



IHPA

Independent Hospital Pricing Authority

Public Interest Disclosure Policy

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Document information

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Glossary

The Act in this Policy is the *Public Interest Disclosure Act 2013* (the PID Act)

Authorised Officer as defined in Section 36 of the Act, is a public official belonging to an agency, appointed in writing by the CEO (Principal Officer). Under this Policy, IHPA's CEO and the Executive Officer are the Authorised Officers for the purposes of the Act.

Chief Executive Officer (CEO) is the head of a prescribed authority under the Act and is the Principal Officer (section 73 of the Act).

Contracted Service Provider is an officer or employee of a contracted service provider for a contract with IHPA; and provides services for the purposes (whether direct or indirect) of the contract with IHPA.

Disclosable conduct is suspected or probable illegal conduct or other wrongdoing as defined in section 29 of the Act.

Disclose means to make new or secret information known.

Discloser includes current and former IHPA public sector employees who are engaged, or were engaged, by IHPA, officers and employees of a contracted service provider and other public officials including the Pricing Authority and committee members, who engage or have engaged in the act of disclosing.

Identifying information is information or details which could be used to discover the identity of the Discloser.

Information, in relation to a disclosure, includes an allegation made in conjunction with the disclosure of information.

IHPA is the Independent Hospital Pricing Authority.

Internal disclosure means a Public Interest Disclosure that has been made to the Discloser's Line Manager, the CEO or the Authorised Officer.

Line Manager in relation to a person, who makes a disclosure, is a public official who supervises or manages the person making the disclosure.

Ombudsman means the Commonwealth Ombudsman.

Principal Officer is the head of a prescribed agency under section 73 of the Act.

Public Interest Disclosure is the disclosure of information that tends to show, or the Discloser believes, on reasonable grounds, that the information tends to show, one or more instances of disclosable conduct.

Public Official includes current or former IHPA employees, IHPA contracted service provider and officers and employees of IHPA contracted service provider and other public officials including the Pricing Authority and Committee members (section 69 of the Act).

Reprisal is an act of retaliation against a person for making or being suspected of making a public interest disclosure. Under section 13 of the Act, reprisal may include dismissal, injury, and detriment to the person's position or discrimination.

The Standard is the Ombudsman's Public Interest Disclosure Standards (the Standard).

Introduction

The *Public Interest Disclosure Act 2013* (the Act) regulates the internal reporting of suspected wrongdoing or disclosable conduct within public sector agencies. It provides a framework and protections for public officials who make eligible disclosures under the Act.

Purpose

The purpose of IHPA's Public Interest Disclosure Policy (the "Policy") is to set out the framework adopted by the Independent Hospital Pricing Authority (IHPA) in complying with the Act. The objectives of the Act are to:

- promote integrity and accountability in the Commonwealth public sector;
- encourage the making of Public Interest Disclosures by public officials;
- ensure that public officials who choose to make Public Interest Disclosures are supported and protected from any adverse consequences relating to the disclosure; and
- ensure that disclosures made by public officials are properly investigated and dealt with by IHPA.

Scope

This Policy applies to all current and former IHPA employees, officers and employees of contracted service providers and other public officials including the Pricing Authority and IHPA Committee Members, who make a protected disclosure under the Act. For the purposes of this Policy these people will be referred to collectively as the "Discloser".

Risk and Control

This Policy sets out the procedures IHPA will implement to deal with and report on Public Interest Disclosures. Additionally, this Policy provides IHPA's employees and contractors with guidance on IHPA's Public Interest Disclosure procedures and protections offered under the Act.

Compliance with this Policy:

- establishes appropriate procedures to facilitate and respond to Public Interest Disclosures;
- ensures staff are made aware of IHPA's Public Interests Disclosure procedures and protections offered under the Act; and
- makes officials within IHPA aware of their roles and responsibilities.

Instances of activation of this Policy will not be included in IHPA's Monthly CEO Report.

Review

This Policy will be reviewed at least every two years by the Executive Officer but may be reviewed more frequently if required.

Key Elements

What is a “Public Interest Disclosure”?

