



NEW SOUTH WALES NURSES AND MIDWIVES' ASSOCIATION
AUSTRALIAN NURSING AND MIDWIFERY FEDERATION NEW SOUTH WALES BRANCH



GUIDELINES ON WHISTLEBLOWING AND PUBLIC INTEREST DISCLOSURES

Re-Endorsed by Annual Conference 2019

NSW Nurses and Midwives' Association
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Guidelines on Whistleblowing and Public Interest Disclosures

WHAT IS WHISTLEBLOWING?

Whistleblowing or public interest disclosure was formerly referred to as a protected disclosure. In New South Wales, a public interest disclosure is a disclosure of wrongdoing which meets the requirements for protection under Part 2 of the *Public Interest Disclosures Act 1994 (the Act)*. Not all reports of serious wrongdoing or misconduct will be protected disclosures. It is strongly recommended that you seek advice before proceeding to make a public interest disclosure, you may also wish to seek legal advice from the NSW Nurses and Midwives' Association.

WHAT TYPE OF WRONGDOING IS DEFINED AS A PUBLIC INTEREST DISCLOSURE?

A public interest disclosure is protected only if it satisfies the applicable requirements of Part 2 of the Act. The object of the Act is to encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration, serious and substantial waste or government information contravention and local government pecuniary interest contravention in the public sector.

Corrupt Conduct

Corrupt Conduct is broadly defined under sections 8 and 9 of the *Independent Commission Against Corruption Act 1988*. The main element of corruption is the misuse of public office.

- Conduct that constitutes dishonest or partial exercise of official functions power or position resulting in one person being disadvantaged over another.
- 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

Maladministration is defined under Section 11(2) of the Act to mean 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

Serious and Substantial Waste is defined under Section 12 of the Act to mean serious and substantial waste of public money by a Public official or public authority.

Government Information Contravention

Government Information Contravention is defined under Section 4 of the Act to mean 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)*.

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 procedure, rights and responsibilities of staff in relation to public interest disclosures.

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.

Detrimental actions or reprisals

If a Nurse or Midwife believes they have 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.

Making complaints that are not public interest disclosures

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



In New South Wales, complaints to the Health Care Complaints Commission (HCCC) can be made by a member of the public 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. 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.

The *Aged Care Act 1997* imposes a responsibility on approved aged care providers to report allegations or suspicion of reportable assault and to take reasonable measures to require each of its staff members to report any suspicion of assault.

Nurses and Midwives have mandatory reporting obligations under Section 141 of the *Health Practitioner Regulation National Law (NSW)* and Section 27 of the *Children and Young Persons (Care And Protection) Act 1998*.

Employees reporting health and safety issues. 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*.

NSWNMA Branch Officials regarding Public Interest Disclosures

In the capacity of assisting a NSWNMA member:

If a Branch Official in his/her capacity of assisting a member becomes aware the member intends to make a public interest disclosure, the Branch Official should:

- inform the member that the NSWNMA has guidelines covering this issue which the member should read before taking any further actions; and that these guidelines are available to download at www.nswnma.asn.au; and
- advise the member that they should contact the NSWNMA to seek legal advice.

The NSWNMA Rules do not impose any obligation on the Branch Official to become involved in any such matter.

In their capacity as an employee:

- If a Branch Official in his/her capacity as an employee wishes to make a public interest disclosure they should follow the guidelines as outlined in this document.

NOTE

This policy should be read in conjunction with the NSW Nurses and Midwives' Association Policy on Whistleblowing and Public Interest Disclosures.



RESOURCES

Useful websites and contact details

HEALTH CARE COMPLAINTS COMMISSION

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

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

NSW MINISTRY OF HEALTH

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

AGED CARE COMPLAINTS COMMISSIONER

<https://www.agedcarequality.gov.au/>

INDEPENDENT COMMISSION AGAINST CORRUPTION

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

SAFEWORK NSW

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