Guidelines on **Whistleblowing and Nursing**

Re-endorsed by Annual Conference 2007

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1. **What is Whistleblowing?**

Whistleblowing is defined as the disclosure of information to protect public interest. It is usually disclosure of information:

- by former or current employees of an organisation;
- about misconduct, illegal, unethical or illegitimate practices that are within the control of their employers;
- to persons or an organisation that have the authority or power to take action.

The person or organisation to which the disclosure is made may be outside the normal internal reporting systems of the organisation where the person is or was employed.

Nurses and midwives may employ whistleblowing procedures in circumstances where illegal, unethical or illegitimate practices are occurring and where: internal mechanisms may not exist, or have failed to respond to complaints made regarding these practices; or where staff, genuinely fear victimisation or harassment if they attempt to use the internal procedures. The illegal, unethical or illegitimate practices may include:

practices that endanger the health and safety of the patients, residents and clients of the health and aged care systems, employees, or the broader community including negligence and unsafe work practices;

- serious and substantial wastage of resources;
- misrepresentation;
- corrupt conduct, including bribery, theft, fraud and other criminal conduct;
- breach of Commonwealth or State legislation or local authority by-laws;
- maladministration and gross mismanagement;
- repeated instances of breach of administrative procedures;
- dishonesty; and,
any other serious improper conduct or any other conduct which may cause detriment to the interests of the health or aged care organisation and community it serves.

It should be noted that concerns or complaints that relate to clinical standards should be made to the Health Care Complaints Commission or the relevant statutory registering authority.

Whistleblowing is recognised as a legitimate form of action in a democratic society. However, a major difficulty in dealing with protected disclosures involves protecting whistleblowers (or people otherwise associated with their disclosures) against detrimental action.

Worldwide experience has clearly shown that being a whistleblower is not easy. Making such disclosures has been seen as disloyalty to, or even an attack on, the employer and colleagues. In such circumstances, the response of both employers and colleagues has generally been to take or support detrimental action against the whistleblower in reprisal.

Such detrimental action has included:

- blaming the whistleblower for the problem;
- 'payback' complaints against the whistleblower;
- loss of opportunity for advancement;
- harassment and/or victimisation;
- disciplinary action or dismissal;
- legal action against the whistleblower, e.g. for defamation, breach of confidence; and,
- assault.

It is not uncommon that the experiences of a whistleblower which led them to make the disclosure, or that followed the making of the disclosure, have a significantly detrimental effect on them. This can result in attitudes and behaviours which employers, investigators and colleagues may find problematic.

In this context it is important to recognise that often 'difficult' whistleblowers were not born that way - they were created by the organisation or staff who are the subject of the disclosure. However, the fact that a whistleblower may be 'difficult' or exhibit challenging behaviours, does not mean the whistleblower or their disclosure should be ignored.

Nurses and midwives who become involved in whistleblowing procedures have the right to protection from discrimination and victimisation. Ensuring effective protection is a management obligation. The protections that are or may be available to whistleblowers can be divided into two categories:

- statutory protections, and
- administrative protections.

Appropriate and timely responses to employees' concerns and complaints may, if recommendations and findings are addressed, improve the health, safety and general well-being of employees and people accessing health services.
2. NSWNA Policy on Whistleblowing and Nursing

These Guidelines are consistent with the NSW Nurses' Association (NSWNA) Policy on Whistleblowing and Nursing and are intended to provide guidance about the rights and obligations of nurses and midwives in relation to whistleblowing, whether they are clinicians, health managers, sit on boards of directors or have other roles in the health and aged care systems.

The NSWNA has adopted the policy that:

1. Health care organisations and employers should have appropriate mechanisms in place for handling complaints, including procedures for disclosure.

2. As a general rule, internal procedures should be exhausted before any external agency is approached. This includes disclosure of information to the media and/or politicians, which should be seen as an avenue for resolution only when internal mechanisms have been followed.

3. Reporting mechanisms should outline the processes available to employees in situations when immediate supervisors are implicated in the misconduct or corrupt conduct or where the outcome of the investigation does not satisfy the employee's concerns. These processes could include identifying a senior person within the organisation responsible for responding to complaints or reports or nominating an independent external person or body to receive complaints or reports.