For the purposes of the Act, a Public Interest Disclosure is a disclosure made by a current or former IHPA employee, IHPA contracted service provider or other public officials, including the Pricing Authority and any IHPA Committee Members, that concerns a disclosure:

- made within IHPA or the Commonwealth, to an authorised internal recipient or a line manager, concerning suspected or probable illegal conduct or other wrongdoing referred to as “disclosable conduct”;
- to anybody, if an Internal disclosure of the information has not been adequately dealt with, and if wider disclosure satisfies public interest requirements; or
- to anybody if there is substantial and imminent danger to health or safety; and/or
- to an Australian legal practitioner for purposes connected with the above matters.

What types of “Disclosable Conduct” can be reported?

Under the Act, a Discloser can Disclose information that they believe, on reasonable grounds, demonstrates an act of wrongdoing or ‘disclosable conduct’. Disclosable conduct is conduct engaged in by an agency, a public official or by a contracted Commonwealth service provider (in connection with the Commonwealth contract) that:

- contravenes a law;
- is corrupt;
- perverts the course of justice;
- constitutes maladministration, including conduct that is unjust, oppressive or negligent;
- is an abuse of public trust;
- is misconduct relating to scientific research, analysis or advice;
- results in wastage of public funds or property; or
- unreasonably endangers health and safety or the environment.

Disagreement with government policy, action or expenditure does not amount to disclosable conduct.

To whom can a disclosure be made?

A disclosure must be made to an appropriate person in order to gain the protection available under the Act.

Agencies – an Internal disclosure

Under Section 26 of the Act, a Discloser can make a disclosure to IHPA’s Principal Officer (CEO) or the appointed Authorised Officer (IHPA’s Executive Officer) who has been delegated responsibility for facilitating and investigating Internal Public Interest Disclosures. Alternately, a Discloser may choose to make a disclosure to their current line manager, who by law must pass on any disclosure to the CEO or the Authorised Officer for investigation, as soon as reasonably practical.

Due to confidentiality requirements, the line manager should obtain the Discloser’s consent before passing on their identifying information.

A Discloser may Disclose information to an Authorised Officer in a different Commonwealth government agency. This may happen if the person has moved to a new agency and reports suspected wrongdoing in their previous workplace.

In appropriate cases, a disclosure may be made directly to the Inspector-General of Intelligence and Security (in relation to an intelligence matter) or to the Commonwealth Ombudsman (in relation to other Commonwealth government agencies), or to an investigative agency, who may investigate the matter or allocate the matter to the relevant agency for investigation.

External disclosures

In certain circumstances, a Discloser has the right to make a disclosure outside of the government, provided that the information or the matter does not include intelligence or sensitive law enforcement information, and the disclosure is not made to a foreign public official.

A public official who has made an Internal disclosure under the Act may make a disclosure to any person if:

- the internal investigation was not completed within 90 days;
- they believe on reasonable grounds that the investigation or its outcome was inadequate, or the agency took inadequate action once the investigation was completed;
- it is not, on balance, contrary to public interest for an external disclosure to be made.

Emergency disclosures

In exceptional circumstances, a Discloser may make an emergency disclosure outside government, if the Discloser reasonably believes there is a significant and imminent danger to a person or public health or safety or to the environment. The extent of the information disclosed must only be what is necessary to alert the recipient of the substantial and imminent danger.

Lawyers

Section 26 of the Act also permits a Discloser to provide information relating to disclosable conduct to an Australian legal practitioner for the purposes of seeking legal or professional advice about making a disclosure.

Protection for Disclosers

To gain protections of the Act, a public official must make their disclosure to someone who is authorised to receive it.

Under the Act, it is a criminal offence to take or threaten to take a reprisal, such as discriminatory treatment, termination of employment or injury, against a Discloser because they make a Public Interest Disclosure. This also includes a proposed or a suspected Disclosure. In the event that a relevant court rules that a public official has taken or threatened reprisal to an individual for making a Public Interest Disclosure, then the court may order compensation to the disclosure¹.

The Act also provides that it is an offence to:

- disclose the identity of an individual who makes a Public Interest Disclosure. The identity of a person who makes a disclosure will be kept confidential as far as practicable;
- provide identifying information without the Discloser's consent unless authorised under the Act.

