

1. Purpose

At Peninsula Hot Springs Group (PHS) we are guided by our company values. These values are the foundation of how we conduct ourselves and interact with each other, our clients, members, suppliers, shareholders and other stakeholders. PHS is committed to ensuring corporate compliance and promoting ethical corporate culture by observing the highest standards of fair dealing, honesty and integrity in our business activities.

The purpose of this policy is to facilitate an environment in which the reporting of any instances of suspected misconduct, or of an improper state of affairs or circumstances in relation to PHS or its operations, is encouraged without fear of detriment. This policy has been put in place to ensure any concerns raised regarding any misconduct or improper state of affairs or circumstances in relation to PHS's business are dealt with effectively, securely, appropriately, and in accordance with the Corporations Act 2001 (Cth) (the Act) and the Taxation Administration Act 1953 (Cth) the Protected Disclosures (Protection of Whistleblowers) Act 2022 (New Zealand).

This policy and any revisions to it from time to time are available to employees via Beakon. This policy will be provided to all employees and officers of PHS upon commencement of their employment or engagement. This policy is also available to persons outside the organisation and can be accessed on PHS website.

PHS may invite officers, senior management, and employees to attend training sessions to ensure ongoing education regarding the application of the policy.

Due to the jurisdictions in which PHS operates (Australia and New Zealand), this policy is set out in two parts:

- (a) The Whistleblower Policy; and
- (b) An appendix containing supplementary New Zealand specific information which, where appropriate for the New Zealand legislation, amends the terms and operations of this policy to reflect requirements in New Zealand (Appendix 1).

2. Scope

This policy applies to:

- Officers, current and former employees and contractors of PHS
- Individuals who supply services or goods to PHS
- Employees of a person or entity who supplies services or goods to PHS, (whether paid or unpaid);
- Individuals who are associates¹ of PHS; and
- Relative, dependent or spouse of any of the persons listed above.

(when making a *protected disclosure*, each of these is a **Whistleblower**)

¹ "Associate" within the meaning of Section 318 of the *Income Tax Assessment Act 1936*.

Refer to Appendix 1 to the Policy which applies specifically to and in respect of the Maruia Hot Springs Ltd (New Zealand).

What is a *protected disclosure*?

A person may make a protected disclosure of information under this policy if they have objective reasonable grounds to suspect that the information concerns misconduct or an improper state of affairs in relation to PHS.

Misconduct or improper states of affairs covered by this policy includes any act or omission that:

- is dishonest, fraudulent or corrupt, such as falsification of records, contracts or data, adopting questionable or improper accounting practices or bribery;
- is unethical, such as actions causing substantial damage to the environment;
- may cause financial loss to PHS, damage its reputation or be otherwise detrimental to PHS's interests;
- is in breach of PHS's policy on Code of Conduct
- any circumstance that represents a danger to the public or the financial system
- Is in breach of any taxation legislation (i.e. Income Tax Act 1997, Fringe Benefit Tax Assessment Act 1986) or misconduct or improper state of affairs or circumstances in relation to the tax affairs of PHS.

The associated Whistleblowing Procedures (Appendix 2) have defined the processes PHS will apply in responding to, and managing, disclosures of information.

A person may also make a protected disclosure of information if they have objective reasonable grounds to suspect that the information indicates that PHS has engaged in conduct which:

- constitutes an offence against, or a contravention of, the *Corporations Act 2001* (Cth), the *Australian Securities and Investments Commission Act 2001* (Cth), the *Banking Act 1959* (Cth), the [*Financial Sector \(Collection of Data\) Act 2001*](#) (Cth), the *Insurance Act 1973* (Cth), the *Life Insurance Act 1995* (Cth), the [*National Consumer Credit Protection Act 2009*](#) (Cth), or the *Superannuation Industry (Supervision) Act 1993* (Cth), or instruments made under these laws;
- constitutes an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more;
- involves any other kind of serious impropriety (e.g. business practices that may cause a consumer harm); or
- represents a danger to the public or the financial system.

Disclosures that are not "protected disclosures" do not qualify for protection under the *Corporations Act 2001* (Cth) (or the Tax Administration Act 1953, where relevant). Such disclosures may be protected under other legislation, such as *Fair Work Act 2009*.

Refer to Appendix 1 to the Policy which applies specifically to and in respect of the Maruia Hot Springs Ltd (New Zealand).

What types of disclosure will not be protected?

This policy is intended for disclosures that have significant implications for PHS, rather than for personal matters.