4. Reporting mechanisms should also include procedures to discourage the giving of false or misleading information with the intention that it will be acted on as a public interest disclosure.

5. All complaints or reports of misconduct or corrupt conduct must be investigated with procedural fairness as soon as practicable. Investigation by an independent person or body should be considered.

6. Health care managers should keep the person making the complaint or report informed about the progress of the investigation and, with due consideration of privacy principles and procedural fairness, any actions that are to take place.

7. Health care managers who receive complaints or reports of misconduct or corrupt conduct should maintain the confidentiality and privacy of the employee making the complaint or report, protect the employee from discrimination and ensure that the focus of investigation of the complaint remains on the information disclosed, not the person who has made the disclosure.

8. Members of the NSW Nurses' Association who make a complaint or report or who are the subject of a complaint or report should seek advice from the NSW Nurses' Association.
3. Blowing the whistle

3.1 Considering blowing the whistle?

As a general rule, internal procedures should be exhausted before any external agency is approached. This includes disclosure of information to the media and/or politicians, which should be seen as an avenue for resolution only when internal mechanisms have been followed. (NSWNA Policy on Whistleblowing and Nursing 2004).

The decision whether or not to blow the whistle about an organisation or individuals in an organisation is not an easy one. Often people do not feel able to discuss the matter with anyone for fear of not being believed, thinking that their situation is not serious enough or because they fear reprisals. Ultimately, everyone has to decide what is best for them, based on their particular circumstances. Your best protection is confidentiality – discretion is essential.

Things to consider before making a decision to blow the whistle or make a disclosure:

- Does the proposed disclosure advance the public interest and is not solely for personal or political gain or revenge?

- Do you have reasonable grounds for believing that the alleged conduct has actually occurred?

- Have you thought about the outcomes you want to achieve by making a disclosure and having the matter investigated, and are these outcomes realistic and achievable?

Possible outcomes include:

- making people responsible for their misconduct, illegal, unethical or illegitimate actions
- preventing the wrongdoing from continuing
- creating an opportunity to improve clinical, organisational or other practices and prevent future wrongdoing.

- Are you prepared for possible disapproval of your actions from fellow workers, friends and family?

- Have you identified sources of support from within and outside the workplace that you can rely on during the process?

- If you are a member of the NSW Nurses' Association have you sought advice from the Association?

- What are the safest and most appropriate avenues for you to make your disclosure without any or further reprisal?

- Have you exhausted all the internal reporting processes that should be in place in your organisation to enable you to report the problem you have identified before considering going to an external agency?
3.2 Once you have decided to make a disclosure

If you wish to make a disclosure, you should obtain a copy of your organisation's internal reporting policy. Your first steps should be to follow the procedures outlined in this policy.

The policy should set out how you should make the disclosure, e.g. whether you can report it orally or if you have to put it in writing. It should also give details about the person or persons within your organisation responsible for dealing with protected disclosures and how the disclosure will be handled.

Seek advice from the person or persons within the organisation responsible for dealing with protected disclosures. Be discreet when doing so.

If you are unable to obtain the policy or are reluctant to ask for it, or have misgivings about the person(s) who are nominated to manage the disclosure you can make a disclosure to the General Manager or the Chief Executive Officer (CEO) of your Area Health Service.

If you no longer work at the organisation or your disclosure relates to an organisation you do not and have not worked in, you can still report to the person or persons within that organisation responsible for dealing with protected disclosures or the General Manager or the CEO of that organisation. If the organisation is in the public sector and you are working in the public sector, you can also make the disclosure to the CEO of your own organisation about the other organisation, or to the Director General of Health.

It is strongly recommended that you seek good advice before proceeding. You may also wish to seek advice from the Nurses' Association or the NSW Ombudsman. Obtaining your own legal advice or approaching a support group are also options. The NSW Ombudsman has produced a useful brochure, Thinking about blowing the whistle? How to make a protected disclosure that you can obtain on the internet or by ringing the Ombudsman's office (details in Appendix B).

Do not broadcast your intention to make a disclosure. It may backfire. If you provide the information discreetly, the organisation will be more able to focus on the issues.

You will need enough evidence to show or tend to show that improper conduct or detrimental action has occurred. It is important that the information you provide is clear, accurate and factual. If you have documents, e.g. incident reports or letters, to support your allegations, try to make them available. This will help the organisation to focus on the real issues and fix real problems.