¹ Compensation may include injunctions or an official apology (Section 15 of the PID Act) and reinstatement of employment (Section 16 of the PID Act).

Under Section 10 of the Act, individuals that make Public Interest Disclosures have immunity from civil, criminal and administrative liability (including disciplinary action) for making the disclosure. However, under Section 11 of the Act, if a public official is found to have knowingly made a misleading or false statement, they may be subject to civil, criminal or disciplinary action.

Freedom of Information requests

Documents associated with a Public Interest Disclosure are not exempt from the operation of the *Freedom of Information Act 1982* (FOI Act). Requests for access to documents under the FOI Act should be considered on a case by case basis. A range of exemptions may apply to individual documents or parts of documents, particularly in relation to material received in confidence, personal information, operation of agencies and law enforcement.

Making a disclosure

Who can make a disclosure?

A current or former Public Official may make a disclosure and receive protection under the Act. 'Public Official' as broadly defined, covers people in or with a relevant connection to the Commonwealth public sector, including the IHPA staff, Pricing Authority members, IHPA committee members and Contracted Service Providers and their staff.

How can a Public Interest Disclosure be made?

Under that Act, a Discloser can choose to make a disclosure in person, by telephone or in writing, including by email to their line manager, the Principal Officer, the Authorised Officer or the Commonwealth Ombudsman. If a disclosure is made verbally a record should be made of what was said and the Discloser should sign the record as being correct.

A person making a disclosure does not need to assert that the disclosure is made under the Act for it to be a Public Interest Disclosure.

Contact details for the Principal Officer, Authorised Officer of IHPA and the Commonwealth Ombudsman are provided in Appendix A.

What information should be provided?

No particular information is required from a Discloser under the Act. The Discloser does not need to prove the disclosure, but only notify the agency that they honestly believe on reasonable grounds that there has been a wrongdoing. In order to assist IHPA in undertaking an effective investigation of the disclosure, the Discloser should consider providing (if possible):

- their name and contact details;
- the nature of the wrongdoing;
- who they think committed the wrongdoing;
- when and where the wrongdoing occurred;
- relevant events surrounding the issue;
- if they did anything in response to the wrongdoing;
- others who know about the wrongdoing and have allowed it to continue;
- whether they believe their information is a Public Interest Disclosure under the Act;
- whether they are concerned about possible reprisal as a result of making the disclosure.

Anonymous disclosures

If preferred by the Discloser, the matter may remain anonymous. Remaining anonymous means that the Discloser does not identify themselves at any stage to anyone, including to the officer who receives the disclosure.

IHPA will investigate disclosures made anonymously whenever possible. However, IHPA has the discretion not to investigate if they cannot contact the Discloser to seek further information. Additionally, the CEO or Authorised Officer will be unable to notify the Discloser regarding the handling or outcome of the disclosure.

Disclosers should consider identifying themselves to an Authorised Officer, or at least provide a means of contact to assist IHPA in carrying out an effective investigation of their disclosure, and for the following reasons:

- the Act requires agencies to keep a Discloser's identity confidential, subject to limited exceptions including the Discloser's consent.
- it will be difficult to ensure protection from reprisal if the agency does not know the Discloser's identity.
- if the Discloser does not provide a means of contact, they cannot be updated on the progress of the matter, including the outcome of the investigation.

A Discloser who has made an anonymous disclosure may come forward at any stage to Disclose their identity and seek protections under the Act.

Allocating a disclosure

Confidentiality

IHPA will make every reasonable effort to protect the Discloser's identity. It is a criminal offence for a Public Official who is handling a disclosure to reveal the Discloser's identifying information to anyone else without the consent of the Discloser, or use it for another purpose.

It should be noted that the Act cannot provide absolute protection of the Discloser's identity in all situations. The Discloser's identity may need to be disclosed to certain people if it is necessary to conduct an effective and proper investigation, or to protect the Discloser against reprisals. If it is necessary or highly likely that the Discloser's identity will be revealed, IHPA's Authorised Officer should discuss the intended disclosure of their identity with the Discloser before proceeding.