This policy does not, therefore, apply to trivial or vexatious matters. Nor is this policy intended to replace or be used instead of other company policies and reporting procedures such as those relating to dispute resolution, "personal work-related grievances" (including matters relating solely to the discloser's employment or having implications for the discloser personally), equal opportunity, discrimination, harassment or bullying. In most cases, such matters will be deemed **not** to be *protected disclosures* for the purpose of this policy, will not qualify for protection under the *Corporations Act 2001* (Cth) and should be referred to the People and Culture for appropriate action in accordance with other relevant company policies and procedures.

Examples of grievances that may be personal work-related grievances include:

- (a) An interpersonal conflict between the discloser and another employee;
- (b) A decision that does not involve a breach of workplace laws;
- (c) A decision about the engagement, transfer or promotion of the discloser;
- (d) A decision about the terms and conditions of engagement of the discloser; or
- (e) A decision to suspend or terminate the engagement of the discloser, or otherwise to discipline the discloser.

However, a disclosure of a personal work-related grievance may still qualify for protection if:

- it includes information about misconduct (as described above), or information about misconduct includes or is accompanied by a personal work-related grievance;
- PHS has breached employment or other laws punishable by imprisonment for a period of 12 months or more, engaged in conduct that represents a danger to the public, or the disclosure relates to information that suggests misconduct beyond the discloser's personal circumstances; or
- the discloser suffers from or is threatened with "detriment" for making a disclosure (as described below).

In addition, as outlined below, disclosures not made to an *eligible recipient* may not be protected.

3. False reporting

This policy applies to disclosures where the discloser has objective reasonable grounds to suspect wrongdoing, or of an improper state of affairs or circumstances in relation to PHS or its operations. Accordingly, where it is shown that a person purporting to be a whistleblower has knowingly or recklessly made a trivial or vexatious report of wrongdoing or otherwise acted in bad faith, then that conduct itself will be considered a serious matter and that person may be subject to disciplinary action, which may include dismissal in serious cases.

4. Eligible recipients of disclosures

Who is an *eligible recipient* of a disclosure?

In order to qualify for protection, the disclosure must be made to an *eligible recipient*. PHS offers several reporting options for making a disclosure internally as well as externally. The role of an *eligible recipient* is to receive disclosures that qualify for protection.

Whistleblowers are encouraged firstly to make a disclosure to an officer or senior manager² of PHS. The *eligible recipients* who have been principally nominated by PHS to receive such reports are:

- People & Culture Director
- Chief Financial Officer
- Chief Executive Officer

Position:	People & Culture Director	Chief Financial Officer	Chief Executive Officer
Name:	Anita Cox	Garry Williams	Craig Mitchell
Email:	anita.cox@peninsulahotsprings.com	garry.williams@peninsulahotsprings.com	craig.mitchell@peninsulahotsprings.com

However, a report made to any other officer or senior manager of PHS or of its related bodies corporate is also protected.

5. *External reporting service*

Alternatively, a disclosure report may be made to PKF Integrity Services (BMNS) Pty Ltd (PKF) , an independent whistleblower hotline service provider approved by the Board of PHS. This service is available to Whistleblowers 24 hours a day, 7 days a week to lodge reports via:

- Telephone: 1800 324 953
- Email: PHShotline@pkf.com.au
- Online: <https://www.pkftalkintegrity.com/?phs>

The recipient will, subject to compliance with confidentiality requirements, provide details of the disclosure to the People & Culture Director within Peninsula Hot Springs.

A report may be submitted anonymously if the Whistleblower does not wish to disclose his or her identity to either PHS or PKF or both. Anonymous disclosures will be protected under the *Corporations Act 2001* (Cth).

Where necessary, disclosures may also be made to ASIC, APRA and the Commissioner of Taxation.

² An "officer" or "senior manager" includes the director or company secretary of a company, a person who makes or participates in the making of decisions that affect the whole, or a substantial part, of the business of PHS and a person who has the capacity to significantly affect PHS's financial standing.

Any disclosure of information made to a lawyer for the purpose of obtaining legal advice or legal representation in relation to the discloser's rights at law, will also be a *protected disclosure*.

