrant dismissal. JH&FMHN must report suspected corrupt conduct to the Commission in accordance with JH&FMHN policy [2.020](#) *Corruption Prevention and Fraud Control*.
  - [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au)
  - Phone: (02) 8281 5999 or 1 800 463 909

- The [NSW Ombudsman](#) ([section 11](#) of the [Act](#)) for issues relating to maladministration. The Ombudsman safeguards public interest by providing redress of justified complaints and promoting fairness, integrity and practical reforms in NSW public administration. An investigation by the Ombudsman will seek to establish the truth and recommend remedial action. A Public Interest Disclosures Unit has been established within the Office of the Ombudsman to provide, among other things, advice to persons who intend to make or have made a public interest disclosure.
  - [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)
  - Phone: (02) 9286 1000 or 1 800 451 524
- Information and Privacy Commission
  - [ipcinfo@ipc.nsw.gov.au](mailto:ipcinfo@ipc.nsw.gov.au)
  - Phone: 1800 472 679
- Members of Parliament or journalists
  - To have the protection of the [Public Interest Disclosures Act 1994](#), staff reporting wrongdoing to a Member of Parliament (MP) or a journalist must have already made substantially the same report to one of the following:
    - The Chief Executive
    - A person nominated in this implementation guide: or
    - An investigating authority
  - Also, the nominated person or authority that received your initial report must have either:
    - Decided not to investigate
    - Decided to investigate but did not complete an investigation within six months
    - Investigated the matter but did not recommend any action: or
    - Not advised the person who made the report within six months whether the matter will be investigated.

Staff who make a disclosure to an external agency should be aware that the disclosure will not necessarily be investigated by JH&FMHN and that the external agency is responsible for any findings and recommendations arising.

### 3.3 Protection Available Under the Act

The rights of people who are the subject of disclosures will be protected. Their identity will be protected and confidentiality maintained, where reasonable and practical (refer to [section 3.3.3](#)).

Disclosures will be assessed and acted on impartially, fairly and reasonably. They will be investigated as discreetly as possible, with a strong emphasis on maintaining confidentiality, both as to the identity of the discloser and the persons the subject of the disclosure.

Where investigations or other inquiries do not substantiate disclosures, the fact that the investigation/inquiry has been carried out, its results and the identity of persons who were the subject of the disclosures, will be kept confidential unless those who were the subject of the disclosures request otherwise.

Persons who are the subject of disclosures (whether public interest disclosures under the [Act](#) or otherwise) and investigated by or on behalf of JH&FMHN, have the right (before any decision / determination / report / memorandum / letter or the like is finalised) to:

- Be informed of the substance of the allegations at an appropriate time.
- Be informed of the substance of any adverse comment included in a report / memorandum / letter or the like arising, from any investigation.
- Be given a reasonable opportunity to put their case (either orally or in writing), to the persons carrying out the investigation for or on behalf of JH&FMHN.

Where the allegations contained in a disclosure are clearly wrong or unsubstantiated, the person who was the subject of the disclosure is entitled to the support of senior management. The nature of reasonable and appropriate support would depend on the case, but may include a public statement of support or a letter setting out JH&FMHN's views that the allegations were either wrong or unsubstantiated.

The person who is the subject of the disclosure is entitled to seek independent advice and representation.

### 3.3.1 Protection Against Reprisals

Detrimental action taken against a person substantially in reprisal for making a disclosure is a punishable offence. The maximum penalty for taking detrimental action is a fine of \$5,000 or imprisonment for 12 months, or both. In addition, any JH&FMHN employee involved in carrying out reprisals at any time shall be subject to JH&FMHN disciplinary action or other appropriate action. *Reprisal* means action causing, comprising or involving any of the following:

- injury, damage or loss;
- intimidation or harassment;
- discrimination, disadvantage or adverse treatment in relation to employment;
- dismissal from, or prejudice in, employment;
- disciplinary action.

Any member of staff who believes reprisal is being taken against them, substantially as a result of making of an internal disclosure, should immediately bring the matter to the attention of the PIDC.

If a member of staff who made an internal disclosure feels that such reprisals are not being effectively dealt with, he or she should speak with their Nominated Disclosure Officer. If this does not resolve the matter, the member of staff who made an internal disclosure should contact the [NSW Ombudsman](#) or the [ICAC](#).

If an external disclosure is made to an investigating authority, that body will either deal with the allegation of reprisal or provide advice and guidance to the person concerned.

### 3.3.2 Protection Against Legal Action

The [Act](#) provides that a person is not subject to any liability for making a public interest disclosure and no action, claim or demand may be taken or made against the person making the disclosure. A person who has made a public interest disclosure is taken not to have committed any offence against an Act which imposes a duty to maintain confidentiality of the information disclosed. A person who has made a public interest disclosure has a defence of absolute privilege in proceedings for defamation.



### 3.3.3 Confidentiality

JH&FMHN, or external officials to whom public interest disclosures are made or referred, may not divulge information that might identify or tend to identify the person who made the disclosure. Where possible and appropriate, every effort will be made by JH&FMHN to maintain the confidentiality of the person who made the disclosure, and the person who is the subject of the disclosure, including in respect to any media enquiries or coverage. The exceptions to the confidentiality requirement are where:

- The person consents in writing to the disclosure of the information
- It is essential, having regard to the principles of natural justice, that the identifying information be disclosed to a person who may be implicated by the information disclosed
- The investigating authority, public authority, officer or public official is of the opinion that disclosure of the identifying information is necessary to investigate the matter effectively; or
- Disclosure is otherwise in the public interest.

Decisions about natural justice, effective investigation and public interest will be made by the PIDC. In all cases the person who made the disclosure will be consulted before a decision is made.

### 3.4 Requests for Information under the GIPA Act

When an application for access to information is made under the [GIPA Act](#), there is conclusive presumption of overriding public interest against disclosing information that contravenes confidentiality guidelines under [section 22](#) of the Public Interest Disclosures Act 1994.

All requests for information made under the [GIPA Act](#) must be directed to the JH&FMHN Right to Information Officer at [GIPAinfo@justicehealth.nsw.gov.au](mailto:GIPAinfo@justicehealth.nsw.gov.au).

## 5. Definitions

### Must

Indicates a mandatory action to be complied with.

### Reprisal

Action causing, comprising or involving any of the following:

- injury, damage or loss;
- intimidation or harassment;
- discrimination, disadvantage or adverse treatment in relation to employment;
- dismissal from, or prejudice in, employment; and
- disciplinary action.

### Should

Indicates a recommended action to be complied with unless there are sound reasons for taking a different course of action.

## 6. Legislation and Related Documents

Legislation

[Government Information \(Public Access Act\) 2009](#)

[Independent Commission Against Corruption Act 1988](#)

[Public Interest Disclosures Act 1994](#)

NSW Health Policy Directives

[PD2016 027](#) *Public Interest Disclosures*

[PD2015 049](#) *Code of Conduct*

[PD2014 042](#) *Managing Misconduct*

JH&FMHN Policies

[2.010](#) *Code of Conduct*

[2.014](#) *Corporate Records Management*

[2.020](#) *Corruption Prevention and Fraud Control*

[3.020](#) *Managing Misconduct*

[3.100](#) *Harassment, Bullying and/or Discrimination*

## Appendix 1 – Flowchart: Management of Disclosures within JH&FMHN