Risk assessment

IHPA must assess the risks that reprisals may be taken against a person who makes the Disclosure. An accurate and objective risk assessment will allow IHPA to put strategies in place to control the risks and defend itself against any allegations of having failed to protect a Discloser.

The risk assessment should be conducted by an Authorised Officer as soon as possible after a Disclosure is received. Further information is available in IHPA's Risk Management Policy and Framework.

Preliminary inquiries

The Act gives Authorised Officers the power to make preliminary inquiries and obtain further information before making a decision about allocating the matter for investigation. Preliminary inquiries could include asking the Discloser for further details.

Making preliminary inquiries is not the same as conducting an investigation. The purpose of a preliminary inquiry is not to draw conclusions or reach an outcome.

If there is evidence of criminal conduct at the preliminary inquiry stage, the Authorised Officer may also need to consider referring that evidence to the relevant law enforcement agency.

Allocating a disclosure

Under section 43 of the Act, the Principal Officer or an Authorised Officer may allocate the handling of the Disclosure to an appropriate entity, unless they are reasonably satisfied that there was no reasonable basis for considering the matter to be an Internal disclosure.

The Authorised Officer must take this action within 14 days of becoming aware of the Disclosure. Disclosures can be allocated to one or more agencies which may include the Department of Health, the Australian Public Service Commission, the Ombudsman, the Inspector-General of Intelligence and Security or a prescribed investigative agency provided that the agency consents.

In the event that the disclosure is allocated to another agency, the CEO or Authorised Officer must fully inform the Principal Officer of the allocated agency of:

- the allocation to their agency;
- the information that was disclosed;
- the suspected disclosable conduct;
- the Discloser's name and contact details if known and the Discloser consents.

An Authorised Officer must make a written record of the allocation decision, the reasons for the decision and the receiving agency's consent. The record must also contain a record of when the Discloser was notified of the allocation, including the date, time and means of notification, and the content of the notification.

The Authorised Officer must also inform the Ombudsman by providing a brief outline of the disclosure and the allocation to the appropriate agency. A notification form is available on the Commonwealth Ombudsman website: <http://www.ombudsman.gov.au/pages/pid/>.

Records should be contained securely within IHPA's record management system.

Informing the Discloser of the allocation

The Authorised Officer must let the Discloser know of their decision to allocate the matter for investigation as soon as practicable after the allocation. If the Authorised Officer decides not to allocate the matter because they have determined that the Disclosure is not an Internal disclosure, they must inform the Discloser of the reasons why this decision has been made, and advise them of any other options that they might have under Commonwealth law (such as in relation to a workplace grievance).

The Authorised Officer need not notify the Discloser if it is not reasonably practicable to do so. A Discloser may be considered to be contactable where they have provided a mail, email address or telephone number.

Investigation procedures

Investigating a disclosure

The Principal Officer, must investigate a Disclosure that has been allocated for investigation unless the Act allows otherwise. The Principal Officer may delegate any of their functions or powers to a public official who belongs to IHPA.

The Commonwealth Ombudsman has determined Public Interest Disclosure Standards (the Standard) relating to the conduct of an investigation under Section 74 (1b) of the Act.

Decision not to investigate

The CEO or the Authorised Officer may at their discretion decide not to investigate a disclosure (or decide to discontinue an investigation already begun) if:

- the Discloser is not a current or former public official;
- the information does not, to any extent, concern serious Disclosable conduct;
- the Disclosure is frivolous or vexatious;
- the information is the same, or substantially the same, as information the disclosure of which has been, or is being, investigated under the Act;
- the Disclosure is the same, or substantially the same, as a disclosure that has been investigated under the Act;
- the disclosure is the same, or substantially the same, as a disclosure that has already been investigated, or is currently being investigated, under another Commonwealth law and:
 - it would be inappropriate to conduct another investigation at the same time; and
 - the CEO or the Authorised Officer is reasonably satisfied that there are no matters concerning the disclosure that warrant further investigation.
- the Discloser has informed the CEO or an Authorised Officer that they do not wish the investigation of the Internal disclosure to be pursued, and the CEO or Authorised Officer is reasonably satisfied that there are no matters concerning the disclosure that warrant further investigation;
- it is impractical to investigate the disclosure because:
 - of the age of the information received;
 - the Discloser has not revealed their name and contact details; or
 - the Discloser has failed, or is unable, to give the investigator the information or assistance they requested.