6. Public interest disclosure

In certain circumstances, 90 days after a whistleblower has made a report in accordance with this Policy to ASIC, APRA or a Commonwealth body prescribed by regulation (the **Regulator**), and provided that the Whistleblower has reasonable grounds to believe that (a) no action is being, or has been, taken by the Regulator or [PHS] to address the matters the Whistleblower has raised in their report; and (b) the making of a further disclosure would be in the public interest, the Whistleblower may give limited disclosure of the matter to a member of Parliament or a journalist. Such a step is a serious matter and, to ensure the Whistleblower is protected by law, the Whistleblower should take independent legal advice before taking any such step. It is important for the Whistleblower to understand the criteria for making a public interest disclosure.

7. Emergency disclosure

In certain circumstances, the Whistleblower has previously made a disclosure of the information to ASIC, APRA or a Commonwealth body prescribed by regulations, and provided the Whistleblower has reasonable grounds to believe that the information concerns a substantial and imminent danger to health or safety of one or more persons or to the natural environment, the Whistleblower may give limited disclosure of the matter to a member of Parliament or a journalist. Such a step is a serious matter and, to ensure the Whistleblower is protected by law, the Whistleblower should take independent legal advice before taking any such step. It is important for the Whistleblower to understand the criteria for making an emergency disclosure.

If the Whistleblower would like additional information before making a disclosure, they are encouraged to seek independent legal advice.

8. Protection of Whistleblowers

How will Whistleblowers be protected?

A Whistleblower qualifies for protection under the *Corporations Act 2001* (Cth) if:

- they are an *eligible whistleblower*, and
- they have made a disclosure of information relating to a *protected disclosure*; and
- they have made the disclosure directly to an *eligible recipient* (or to ASIC, APRA, Commissioner of Taxation or another Commonwealth body prescribed by regulation; a legal practitioner for the purposes of obtaining legal advice or legal representation about the operation of the Whistleblower provisions in the Act; or they have made an 'emergency disclosure' or 'public interest disclosure').

A Whistleblower may still qualify for protection even if their disclosure turns out to be incorrect.

Refer to Appendix 1 to the Policy which applies specifically to and in respect of the Maruia Hot Springs Ltd (New Zealand) – What is a protected disclosure.

Protections under the Tax Administration Act 1953

The Australian Tax Administration act 1953 provides protections for disclosures of information that indicate misconduct or an improper state of affairs in relation to the tax affairs of an entity or an associate of an entity where the person considers the information may assist the recipient of that information to perform functions or duties in relation to the tax affairs of the entity or an associate.

Protections are provided for disclosures made to the Australian Commissioner of Taxation, any person or regulator such as ASIC, APRA, ATO, Australian Federal Police or the Tax Administration Act 1953. The protections available to someone who makes a protected disclosure under the Tax Administration Act 1953 are similar to those outlined above under the Corporations Act 2001.

Confidentiality

PHS will not disclose the identity of the Whistleblower or information that is likely to lead to the identification of the Whistleblower unless it is:

- to ASIC, APRA, ATO or a member of the Australian Federal Police;
- to a legal practitioner (for the purposes of obtaining legal advice or legal representation about the Whistleblower provisions in the *Corporations Act 2001* (Cth);
- to a person or body prescribed by regulations; or
- with the consent of the Whistleblower.

It is illegal for PHS to disclose the identity of the Whistleblower outside these circumstances (named above).

PHS will seek to reduce the risk that a Whistleblower will be identified from the information contained in a disclosure through precautions such as:

- referring to the Whistleblower in gender-neutral terms and redacting information where appropriate;
- ensuring disclosures are handled and investigated by qualified staff;
- ensuring persons involved in handling and investigating disclosures understand the importance of confidentiality and that disclosure of a Whistleblower's identity may be a criminal offence.

A discloser can refuse to answer questions that they feel could reveal their identity at any time. A discloser who wishes to remain anonymous, should maintain ongoing two-way communication with PHS, so they can ask follow up questions or provide feedback.

Refer to Appendix 1 to the Policy which applies specifically to and in respect of the Maruia Hot Springs Ltd (New Zealand).

Protection of records

PHS will seek to protect the identity of a Whistleblower through secure record-keeping and information-sharing processes. Examples of reasonable precautions PHS will take include:

- securely storing any records relating to a disclosure of wrongdoing and permitting access to authorised persons only and limiting authorisation to those directly involved in handling and investigating the disclosure.
- not sending communications and documents relating to the investigation of a disclosure to an email address or printer that can be accessed by other staff.

Whistleblowers are assured that an unauthorised release of information in breach of this policy will be regarded as a serious matter.