The people who may be implicated in your disclosure also have rights to confidentiality and procedural fairness throughout any disclosure and investigation processes.

Avoid speculation or emotive language: it is likely to divert attention from the real issues.
If you are making an anonymous disclosure, you will require comprehensive evidence to enable an investigation to be carried out.

If your allegations cannot be investigated without your identity being guessed or revealed, the person or agency to which you make the disclosure should:

- alert you before your identity, or information that may tend to identify you, is revealed as part of the investigation; and,
- take all reasonable steps to protect you against any reprisals in the workplace.

A person to whom you make a protected disclosure should keep information that might identify you confidential unless:

- you allow them to reveal the information, or
- fairness to other people requires the information to be revealed, or
- it is necessary to disclose information identifying you in order to investigate the matter, or
- it is in the public interest to reveal the information.

3.3 Detrimental action or reprisals

If someone takes detrimental action against you once you have made a disclosure:

- complain to the person to whom you made the disclosure, or to the person who is responsible for dealing with protected disclosures in your health or aged care organisation.

- if they do not help you or do not take your complaint seriously, complain to your General Manager or CEO. If you work in the public sector you can also complain to the NSW Ombudsman or to the Independent Commission Against Corruption; however, be aware that these bodies cannot prosecute anyone for taking detrimental action against you; as with other criminal prosecutions, this is a matter for the police, although you may be able to bring a private prosecution yourself.

3.4 External agencies available if internal processes fail

If your disclosure relates to a public sector health care or aged care service and you do not want to make a protected disclosure to someone within the organisation concerned, you can make a protected disclosure to:

- the Independent Commission Against Corruption (ICAC) (in relation to corrupt conduct);
- the NSW Ombudsman (in relation to maladministration);
• the Auditor-General (in relation to serious and substantial waste of public money).

This can be done under the legislative framework of the Protected Disclosures Act 1994. The Protected Disclosures Act 1994 provides specific legislative protections for nurses and midwives in the public health system who decide to take the major step of blowing the whistle in relation to any of the conduct outlined.

The way in which you are going to make your disclosure will determine whether you are protected under any legislation such as the Protected Disclosures Act 1994. However, the primary objective of the legislation is to ensure organisations have strong internal protections in place to protect whistleblowers. This legislation is discussed more fully in Section 5 of these Guidelines.

If you are in the public or private health care sectors, you can also make a complaint to the Health Care Complaints Commission (HCCC) but all the same protections may not apply. 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 Resolution Scheme. The Australian Government introduced the Aged Care Complaints Resolution Scheme to manage complaints about Australian Government funded aged care services. The legislative basis for the Complaints Resolution Scheme, Complaints Resolution Committees and Review Panels is contained in the Aged Care Act 1997 and the Aged Care Principles 1997.

The processes outlined in the legislation that supports the Scheme are based on resolution through negotiation, mediation or determination. If the mediator advises the matter is not amenable to mediation, or mediation is ultimately unsuccessful, the matter is referred to a Complaints Resolution Committee for Determination. Hearings are conducted by Complaints Resolution Committees, which are made up of three independent members with expertise and experience in aged care and complaints resolution. Committees are appointed to hear a matter by the Commissioner for Complaints. Determinations set out a course of action for and are legally binding on the service provider.

The organisation also has obligations under the common law and occupational health and safety legislation to make sure that whistleblowers do not suffer as a result of coming forward.
4. Organisational policies on whistleblower protection

4.1 Governance and management obligations

Health care organisations and employers should have appropriate mechanisms in place for handling complaints, including procedures for disclosure. (NSWNA Policy on Whistleblowing and Nursing 2004).

The way that health and aged care organisations support whistleblowing and protect whistleblowers is a key indication of the robustness of an organisation’s governance system. The elements of good governance are: leadership; direction and control; integrity; effectiveness; participation and inclusiveness; transparency and openness; stewardship; efficiency; and, accountability.

Good administrative practice generally dictates that General Managers and CEOs, boards of directors and management in both the public and the private health and aged care systems are responsible to ensure that bona fide whistleblowers are protected from both direct and indirect detrimental action. CEOs are also responsible to ensure that the culture of their agency is supportive of protected disclosures being made and of whistleblowers.