Under section 50A of the Act, if the CEO or the Authorised Officer decide not to investigate the disclosure, they must inform the Commonwealth Ombudsman of the decision and of the reasons for that decision. A notification form is on the Commonwealth Ombudsman website: <http://www.ombudsman.gov.au/pages/pid/>.

Keeping the Discloser informed

The Act requires the Discloser to be notified at various stages in the process, provided that the Discloser's contact details are available.

The CEO or the Authorised Officer must, as soon as reasonably practicable after receiving the disclosure, inform the Discloser of the following;

- when the Disclosure is either allocated for investigation, or not allocated because it has been determined not to be an Internal disclosure;
- of information about the CEO's discretionary powers not to investigate within 14 days of the Disclosure being allocated;
- if the agency decides to investigate and the estimated length of the investigation;
- if the agency decides not to investigate, the reasons for the decision and action that might be available to the Discloser under other Commonwealth laws;
- if an extension of time is granted by the Ombudsman, the progress of the investigation;
- after the investigation report is completed.

The CEO or the Authorised Officer must record the time and date, the method and the content of the above notifications.

Any questions or concerns the Discloser raises should be addressed honestly and as soon as possible. The Discloser can also be referred to:

- the Commission's Public Interest Disclosure Policy and Procedures
- support networks or services
- the guide for Disclosers, available at http://www.ombudsman.gov.au/data/assets/pdf_file/0014/29030/speaking_up_about_wrongdoing.pdf

Conducting the investigation

Investigators must ensure they do not have an actual or perceived conflict of interest. Unless there are compelling reasons not to do so, the investigator should be separate from the workgroup where the alleged wrongdoing has occurred.

An investigation of a Disclosure by the CEO or the Authorised Officer should be conducted as they best thinks fit, obtaining information and making enquires as they believe to be most appropriate. When conducting the investigation, the CEO or Authorised Officer must comply with the Standard issued by the Commonwealth Ombudsman at <https://www.legislation.gov.au/Details/F2014C00919>

Further guidance for investigators can be found in the Australian Government Investigations Standards 2011, available at www.ag.gov.au.

Where the investigation relates to fraud, the investigator must also act in accordance with IHPA's Fraud and Anti-Corruption Control Plan and the Commonwealth Fraud Control Guidelines.

In investigating an alleged breach of the Code of Conduct under the *Public Service Act* (PS Act), the investigator must comply with the procedures established under section 15(3) of the PS Act.

Time limit for investigations

The investigation under the Act must be completed within 90 days of the date the matter was allocated for investigation.

If more time is required, IHPA must lodge an application to the Commonwealth Ombudsman for extension of time to investigate at least 20 days before the 90-day time period has expired. Such an application should include reasons why the investigation cannot be completed within the 90 days, the views of the Discloser and an outline of the action taken to progress the investigation. A 'Request for extension of time' form on the Commonwealth Ombudsman website <http://www.ombudsman.gov.au/Our-responsibilities/making-a-disclosure/Tools-and-Resources>.

If an extension is granted, the Ombudsman will inform the Discloser and give reasons for the extension. The CEO or Authorised Officer must also let the Discloser know, as soon as reasonably practicable after the extension is granted, about the progress of the investigation.

Standard of proof and evidence

Section 11 of the Standard states that the Principal Officer must ensure that a Disclosure is investigated on the basis that a decision whether the evidence is sufficient to prove a fact must be determined on the balance of probabilities. A fact is taken to have been proven on the balance of probabilities if the Principal Officer is satisfied that it is more likely than not that the fact is true.

The Principal Officer must ensure that a finding is based on logically probative evidence and that the evidence relied on in an investigation is relevant.

Maintaining confidentiality

Disclosures should be assessed and investigated discreetly, with a strong emphasis on maintaining confidentiality of both the Discloser and any person who is the subject of the Disclosure.