No criminal, civil or administrative liability

The fact that a person has made a protected disclosure will not give rise to any civil liability (e.g. legal action for breach of contract), criminal liability (e.g. prosecution for unlawful disclosure of information) or administrative liability (e.g. disciplinary action) on the part of the Whistleblower, and the fact of making the disclosure and its content is not admissible against the Whistleblower in criminal or civil proceedings.

However, the Whistleblower can still be pursued for having made a false disclosure and in connection with the discloser's own conduct which is revealed by the matters highlighted in the disclosed information (ie. the discloser's own conduct in the misconduct, improper affairs or other circumstances which are revealed by the *protected disclosure*).

Refer to Appendix 1 to the Policy which applies specifically to and in respect of the Maruia Hot Springs Ltd (New Zealand).

No breach of contract or enforcement of other rights

PHS will not take (and the law prohibits any other person from taking) any action under a contract to which a Whistleblower is a party (including to terminate a contract on the basis that the disclosure is a breach of contract) or seek to enforce any other right against a discloser, solely on the basis of the *protected disclosure*.

Protection from detriment

PHS will endeavour to protect Whistleblowers from any detriment arising directly from their disclosure. Conduct by any person giving rise to detriment or the threat of detriment to an actual or intended discloser may be a criminal or civil offence at law in certain circumstances and will be regarded as a serious matter.

Detrimental actions include, but are not limited to:

- dismissal of an employee;
- injury of an employee in his or her employment;
- alteration of an employee's position or duties to his or her disadvantage;
- discrimination between an employee and other employees of PHS;
- harassment or intimidation;
- physical or psychological harm;
- damage to a person's property;

- damage to a person's reputation;
- damage to a person's business or financial position; and
- any other damage to a person.

Some examples of measures and mechanisms for protecting disclosers from detrimental acts or omissions include:

- processes for assessing the risk of detriment against a discloser and other persons (e.g. other staff who might be suspected to have made a disclosure), which will commence as soon as possible after receiving a disclosure;
- support services (including counselling or other professional or legal services) that are available to disclosers; and
- strategies to help a discloser minimise and manage stress, time or performance impacts, or other challenges resulting from the disclosure or its investigations.

An employee or contractor who is subjected to detrimental treatment should inform an officer or senior manager immediately. If the matter is not remedied, it should be disclosed in line with this policy.

It may then be the subject of a separate investigation by an officer not involved in dealing with the original disclosure, which may result in other interventions, such as disciplinary action against the person who subjected the Whistleblower to detriment and measures to restore the Whistleblower subjected to detriment.

A Whistleblower may seek compensation and other remedies through the courts where "detriment" has been taken against them, including orders against the person who engaged in the detriment or a person who was otherwise involved, if:

- they suffer loss, damage or injury because of a disclosure; and
- PHS failed to take reasonable precautions and exercise due diligence to prevent the detrimental conduct.

9. Investigation of the disclosure

All disclosures covered by this policy will be taken seriously and handled sensitively and fairly. PHS will direct the matter to the People and Culture Director, who will attempt to ensure all protected disclosures are investigated as soon as reasonably practicable. Where appropriate the Whistleblower will be kept informed as to the progress of the investigation.

PHS will investigate disclosures covered by this policy in an, objective, fair and appropriate manner, depending on the circumstances of each disclosure. PHS reserves the right to use both internal and external resources to investigate a disclosure or part of it.

Assessment

As a first step in the investigation process, normally PHS will assess a disclosure to determine whether or not it falls within the scope of this policy. If it does, the following steps will normally apply to the investigation. If it does not, the matter will not be investigated and the discloser will be advised of that fact.

In that latter case, the discloser may be directed to another appropriate person or section within the organisation such as People and Culture.

For disclosures assessed to be within the scope of this policy, PHS will advise the Whistleblower of the support available to the Whistleblower and emphasise to the Whistleblower the importance of confidentiality.

PHS will ask the Whistleblower if the Whistleblower consents to the disclosure of their identity for the purposes of the investigation. PHS will explain to the Whistleblower the steps PHS has in place to take all reasonable steps to reduce the risk that the Whistleblower will be identified as the result of the disclosure. If the Whistleblower consents, PHS will keep a written record of that consent. If the Whistleblower does not consent, PHS will also record that fact and advise the Whistleblower that PHS will not disclose the identity of the Whistleblower, but may refer on information that is reasonably necessary for the purposes of investigating the matter to which the disclosure relates. In doing so, PHS will also advise the Whistleblower that it will take all reasonable steps to reduce the risk the Whistleblower will be identified as a result of the disclosure.