It is now obligatory for organisations in the public health system to have comprehensive policies and programs to support and protect people who wish to make a disclosure. These obligations arise from the Protected Disclosures Act 1994 and from mandatory policy directives issued by the Director-General for Health in January 2005.

A strong commitment to improving the quality and safety of the service, as well as integrity, transparency and accountability are required to establish whistleblower support and protection systems.

Effective complaints handling systems are an essential part of providing quality health and aged care. This applies equally to the management of both internal and external complaints. Effective complaints handling systems ensure that the following issues are addressed:

- The identification of serious problems and risks to patients, residents, clients, employees and other members of the community – whistleblowers are often best placed to bring to light serious problems within the management and operations of an organisation.

These problems tend to fall into two categories:

- unintentional problems - due to, for example, misjudgements, mistakes, delays, haste - primarily competence and resources issues, and,
- intentional problems due to misconduct, corruption and/or illegality - integrity issues.

The first category of problem can generally be identified through effective management and incident reporting systems, clinical review systems,
performance management, internal or external audit and complaints from health consumers, their families or friends. Even so, such problems are often only brought to light by nursing and midwifery staff who are prepared to draw attention to them.

The second category of problem is much harder to identify. It is not in the interests of the parties to such conduct to draw attention to it. It is in their interest to actively take steps to hide or disguise the problem and their involvement. Illegality, corrupt conduct and serious misconduct are usually only brought to light in one of four ways:

i. By very astute internal or external auditing or hands-on management/supervision that identifies an anomaly and traces it through to a cause.

ii. Where small errors or mistakes made by one person are noticed by others and followed up, leading to the discovery that a problem exists.

iii. Where a strong moral sense is affronted by conduct that is clearly wrong.

iv. Through whistleblowing by a disaffected employee or former employee, or a relative, friend or work colleague motivated by a breakdown in a relationship, a falling out or ongoing ill will - probably the more common way that integrity issues are brought to light.

- Occupational health and safety and common law duty of care obligations on employers to protect staff from victimisation and harassment.

- Inclusion of an early warning system to prevent serious problems and risks to patients, residents, clients, employees and other members of the community – an effective internal incident and ‘near misses’ reporting system that encourages all staff to safely report to their management who in turn treat the report seriously, follow it up, take action and provide information back to the reporter will hopefully help to prevent, as well as expose problems.

- Avoidance of the public embarrassment of going through investigation and/or prosecution by an external body - including the police, the Coroner, the Health Care Complaints Commission (HCCC), the Independent Commission Against Corruption (ICAC), Parliamentary Committee, the Commonwealth Aged Care Standards Complaints Resolution Scheme, the media or other forms of public inquiry.

- Avoidance of long term detriment to the organisation - such as the lowering of staff morale, loss of reputation in the community and ongoing negative media attention, often over a long period of time.
4.2 Establishment of effective internal reporting systems

It is vital that health care and aged care organisations establish effective internal reporting systems to facilitate the making of complaints or disclosures by their staff and the protection of those who have made such complaints. Staff must feel safe in using these systems and know that any matter they report or disclose is followed up and that action is taken where necessary or possible.

Internal reporting systems should:

- promote a culture that encourages and enables staff to report the problem internally;

- outline the processes available to employees in situations when immediate supervisors are implicated in the misconduct or corrupt conduct, including identifying a senior person within the organisation responsible for responding to complaints or reports or nominating an independent external person or body to receive complaints or reports;

- include procedures to discourage the giving of false or misleading information with the intention that it will be acted on as a public interest disclosure;

- emphasise that as a general rule, internal procedures should be exhausted before any external agency is approached; this includes disclosure of information to the media and/or politicians, which should be seen as an avenue for resolution only when internal mechanisms have been followed;

- recognise and outline the rights of any persons who may be the subject of a disclosure to confidentiality and procedural fairness;

- ensure that all complaints or reports of misconduct or corrupt conduct are investigated with procedural fairness being accorded to all parties, as soon as practicable; with investigation by an independent person or body being considered;

- ensure that the person making the complaint or report is kept informed about the progress of the investigation and, with due consideration of privacy principles and procedural fairness, any actions that are to take place;

- require that health care managers who receive complaints or reports of misconduct or corrupt conduct maintain the confidentiality and privacy of the employee making the complaint or report;