All interviews should be conducted in private. In particular, any interviews with the Discloser should be arranged discreetly to avoid identification by other staff. Care should be taken to avoid any authorised divulging of information. All information obtained, including documents and interview tapes, should be stored securely and only be accessible on the need-to-know basis. Those who are interviewed should be advised that information relating to the matter is confidential, that release of information may jeopardise an investigation and that they may be committing an offence if they divulge any information that is likely to identify the Discloser.

IHPA will ensure that all records relating to the disclosures are secure and only accessible by Authorised Officers, investigators and other officers involved in managing Internal disclosures.

Conducting an interview

The CEO or Authorised Officer must ensure that, if a person is interviewed as part of the investigation of a Disclosure, the interviewee is informed of the following:

- the identity and function of each person conducting the interview;
- the process of conducting the investigation;
- the authority of the CEO or Authorised Officer to conduct the investigation under the Act; and
- the protections provided under the Act.

It is the responsibility of the CEO or Authorised Officer to ensure that;

- no audio or visual recordings are made of the interview without the interviewed party's knowledge;
- on completion of the interview that the interviewed party or witness is provided the opportunity to make a final statement, comment or express a position; and
- any final statement, comment or expression of position is included in the interview records.

Interviewed parties and witnesses must be informed that if during the course of the questioning they should obtain the identity of a Discloser; that they must not Disclose the person's identity to others or threaten / take any act of reprisal against and that interviewed parties or witness that do so may face criminal charges.

What constitutes reprisal?

In the event that a person takes or threatens action intended to penalise a person that has made a Disclosure (including a proposed or suspected disclosures), this is reprisal. Types of reprisal could include:

- disadvantage to a person, including dismissal, injury in their employment, discrimination between them and other employees or alteration of their position to their disadvantage;
- a physical or psychological injury, including a stress-related injury;
- intimidation, harassment or victimisation;
- loss or damage to property; or
- disadvantage to a person's career (for example, denying them a reference or a promotion without appropriate reasons).

Section 19 of the Act provides that if a person commits an offence by taking or threatening to take an act of reprisal against, a Discloser (including proposed or suspected disclosures), that the person may face penalties of two years imprisonment and fines exceeding \$20,000.00.

The protections under the Act for Disclosers against acts or threats of reprisal are ongoing and do not expire or cease over time, even if the Discloser chooses to make their identity known.

Criminal matters

Under Section 56 of the Act, if the CEO or Authorised Officer, in the course of a Disclosure investigation, suspects on reasonable grounds that some or all of the information disclosed, or obtained in the course of the investigation is evidence of an offence against a law, the Authorised Officer may choose to Disclose the information and any evidence to a member of an Australian police force for investigation. However, if the offence is punishable by imprisonment for a period greater than 2 years, the CEO or Authorised Officer must, by law notify the Australian police force.

After an investigation

Report of investigation

After an investigation, the CEO or the Authorised Officer must ensure that a report is prepared and that appropriate action is taken by IHPA. The report must set out;

- whether there has been one or more acts of Disclosable conduct;
- any regulations, rules or administrative requirements to which the Disclosable conduct relates;
- the process used to collect the evidence;
- the matters considered in the course of the investigation;
- the duration of the investigation;
- the CEO or Authorised Officer's findings (if any);
- any action that has been, is being, or is recommended to be, taken; and
- any claims or evidence of detrimental action to the Discloser, and the agency's response to those claims and that evidence.

Additionally, the CEO or Authorised Officer must within a reasonable timeframe after preparing the report, provide a copy of the report to the Discloser. This is not required where the Discloser is unable to be contacted.

The version given to the Discloser may have some information deleted if the information:

- reveals, or is likely to reveal the identification of the Discloser or another person;
- the inclusion of information which would:
 - result in the copy being a document that is exempt for the purposes of Part IV of the *Freedom of Information Act 1982*; or
 - result in the copy being a document having, or being required to have, a national security or other protective security classification.

Action to be taken by IHPA

The action taken by IHPA at the end of an investigation will vary with the circumstances. The CEO will take appropriate action in response to the recommendations and other matters contained in the investigation report. Actions may include:

- commencing Code of Conduct proceedings under the *Public Service Act 1999* or another disciplinary process;
- referral of the matter to the police or another body that can take further action;
- mediation or conciliation of a workplace conflict;
- an internal audit or other review of an issue or the operations of a particular unit;
- implementing or changing policies, procedures or practices;
- conducting training and awareness sessions for staff.