Investigation Steps

As a general guide and subject to the particular circumstances applying to the disclosure, the steps in the investigation process are normally expected to include the following:

- interview the Whistleblower to obtain relevant information;
- interview any alleged wrongdoer to obtain a response to the disclosure in so far as it relates to the alleged wrongdoer;
- a discloser can refuse to answer questions that may reveal their identity during and after the investigation;
- interview any relevant witnesses regarding relevant matters arising from the disclosure;
- review any documents or other material relevant to the disclosure;
- if necessary, conduct further interview/s with the Whistleblower to obtain further information or a response to material arising from the investigation; and
- if necessary, conduct further interview/s with any alleged wrongdoer regarding further material arising from the investigation.

Interviews need not be conducted face to face. All relevant material including interviews and documents obtained during the investigation is then considered and a report prepared.

Without the disclosers consent, PHS cannot disclose information that is likely to lead to the identification of the discloser as part of the investigation process – unless;

- (a) the information does not include the discloser's identity
- (b) the entity removes information relating to the disclosers identity
- (c) it is reasonably necessary for investigating the issues raised in the disclosure

PHS may not be able to undertake an investigation if it's not able to contact the discloser.

The report will make findings of fact and determine whether a disclosure has been substantiated or not substantiated, in whole or part. The report may also include recommendations arising from any factual findings.

If the disclosure is substantiated, the response may include disciplinary action, up to and including the termination of an individual's employment or engagement with PHS and/or referral to an external body, including ASIC or a law enforcement authority as appropriate.

Where appropriate, the findings will be communicated to the discloser. Subject to compliance with confidentiality requirements, the findings will also be communicated to the Board. The discloser will be kept informed through the key stages of the investigation:

- (1) When the investigation process has begun
- (2) While the investigation is in process
- (3) After the investigation has been finalised.

PHS may not be able to complete the investigation process if they are unable to contact the discloser.

Timing

PHS aims, where practicable, to finalise investigations of disclosures within 90 days of the date the disclosure is first made. Where finalisation is not practicable, however, PHS will take all reasonable steps to ensure that significant progress is made in relation to a disclosure within 90 days of the date the disclosure is first made.

PHS will take reasonable steps to keep the Whistleblower informed of the progress of an investigation of their disclosure.

10. Fair treatment

PHS will ensure fair treatment of employees mentioned or implicated in a protected disclosure within the meaning of this policy or to whom such disclosure relates (**Relevant Employee**) by applying the following principles.

Confidentiality

We will treat your identity and all concerns raised under this Policy as confidential. Under law, the recipient of your concerns cannot disclose your identity, or any information in your disclosure, that is likely to identify you unless:

- We have your consent
- They are disclosing it to the ASIC, APRA, the Australian Federal Police or a lawyer for the purposes of obtaining legal advice.

A person can disclose the information contained in report without your consent if:

- The information does not include your identity as the discloser;
- We have taken all reasonable steps to reduce the risk that the reporter will be identified from the information; or
- It is reasonably necessary for investigating the issue raised in the disclosure.

Refer to Appendix 1 to the Policy which applies specifically to and in respect of the Maruia Hot Springs Ltd (New Zealand).

Anonymity

You can choose to remain anonymous when you make a disclosure, over the course of any investigation and after the investigation is finalised.

If you choose to raise your concern anonymously, we prefer you do it via email to allow PHS to respond to your email; or via hotline and enable the independent provider to contact you.

If we cannot contact you, we will not be able to:

- Ask for further information, which may inhibit a property appropriate inquiry or investigation into your disclosure; or
- Provide you with feedback on the progressor outcome of your disclosure.

Impartiality

An investigator appointed to investigate a protected disclosure will act impartially and without bias in conducting the investigation. An investigator must declare any material personal interest the investigator has in any matter relevant to the investigation for which the investigator has responsibility immediately to PHS. The investigator must then take no further part in the investigation unless directed otherwise (other than to provide relevant material or information by way of a handover to a new investigator or to take any necessary incidental action for that purpose).

Fair process

An investigation into a protected disclosure will follow a fair process including:

- informing a Relevant Employee of the substance of a protected disclosure, as far as it applies to the Relevant Employee;
- giving a Relevant Employee a reasonable opportunity to respond to any matter referred to above, before the investigation is finalised;
- informing a Relevant Employee of any adverse finding directly affecting the Relevant Employee arising out of the investigation; and
- giving a Relevant Employee a reasonable opportunity to respond to any such adverse finding before the report is finalised.