- oblige health care managers to protect the employee from any form of reprisal for reporting, ensuring that the focus of investigation of the complaint remains on the information disclosed, not the person who has made the disclosure;
• provide an alternative reporting channel for disclosures that could otherwise only be made by staff working in the public health system under the Protected Disclosures Act 1994 to the organisation's CEO;

• have systems in place to ensure that any outcomes of the investigation or recommendations made by the investigators are implemented;

• help ensure that staff who report a problem are adequately protected from detrimental/reprisal action;

• include information on what steps can be taken by the person who made the original complaint or report, where the outcome of the investigation does not satisfy the employee's concerns;

• be linked to and consistent with other systems in the organisation (such as quality and safety improvement, grievance procedures, bullying and harassment, performance management, occupational health and safety, equal employment opportunities etc);

• include an ongoing monitoring and review system to ensure the program is effective.

Successful internal reporting systems are an important tool which, if working effectively, can alert management to serious problems within an organisation.

A documented internal reporting system should be formally adopted as a policy of the agency. The essential elements of an internal reporting policy include:

a) expression of the organisation's support for whistleblowers (signed by CEO);

b) the purpose of the policy;

c) definition of key terms in the policy;

d) identification of internal reporting channels;

e) outline of the roles and responsibilities of those involved with clear identification of delegations from the CEO;

f) identification of external reporting channels including information about the Protected Disclosures Act 1994 (if a public sector organisation) and the specific disclosures protected by that Act;

g) outline of the rights of the people reporting;

h) outline of the rights of any people who are the subject of the reports;

i) outline of the protections that are available;

j) advice about the format for reports and disclosures;

k) the organisation's options for action;
l) confidentiality requirements;
m) notification of whistleblowers of action taken or proposed;
n) identification of avenues for obtaining further information.

4.3 Implementation

An internal reporting system is only effective if:

- There are well established arrangements for:
  - introducing staff to the system and ensuring all staff know how the system works
  - routinely introducing new staff to the system as part of a formal orientation process
  - staff easily obtaining detailed information about the reporting process, at short notice and without drawing attention to themselves.
- The system has a reputation for achieving change and improvements.
- There is no history of reprisal, harassment or victimisation for people reporting problems.

4.4 Monitoring and review

As with any key reporting program, there needs to be ongoing monitoring to ensure that the program is effective, to obtain feedback and to ensure that employees remain aware that the program is in place. The person responsible for the management of the whistleblower program should report on the number of disclosures received, a categorisation of the allegations reported and on outcomes to a peak organisational committee that has the relevant responsibility for that aspect of governance in the organisation.

Critical developments should be brought to the attention of the board of directors or the audit committee or equivalent, immediately.

5. The Protected Disclosures Act 1994 (NSW)

The Protected Disclosures Act 1994 is designed to deal with disclosures about serious matters about public administration. Public hospitals and other public health services come under the jurisdiction of this Act. In particular it covers reports of:

- corruption, or
- maladministration (which must be conduct of a serious nature), or
- serious and substantial waste of public money.
These terms are defined more clearly in Appendix A.

While the legislation has become known as the 'whistleblower' legislation, the Act has three primary objectives. These are: to enhance procedures for disclosure; protect the people making disclosures; and, to assist disclosures to be properly investigated.

A disclosure is not covered by the Act if:

- it was made frivolously or vexatiously;
- it was made primarily to avoid dismissal or disciplinary action;
- it contains intentionally false statements or is intended to mislead or attempt to mislead the recipient (these are offences under the Act);
- it questions the merits of government policy.

The Act makes it an offence to take detrimental action against a person substantially in reprisal for them making a protected disclosure. It is not in the public interest for whistleblowers to suffer as a result of coming forward.

The public health or aged care service about which a nurse or midwife makes a protected disclosure should take reasonable action to protect them against detrimental action. This is now an expectation of the NSW Government and the community watchdog bodies.

Protections for whistleblowers provided by the Act:

- they do not incur any liability for making a protected disclosure;
- they have a legal defence to any action taken against them for defamation or breach of confidence.

However, the Act will not protect whistleblowers if they break the law in other ways, for example, if they break into someone's office to obtain evidence to support their allegations.