A person who makes a disclosure that is intentionally false or misleading will not gain the protections under the Act, and disciplinary action may be taken by IHPA.

What if the Discloser is not satisfied with the action taken?

If a Discloser is not satisfied with IHPA's decision not to investigate a matter, or if they believe that the investigation or IHPA's response to the investigation was inadequate, the Discloser can approach the CEO or the Authorised Officer to discuss their concerns about process or outcome. IHPA can undertake review or reconsideration measures to address the Discloser's concerns.

It is important for the Discloser to understand that they do not 'own' the Public Interest Disclosure, and that it is up to IHPA to determine how best to resolve matters by identifying problems and taking corrective action. However, a reasonable belief that an investigation or IHPA's response to an investigation was inadequate is one of the conditions for making an external disclosure.

A Discloser can also make a complaint to the Ombudsman if they believe an agency that received their Internal disclosure did not appropriately investigate and deal with the Disclosure. Contact details for the Ombudsman are provided in Appendix A.

Support and protection

Under the Act, current and former public officials are protected from adverse consequences when making a Public Interest Disclosure. These protections do not only apply to Internal disclosures, but to external and emergency disclosures made in accordance with the Act.

If information provided by a Discloser turns out to be incorrect or unable to be substantiated, their Disclosure is protected under the Act, provided that the Disclosure was made to the appropriate person under the Act and that the Discloser honestly believed on reasonable grounds that the information regarded disclosable conduct.

In addition to the protections under the Act, IHPA will ensure that support is provided to a Discloser where appropriate, and will be mindful of their responsibilities towards anyone against whom an allegation has been made.

Support for Disclosers

IHPA will provide active support for a Discloser throughout the process, including providing information about what options are available and assurance that IHPA will take all reasonable steps necessary to protect them. Support is also available from the Department of Health's Harassment Contact Officer (HCO).

IHPA also provides access to the Employee Assistance Program (EAP) to Disclosers to access professional counselling services, if required. Contact details for the EAP are provided in Appendix A.

The investigator is not the most appropriate person to provide support to the Discloser throughout the investigation process, as their role is to objectively and impartially investigate the matter.

Protection for Accused Parties

The CEO has a responsibility to protect the identity and reputation of parties who are accused of Disclosable conduct as much as practicable. Any person subject to allegations under the Act shall be treated as innocent until proven otherwise.

Parties accused of Disclosable conduct may also seek support from Department of Health's HCO or from the EAP.

Protection for witnesses

No IHPA staff member, Authority or Committee member, contractor or their employees will be subject to any criminal or civil liability or disadvantage because they (voluntarily or otherwise) provide information relating to an investigation into a Public Interest Disclosure.

This does not apply if the information obtained relates to an IHPA staff member or contractor's own behaviour or conduct.

Protection for CEO, Authorised Officers and Line Managers

The CEO, Authorised Officer and line managers are not liable to any criminal or civil prosecution if they act in good faith in the performance, or any function of the Act (s78).

Protected Information

Section 65 and 67 of the Act provide that if a person or their legal representative:

- obtains information related to the Disclosure during the course of the disclosure investigation or while exercising their powers under the Act; and
- Discloses that information to another person; or
- uses the information inappropriately or for purposes unrelated to the Act,

that the person may face penalties of 2 years imprisonment and fines exceeding \$20,000.00.

Information and assistance required by the Ombudsman

The Commonwealth Ombudsman will collate the Public Interest Disclosure reports and submit an annual report to Parliament at the end of each financial year. Under sections 14 and 15 of the Ombudsman's Public Interest Disclosure Standards (the Standard) the CEO must provide the following information to the Commonwealth Ombudsman (Ombudsman) for the purposes of preparing the Ombudsman's annual report:

- the number of Public Interest Disclosures received by IHPA during the course of the financial year;
- the kinds of disclosable conduct to which the Public Interest Disclosures related;
- the number of Public Interest Disclosure investigations conducted during the financial year;
- the actions that the CEO has taken during the relevant financial year in response to recommendations in reports relating to those disclosure investigations; and
- any other information requested by the Ombudsman.