Any potential disciplinary action against a Relevant Employee arising out of or as a result of an adverse finding in an investigation report under this policy will be dealt with consistently with PHS's usual practice, policy or procedure relating to a disciplinary action. [*Refer to any specific company policies that may apply in such a case.*]

Protection from Detriment

PHS strictly prohibits all forms of retaliation against a whistleblower as a result of making a disclosure within the scope of this Policy or applicable legislation.

A Whistleblower who considers himself or herself at risk of retaliation, has been retaliated against, or is concerned about how this Policy applies to his or her disclosure should first raise this with the person within PHS to whom he or she made the disclosure to or with the People & Culture Director.

Refer to Appendix 1 to the Policy which applies specifically to and in respect of the Maruia Hot Springs Ltd (New Zealand).

Support

Relevant Employees will have reasonable access to support made available by PHS such as contact with a nominated person and, where relevant, access to PHS's Employee Assistance Program (**EAP**) or similar counselling service. PHS will consider any request for other support for a Relevant Employee on a case-by-case basis.

PHS will work with Whistleblowers to identify strategies to help them minimise and manage stress or other challenges resulting from the disclosure or its investigation, and ways to protect them from detriment. For example, where necessary and appropriate, PHS will support Whistleblowers by making modifications to the way they perform their work duties, for example, allowing them to perform their duties from another location.

11. Review

This policy will be reviewed annually by People & Culture and subject to approval by the Board to ensure it remains consistent with all relevant legislative requirements.

Item	Role/Date
Owner	People & Culture
Approved By	Peninsula Hot Springs Management Pty Ltd Board
Date approved (and effective)	1 November 2022
Review period	1 year
Next review date (no later than September 2023)	1 November 2023

This policy may be amended, terminated or replaced at PHS's discretion. The most recent version of this policy will be available via Beakon and the PHS website.

12. Associated Policies & References

Code of Conduct Policy
Corporations Act 2001
Taxation Administration Act 1953

Appendix 1 – Maruia Hot Springs Ltd (New Zealand)

This Appendix is to be read in conjunction with the PHS Whistleblower Policy.

Protected Disclosures (Protection of Whistleblowers) Act 2022

Who is an *eligible whistleblower* under this policy?

This policy applies to:

A discloser, in relation to an organisation, means individual who is (or was formerly) –

- (a) An employee;
- (b) A homemaker within the meaning given in section 5 of the Employment Relations Act 2000
- (c) A secondee to the organization;
- (d) Engagement or contracted under a contract for services to do work for the organization
- (e) Concerned in the management of the organization (including, for example, a person who is or was a member of the board or governing body of the organisation)
- (f) A member of the Armed Forces (in relation to the New Zealand Defence Force)
- (g) A volunteer working for the organization without reward or expectation of reward for that work

What is a *protected disclosure*?

A disclosure of information is a protected disclosure if the discloser –

- (a) Believes on reasonable grounds that there is, or has been, serious wrongdoing in or by the discloser's organisation; and
- (b) Discloses information about that in accordance with this Act; and
- (c) Does not disclose it in bad faith

Serious Wrongdoing

Includes any act, omission, or course in (or by) any organization that is 1 or more of the following:

- (a) An offence;
- (b) A serious risk to –
 - (i) Public health; or
 - (ii) Public safety
 - (iii) The health or safety of any individual or
 - (iv) The environment
- (c) a serious risk to the maintenance of law, including –
 - (i) the prevention, investigation, and detection of offences; or
 - (ii) the right or fair trial
- (d) an unlawful, a corrupt, or an irregular use of public funds or public resources:
- (e) oppressive, unlawfully discriminatory, or grossly negligent, or that is gross mismanagement, and is done (or is an omission) by –
 - (i) an employee (if the organization is a public sector organization

- (ii) a person performing (or purporting to perform) a function or duty or exercising (or purporting to exercise) a power on behalf of a public sector organisation or the Government

What is a *protected disclosure*?