The person or agency to which a disclosure has been made must tell the person who made the disclosure, within six months what action they have taken or propose to take. If there has been no response received within six months, the person or agency handling the disclosure can be contacted and asked what is happening. If the person who has made the disclosure does not get a response they can complain to the NSW Ombudsman.

If the person who made the disclosure is not happy with the response they can complain to the NSW Ombudsman or the Independent Commission Against Corruption (ICAC) about the way their protected disclosure was handled.

If any of the following have occurred:

- it has been decided that their allegations will not be investigated, or
- the investigation was not completed within six months, or
• no recommendations were made for action to be taken despite an investigation, or
• they were not notified within six months of whether or not the matter was to be investigated,
• the person who made the original disclosure can make a disclosure to a Member of Parliament or a journalist.

However, it is important that the person who made the disclosure seeks advice from the NSW Nurses' Association or a lawyer before they do this. To obtain protection for a disclosure to a Member of Parliament or a journalist, they must be able to prove that the disclosure is substantially true.

**END NOTES:**

6. vi Ibid.
7. vii Ibid.
8. viii Ibid.
10. x Ibid.
11. xi Ibid.
15. xv Department of Justice Victoria (2002) op cit.
16. xvi NSW Ombudsman (2004b) op cit, 1.
17. xvii NSW Ombudsman (2004b) op cit, 1.
18. xviii Ibid.
19. xix Ibid.
23. xxiii NSW Ombudsman (2004b) op cit, 3.
25. xxv NSW Ombudsman (2004a) op cit, C-3.

28. xxviii Ibid.
29. xxix Ibid.
32. xxxii Ibid.
33. xxxiii Ibid.
34. xxxiv NSW Ombudsman (2004a) op cit, A-6.
36. xxxvi NSW Ombudsman (2004b) op cit, 1.
38. xxxviii Ibid.
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APPENDIX A

Glossary of Terms

CORRUPT CONDUCT: is conduct of any person (whether or not a public official) that adversely affects, or could adversely affect, either directly or indirectly, the honest and impartial exercise of their official functions. It includes but is not limited to fraud, bribery, blackmail, theft, embezzlement, tax evasion, revenue evasion, illegal drug dealing, illegal gambling, forgery, violence, harbouring criminals and obtaining financial benefit by vice.

Corrupt conduct is also defined in sections 8 and 9 of the Independent Commission Against Corruption Act 1988. The definition used in the Act is intentionally quite broad - corrupt conduct is defined to include the dishonest or partial exercise of official functions by a public official. Conduct of a person who is not a public official, when it adversely affects the impartial or honest exercise of official functions by a public official, also comes within the definition. Corrupt conduct can take many forms. Some examples are:

- taking or offering bribes,
- using public resources for private purposes,
- awarding a tender to a company in which the public official has a financial interest,
- inappropriately releasing confidential information.

DETRIMENTAL ACTION: is action such as dismissing the person making the disclosure or taking disciplinary action against them and also includes any action:

- that causes them injury, damage or loss,
- that intimidates or harasses them, or
- that discriminates against them or disadvantages them in their employment.

MALADMINISTRATION: is defined in the Protected Disclosures Act 1994 as conduct that involves action or inaction of a serious nature that is:

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

Contrary to law includes:

- a decision or action contrary to the common law, an Act or a Regulation
- a decision or action ultra vires (i.e. the decision-maker had no power to make the decision or to do the act)
- a decision or action contrary to lawful and reasonable orders from people or agencies with authority to make or give such orders.
- a breach of natural justice or procedural fairness
- improperly exercising a delegated power (e.g. a decision or action not authorised by a delegation or acting under the direction of another)
- unauthorised disclosure of confidential information
- a decision or action induced or affected by fraud.

**Unreasonable** includes:
- a decision or action inconsistent with adopted guidelines or policies or with a decision or action which involves similar facts or circumstances not justified by any evidence, or so unreasonable that no reasonable person could so decide or act (i.e. irrational)
- an arbitrary, partial, unfair or inequitable decision or action
- a policy that is applied inflexibly and without regard to the merits of an individual case
- a decision or action that does not take into account all relevant considerations or that takes into account irrelevant considerations
- serious delays in making a decision or taking action
- failing to give notice of rights
- giving wrong, inaccurate or misleading advice leading to detriment
- failing to apply the law
- failing to rectify identified mistakes, errors, oversights or improprieties
- a decision or action based on incorrect or misinterpreted information
- failing to properly investigate.