The CEO must provide all the information within the timeframe required by the Ombudsman or as otherwise agreed with the Ombudsman.

Roles and Responsibilities

The roles and responsibilities under IHPA's Public Interest Disclosure Policy are as follows:

Chief Executive Officer

IHPA's CEO must establish procedures for facilitating and dealing with Public Interest Disclosures relating to IHPA. The procedures must include:

- assessing risks that reprisals may be taking against the Discloser;
- providing confidentiality of investigative processes; and
- compliance with any standards issued by the Commonwealth Ombudsman²

The CEO must take reasonable steps to:

- protect public officials who belong to IHPA from detriment, or threats of detriment, relating to Public Interest Disclosures by those public officials;
- nominate a sufficient number of Authorised Officers for IHPA to ensure that they are readily accessible by public officials who belong to IHPA; and
- ensure that public officials who belong to IHPA are aware of the identity of the Authorised Officer for IHPA.

The CEO must ensure that appropriate action is taken in response to recommendations in a report under section 51 of the Act.

The CEO may delegate their responsibilities, powers and functions to the IHPA's Authorised Officer (See Appendix A).

Authorised Officer

If an individual Discloses, or proposes to Disclose, information to an Authorised Officer and the Authorised Officer has reasonable grounds to believe that the information concerns an act of Disclosable conduct; and the Discloser is unaware of what is required in order for the disclosure to be an Internal disclosure, the Authorised Officer must:

- inform the individual that the Disclosure could be treated as an Internal disclosure for the purposes of the Act;
- explain what the Act requires in order for the disclosure to be an Internal disclosure; and
- advise the individual of any orders or directions of which the Authorised Officer is aware, that are designated publication restrictions that may affect Disclosure of the information.

Line Managers

If a public official Discloses information to a Line Manager and they have reasonable grounds to believe that the information concerns instances of Disclosable conduct, the Line Manager must, as soon as reasonably practicable, give the information to the Authorised Officer.

Disclosers

Disclosers are required to make endeavours to assist the CEO or the Authorised Officer to conduct an investigation of the Disclosure. Disclosers are also required to assist the Ombudsman in the performance of the Ombudsman's functions under the Act.

² Currently the Ombudsman's Public Interest Disclosure Standards

Public Interest Disclosure Policy

When making a Disclosure, Disclosers:

- should be clear and factual in their statements and avoid speculation, personal attacks and emotive language;
- should not discuss the details of a Disclosure with anyone who does not need to know. Any unauthorised discussions will not be protected under the Act;
- should not investigate a matter themselves prior to making the Disclosure;
- be prepared to provide further information within a reasonable timeframe to assist with the investigation.

IHPA staff and contractors

IHPA staff and contractors are required to adhere to IHPA's Public Interest Disclosure Policy. They must also assist the CEO or Authorised Officer to conduct an investigation by responding to any request for information or documentation in a reasonable timeframe.

Appendix A Contact Details

Principal Officer (Chief Executive Officer)

Name: James Downie
Postal Address: PO Box 483 Darlinghurst NSW 1300
Telephone: 02 8215 1100
Email: james.downie@ihpa.gov.au

Authorised Officer

Name: Olga Liavas
Title: Executive Officer
Postal Address: PO Box 483 Darlinghurst NSW 1300
Telephone: 02 8215 1129
Email: olga.liavas@ihpa.gov.au

Commonwealth Ombudsman

Complaints to the Commonwealth Ombudsman can be made in writing or by phone. Details can be found on the Ombudsman's website at <https://www.ombudsman.gov.au/>

Commonwealth Ombudsman: 1300 362 072
PID information line: 02 6276 3777 (9am – 5pm [AEST] Monday to Friday)
Email: PID@ombudsman.gov.au
Postal Address: GPO Box 442, Canberra, ACT 2601

Employee Assistance Program

IHPA, through Converge International, provides a range of services under its Employee Assistance Program (EAP). These services include personal and professional support for staff, managers and their families. EAP services are free and completely confidential.

Telephone: 1300 687 327
Email: eap@convergeintl.com.au
Website: www.convergeinternational.com.au