- (1) A disclosure is entitled to protection under this Act for a protected disclosure made (in accordance with Section 11) to their organization or to an appropriate authority.
- (2) A discloser is entitled to protection for a protected disclosure made to their organization if it is made -
 - (a) In accordance with any internal procedures; or
 - (b) To the head or a deputy head of the organisation.
- (3) A discloser is entitled to protection for a protected disclosure made to an appropriate authority at any time. (This applies whether or not the discloser has also made the disclosure to their organization or to another appropriate authority).
- (4) A discloser is entitled to protection even if –
 - (a) They are mistaken and there is no serious wrongdoing; or
 - (b) They do not refer to the name this Act when making the disclosure; or
 - (c) They technically fail to comply with this section or Section 14 (as long as they have substantially complied); or
 - (d) They also make the disclosure to another person, as long as they do so –
 - (i) On a confidential basis; and
 - (ii) For the purpose of seeking advice about whether or how to make a protected disclosure in accordance with this Act)
- (5) If the disclosure is or includes intelligence and security information or international relations information, this section is subject to Section 25(2), 27 and 28.

Fair treatment

Confidentiality

- (1) Every receiver of a protected disclosure must use their best endeavours to keep confidential information that might identify the discloser.
- (2) However, a receiver need not keep a discloser's identity confidential if—
 - (a) the discloser consents to the release of the identifying information; or
 - (b) there are reasonable grounds to believe that the release of the identifying information is essential—
 - (i) for the effective investigation of the disclosure; or
 - (ii) to prevent a serious risk to public health, public safety, the health or safety of any individual, or the environment; or
 - (iii) to comply with the principles of natural justice; or
 - (iv) to an investigation by a law enforcement or regulatory agency for the purpose of law enforcement.
- (3) Before releasing identifying information for a reason described in subsection (2)(b),—
 - (a) if the release is for the reason described in subsection (2)(b)(i) or (iii), the receiver must consult the discloser about the release; or

- (b) if the release is for the reason described in subsection (2)(b)(ii) or (iv), the receiver must, if practicable, consult the discloser about the release.
- (4) After releasing identifying information for a reason described in subsection (2)(b), the receiver must inform the discloser.
- (5) Anyone may seek information and guidance from an Ombudsman about the duty of confidentiality in this section.
- (6) In this section, law enforcement or regulatory agency includes bodies within the meaning of law enforcement agency given in section 3(1) of the Search and Surveillance Act 2012.
- (7) See section 27 for special rules relating to intelligence and security information.

Protection from retaliation or unfavourable treatment by the employer

An employer must not retaliate or threaten to retaliate against an employee because an employee has made, or intends to make, a protected disclosure. If this occurs the employee is able to take a personal grievance under the Employment Relations Act 2000.

A discloser who is treated less favourable than others in the same or similar circumstances may also be able access the anti-victimisation protections in the Humans Rights Act 1993. This applies if the person is not covered by the Employment Relations Act.

- (1) An employer must not retaliate, or threaten to retaliate, against an employee because the employee intends to make or has made a protected disclosure.
- (2) If an employer retaliates, or threatens to retaliate, against an employee in breach of subsection (1), the employee has a personal grievance under [section 103\(1\)\(k\)](#) of the Employment Relations Act 2000.
- (3) [Part 9](#) of that Act applies accordingly.
- (4) For the purposes of this section and [section 20\(1\)](#),—

employee has the meaning given in [section 6](#) of the Employment Relations Act 2000

employer has the meaning given in [section 5](#) of the Employment Relations Act 2000

retaliate means—

(a) doing any of the following:

- (i) dismissing the employee:
- (ii) refusing or omitting to offer or afford to the employee the same terms of employment, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available to other employees of the same or substantially similar qualifications, experience, or skills employed in the same or substantially similar circumstances:
- (iii) subjecting the employee to any detriment or disadvantage (including any detrimental or disadvantageous effect on the employee's employment, job performance, or job satisfaction) in circumstances in which other employees employed by the employer in work of that description are not or would not be subjected to such detriment or disadvantage:

- (iv) retiring the employee, or requiring or causing the employee to retire or resign:
- (c) organising to do anything described in paragraph (a).

No victimisation

- (1) A person (A) must not treat, or threaten to treat, another person (B) less favourably than A would treat other persons in the same or substantially similar circumstances because—
 - (a) B (or a relative or associate of B)—
 - (i) intends to make, or has made, a protected disclosure under this Act; or
 - (ii) has encouraged another person to make a protected disclosure; or
 - (iii) has given information in support of, or relating to, a protected disclosure; or
 - (b) A believes or suspects that B (or a relative or associate of B) intends to do, or has done, anything described in paragraph (a).
- (2) Subsection (1) does not apply if B knowingly made a false allegation or otherwise acted in bad faith.
- (3) A breach of subsection (1) is unlawful under section 66(3) of the Human Rights Act 1993.

Immunity from civil, criminal, and disciplinary proceedings

An employee who makes a protected disclosure is protected from liability from any civil, criminal or disciplinary proceedings because of making the disclosure.