**Unjust** includes:
- a decision or action not justified by any evidence or that is unreasonable
- a partial, unfair, inequitable or unconscionable decision or action.

**Oppressive** includes:
- an unconscionable decision or action
- where the means used are not reasonably proportional to the ends to be achieved
- an abuse of power, intimidation or harassment.

**Improperly discriminatory** includes:
- the inconsistent application of a law, policy or practice when there is no reasonable, justifiable or appropriate reason to do so
- applying a distinction not authorised by law, or failing to make a distinction which is authorised or required by law.

**Based wholly or partly on improper motives** includes:
- a decision or action for a purpose other than that for which a power was conferred (i.e. in order to achieve a particular outcome)
- a conflict of interest
- bad faith or dishonesty
- seeking or accepting gifts or benefits in connection with performance of official duties
- misusing public property, official services or facilities.
PROTECTED DISCLOSURE: Disclosures are protected if they concern corrupt conduct, maladministration or serious or substantial waste of public funds, and meet the criteria for being accepted as a protected disclosure under the Protected Disclosures Act 1994 (NSW).

SERIOUS AND SUBSTANTIAL WASTE: The term serious and substantial waste is not defined in the Protected Disclosures Act. The Auditor-General provides the following working definition:

Serious and substantial waste refers to the uneconomical, inefficient or ineffective use of resources, authorised or unauthorised, which results in a loss/wastage of public funds/resources.

In addressing any complaint of serious and substantial waste regard will be had to the nature and materiality of the waste. For example:

**Absolute:** Serious and substantial waste might be regarded in absolute terms where the waste is regarded as significant, for example $200,000.

**Systemic:** The waste indicates a pattern which results from a system weakness within public authorities.

**Material:** The serious and substantial waste is/was material in terms of the public authority's expenditure or a particular item of expenditure or is/was material to such an extent so as to affect a public authority's capacity to perform its primary functions.

**Material by nature not amount:** The serious and substantial waste may not be material in financial terms but may be significant by nature. That is it may be improper or inappropriate. Alternatively, this type of waste may constitute 'maladministration' as defined in the Protected Disclosures Act.

**Note:** It is possible that in assessing the seriousness of waste or administrative conduct for the purposes of whether either is covered by the Act, differences in the size, budgets, responsibilities of agencies may be taken into account (what is serious for a small agency may not be so serious for a large agency).

Waste can take many forms, for example:

- misappropriation or misuse of public property;
- the purchase of unnecessary or inadequate goods and services;
- too many staff being employed in a particular area, incurring costs which might otherwise have been avoided;
- staff being remunerated for skills that they do not have, but are required to have under the terms or conditions of their employment;
- programs not achieving their objectives and therefore the costs being clearly ineffective and inefficient.

Waste can result from such things as:

- the absence of appropriate safeguards to prevent the theft or misuse of public property;
- purchasing procedures and practices which fail to ensure that goods and services are necessary and adequate for their intended purpose; and,
- purchasing practices where the lowest price is not obtained for comparable goods or services.¹

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**APPENDIX B**

**Useful websites and contact details - whistleblowing**

**Websites and relevant electronic documents:**

**INDEPENDENT COMMISSION AGAINST CORRUPTION**

**HEALTH CARE COMPLAINTS COMMISSION**

**NSW HEALTH POLICIES**
- Protected Disclosures Procedures in Health Services (Policy and Guidelines for the Development of)
- Protected Disclosures Policy - NSW Department of Health

**NSW LEGISLATION**
- Health Care Complaints Act 1993
- Health Services Act 1997
- Independent Commission Against Corruption Act 1988
- Nurses and Midwives Act 1991
- Private Hospitals and Day Procedures Centres Act 1988
- Protected Disclosures Act 1994
- Occupational Health and Safety Act 2002

**NSW OMBUDSMAN**
- Protected Disclosure Guidelines 5th Edition -
- Thinking about blowing the whistle: How to make a protected disclosure.

**WORKCOVER**
AGED CARE COMPLAINTS RESOLUTION SCHEME

- Aged Care Act 1997-
- Aged Care Principles 1997-
- Aged Care Resolution Scheme -

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