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18 March 2021

The Hon. Greg Donnelly
Chair Portfolio Committee No. 2 – Health
Parliamentary Inquiry into Health Outcomes

By email: portfoliocommittee2@parliament.nsw.gov.au

Attention: Ms Madeleine Foley, Director Committees

Dear Mr Donnelly

The application of the *Public Interest Disclosure Act 1994* in health contexts

The NSW Ombudsman oversees the *Public Interest Disclosure Act 1994* (PID Act). Our functions under the PID Act include promoting public awareness of the PID Act and providing information, advice, assistance, and training about the PID Act to public authorities.

I am aware that media reports in relation to the *Inquiry into health outcomes and access to health and hospital services in rural, regional, and remote New South Wales* (the Inquiry) have referred to ‘whistle-blowers’ raising concerns about health services.

I am writing to you to briefly outline the application of the PID Act to NSW health services in the hope that this will be of assistance to the Inquiry.

I acknowledge that the overlap between clinical incident reporting and public interest disclosures (PIDs) is not central to the Inquiry’s terms of reference. However, it is important that staff in NSW Health organisations are aware of their obligation to report wrongdoing (of the kinds referred to below) and understand the protections available to them under the PID Act if they do so. There is also international evidence to suggest that a culture of reporting wrongdoing will lead to better health outcomes.¹

The application of the PID Act to NSW health services

The object of the PID Act is to encourage and facilitate the disclosure, in the public interest, of wrongdoing in the public sector. The types of wrongdoing that can be the subject of a PID include allegations of:

- (a) corrupt conduct, as defined in the *Independent Commission Against Corruption Act 1998*,
- (b) maladministration in the exercise of administrative functions, being an 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, and

¹ Sir Robert Francis, Freedom to Speak Up Report: An independent review into creating an open and honest reporting culture in the NHS; February 2015. [The Report \(freedomtospeakup.org.uk\)](http://freedomtospeakup.org.uk)

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(c) a serious and substantial wasting of public money.

The PID Act sets out the requirements for a report to be classified as a PID, resulting in the reporter receiving the protections under the Act, including protection from reprisal.

NSW Health and related organisations, such as Local Health Districts, are “public authorities” under the PID Act. This means that “public officials” (including volunteers and contractors) from those organisations can make PIDs about the conduct of such organisations or another public official.

Under the PID Act, public authorities are required to:

- Establish systems for receiving, assessing, and dealing with PIDs. This includes having a policy that sets out procedures for receiving, assessing, and dealing with PIDs.
- Ensure staff are made aware of the public authority’s PID policy and the protections under the Act.

The Health Directive

The current NSW Health PID Policy Directive (the Health Directive) was published in July 2016.² The Health Directive explains the types of wrongdoing reports that would be considered as PIDs and the process for assessing and dealing with PIDs. It outlines the roles and responsibilities of individuals in the NSW Health PID reporting process, including staff who may report wrongdoing; staff who may be the subject of a report of wrongdoing; and staff involved in the management of a report.

The Directive requires staff to report “known or suspected wrongdoing and support those who have made a report of wrongdoing.”

The Health Directive may be supplemented by individual policies within NSW Health organisations that set out further PID processes.

We trust that this information is useful. There is further information about PIDs and the PID Act on our website www.ombo.nsw.gov.au. If we can be of further assistance, please do not hesitate to contact us at PID@ombo.nsw.gov.au.

Yours sincerely



Paul Miller
Acting NSW Ombudsman

² NSW Health Policy Directive Public Interest Disclosures (12 July 2016), p 2
https://www1.health.nsw.gov.au/pds/ActivePDSDocuments/PD2016_027.pdf