

Guidelines on 'Whistleblowing' and Public Interest Disclosures

Endorsed by Annual Conference 2017

1. What is Whistleblowing?

Whistleblowing is referred to as a protected disclosure or a public interest disclosure. Not all reports of serious wrongdoing or misconduct will be protected disclosures. It is strongly recommended that you seek good advice before proceeding to make a public interest disclosure, you may also wish to seek advice from the NSW Nurses and Midwives' Association.

2. What type of wrongdoing is defined as a public interest disclosure?

In New South Wales, the *Public Interest Disclosures Act 1994* (the Act) sets out the circumstances and requirements for making a protected disclosure. The object of the Act is to encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration, serious and substantial waste, government information contravention and local government pecuniary interest contravention in the public sector.

Corrupt Conduct is defined under sections 8 and 9 of the *Independent Commission Against Corruption Act 1988*:

Examples of corrupt conduct:

- Conduct that constitutes dishonest or partial exercise of official functions.
- The misuse of information or material acquired in the course of official functions whether or not for the benefit of the public official or any other person.
- Acting dishonestly or unfairly, or breaching public trust.

Maladministration means conduct that involves action or inaction of a serious nature that is:

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

Serious and Substantial Waste means serious and substantial waste of public money by a Public official or public authority.

Government Information Contravention means conduct of a kind that constitutes a failure to exercise functions in accordance with any provision of the *Government Information (Public Access) Act 2009 (GIPA)*.

3. What are the Requirements for a Public Interest Disclosure?

Public Interest disclosures will be protected only if the disclosure satisfies the applicable requirements of Part 2 of the Act:

- The person making the disclosure must honestly believe, on reasonable grounds, that the information disclosed shows or tends to show corrupt conduct, maladministration, serious and substantial waste of public money or government information contravention by the authority or any of its officers or by another authority or any of its officers; and
- The disclosure must be made by a 'public official'. All nurses and midwives who are employed by or under contract to provide services to or on behalf of NSW Health are defined as 'public officials' under Section 4A of the Act ; and



- The disclosure must be made to the principal officer of a 'public authority' to which the public official belongs or to an officer of the public authority to which the disclosure relates. NSW Health is defined as a 'public authority' under Section 4 of the Act; and
- The disclosure must be in accordance with any procedure established by the public authority for the reporting of allegations of corrupt conduct, maladministration, serious and substantial waste of public money or government information contravention by that authority or any of its officers. It is a mandatory requirement for all public authorities to have a policy and procedure for receiving, assessing and dealing with public interest disclosures. NSW Health Policy Directive PD2016_027 clearly sets out the rights and responsibilities of staff in relation to public interest disclosures.

4. **When can a Public Interest Disclosure be made to a Journalist or Member of Parliament?**

A public interest disclosure can be made to a Journalist or Member of Parliament only under the following circumstances:

- The Nurse or Midwife must have already made substantially the same disclosure to a public authority or an officer of a public authority; and
- The investigating authority to whom the disclosure was referred:
 - decided not to investigate the matter; or
 - the investigation was not completed within 6 months of the original disclosure; or
 - investigated the matter but not recommended the taking of any action; or
 - failed to notify the person making the disclosure, within 6 months of the disclosure being made, of whether or not the matter is to be investigated.

5. **Detrimental action or reprisals**

If a Nurse or Midwife has been subjected to detrimental action or reprisal as a result of a public interest disclosure they should immediately report to the principal officer of the public authority who received the disclosure. They can also contact the NSW Nurses and Midwives' Association for legal advice and assistance.

A person who takes detrimental action that is substantially in reprisal against another person making a public interest disclosure:

- Is guilty of an offence (Section 20 of the Act); and,
- Is guilty of misconduct in the performance of his or her duties as a public official; and,
- Is liable for damages (compensation) for any loss the other person suffers as a result of the detrimental action.

Detrimental action means action causing, comprising or involving any of the following:
Injury, damage or loss:

- Intimidation or harassment;
- Discrimination from, or prejudice in, employment;
- Disciplinary proceeding.



6. Making complaints that are not public interest disclosures

Not all reports of serious wrongdoing will be public interest disclosures. NSW Health and Local Health Districts have policies and procedures for the reporting of grievances, misconduct, bullying and harassment and concerns about clinicians in the workplace.

If you are in the public or private health care sectors, you can also make a complaint to the Health Care Complaints Commission (HCCC). In NSW section 98 of the *Health Care Complaints Act 1993* makes it an offence to intimidate or bribe anyone wishing to, or who has made a complaint to the HCCC. Complaints to the HCCC can be made about the professional conduct of a health practitioner or a health service which affects the clinical management or care of an individual client or a health service provider.

If you are a nurse working in the aged care sector there may be some capacity to utilise the Aged Care Complaints Scheme. The Australian Government introduced the Aged Care Complaints Scheme to manage complaints about Australian Government funded aged care services.

There are substantial penalties for persons and corporations engaged in discriminatory conduct for prohibited reasons as set out in *Part 6 of the Work Health and Safety Act 2011*.

APPENDIX A: Useful websites and contact details

INDEPENDENT COMMISSION AGAINST CORRUPTION

<http://www.icac.nsw.gov.au/>

HEALTH CARE COMPLAINTS COMMISSION

<http://www.hccc.nsw.gov.au/>

NSW MINISTRY OF HEALTH

<http://www.health.nsw.gov.au/>

http://www.health.nsw.gov.au/policies/pd/2016/pdf/PD2016_027

SAFEWORK NSW

<http://www.safework.nsw.gov.au>

AGED CARE COMPLAINTS COMMISSIONER

<http://www.agedcarecomplaints.gov.au>

HEALTH CARE COMPLAINTS COMMISSION

Tel: 02 9219 7444

Toll Free: 1800 043 159 (in NSW)

TTY: 02 9219 7555

Fax: 02 9281 4585

Email: hccc@hccc.nsw.gov.au

Postal Address: Locked Mail Bag 18, Strawberry Hills NSW 2012

SAFEWORK NSW

Tel: 13 10 50 or 02 4321 5000

TTY: 133 677 then ask for 13 10 50

Email: contact@safework.nsw.gov.au

Postal Address: Locked Bag 2906, Lisarow NSW 2252

Office Address: 92-100 Donnison Street, Gosford NSW 2250

AGED CARE COMPLAINTS COMMISSIONER

Tel: 1800 550 552

Email: enquiries@agedcarecomplaints.gov.au

Postal Address: Locked Bag 3, Collins Street East, Melbourne VIC 8003

Office Address: Level 18, 90 Collins Street, Melbourne VIC 3000