- (1) Neither a discloser who makes a protected disclosure nor a receiver who refers a protected disclosure under section 16 is liable to any civil, criminal, or disciplinary proceeding because of making or referring the disclosure.
- (2) Subsection (1) applies despite any prohibition of or restriction on the disclosure of information under any legislation, rule of law, agreement, contract, internal procedure, oath, or practice.

Appendix 2 – Whistleblower Procedures

1. This procedure is to be read in conjunction with the PHS Whistleblower Policy.
2. The following steps apply to disclosures of misconduct made to PKF, and/or the PHS WPO (Whistleblower Protection Officer).

Escalation processes

3. The PHS People & Culture, who is also the PHS WPO, can be contacted in person or by:
 - a. Email: anita.cox@peninsulahotsprings.com
4. Where a disclosure relates to a member of the senior management team, then the disclosure should be made to:
 - a. WPO; or
 - b. Eligible recipients (refer above to their details); or
 - c. PKF (refer to policy for reporting channels); or
 - d. A third party such as the auditor.
5. Where a disclosure relates to the PHS Chief Executive Officer, Chair or another Board Member, then the disclosure should be made to:
 - a. PKF; or
 - b. WPO; or
 - c. A third party such as the auditor or a regulator, e.g., the Australian Securities Investment Commission (“ASIC”)

Roles and responsibilities

Whistleblower Protection Officer

6. The role and responsibilities of the PHS WPO have been designed to ensure appropriate separation from PHS management. The person undertaking the role should have the appropriate background, experience and skill set to manage the defined roles and responsibilities, as outlined below.
7. The role of the WPO must be independent of management
8. If the WPO receives a disclosure that implicates a person in their reporting line that is senior to them (other than the CEO, Chair of the Board or another Board member), then to manage any potential conflict of interest, the WPO should report the disclosure to either the CEO, the Chair of the Board or another Board member.
9. Where the above circumstances arise, the WPO (providing there is not conflict of interest – see below for further details if this occurs) should work with the appropriate officer or senior manager and the outsourced provider/s (if required) to manage the disclosure and progress it to an appropriate resolution
10. The WPO will also be responsible for:

- Assessing the risk of detriment or adverse action to the whistleblower and / or other implicated individuals
- Working with other key stakeholders at PHS (and PKF) to assess the disclosure to determine the type of misconduct involved and the most effective course of action. Where possible, the approach should be collaborative but on a “need to know” basis to ensure confidentiality is maintained
- Ensuring appropriate resources and suitably qualified individuals (internal or external) are engaged to conduct any investigation (if required)
- Managing the resolution of the disclosure, ensuring appropriate and secure communication to key internal stakeholders
- Considering the legal implications of disclosures of misconduct including, where appropriate, the need to undertake investigations under the protection of legal professional privilege or the requirement to notify the relevant regulator
- Advising the whistleblower that they can report their matter to a regulator such as the Australian Securities Investment Commission (“ASIC”).

CEO, Chairman of the Board or Board member

11. If the CEO, Chairman of Board or a Board member receives a whistleblower disclosure, they should work with the WPO and the outsourced provider (where necessary) to manage the disclosure and progress it to resolution. The steps would follow those outlined above for the WPO role.
12. If the disclosure is about any of the WPO or presents a conflict of interest for the WPO, then the office or senior manager that has received the complaint will work with the outsourced provider (if necessary) to manage the disclosure and progress it to resolution. (Further considerations for the officer or senior manager are outlined below)

Outsourced provider

13. In most circumstances, any disclosure received by PKF (or any other provider) will be provided to the WPO.
14. However, where a disclosure implicates the WPO, then PKF should provide the disclosure to the parties outlined in the escalation processes above.
15. Where a whistleblowing disclosure is made to PKF, the CEO, WPO, Chairman of the Board, or other Board member should work with PKF to assess and mitigate any risks that may be apparent from the details contained in the disclosure, such as but not limited to:
 - legal and/or reputational risks in respect of how the disclosure is to be handled
 - excessive time taken to appropriately resolve the disclosure
 - lack of skilled and experienced internal resources to effectively investigate the disclosure
 - the complexity of the subject matter of the disclosure which is related to the availability of appropriately skilled and experienced internal resources
 - confidentiality concerns associated with internally managing the disclosure

- the seniority of the person who is the subject of the disclosure
- actual or perceived conflicts of interest on the part of PHS employees managing the disclosure.