



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



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# **GUIDELINES ON WHISTLEBLOWING AND PUBLIC INTEREST DISCLOSURES**

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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 (NSWNMA).

NSWNMA Branch Officials assisting a member who 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 action: and that these guidelines are available to download at [www.nswnma.asn.au](http://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.

## THE ROLE OF THE OMBUDSMAN

The NSW Ombudsman has oversight of the Act and provides advice, assistance and training to public authorities, investigating authorities and public officials on any matters relevant to the Act.

## 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 in sections 7 and 8 of the *Independent Commission Against Corruption Act 1988*, section 9 sets out the limitations on the nature of corrupt conduct. 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 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 the policy and procedure established by the public authority for the reporting of allegation 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 clearly sets out the procedure, rights and responsibilities of staff in relation to public interest disclosures.
- The investigating authority, public authority or officer to whom a disclosure is made under the Act, or if the disclosure is referred, must notify the person who made the disclosure, within six months of the disclosure being made, of the action taken or proposed to be taken in respect of the disclosure.

## 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 NSWNMA 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 proceedings

## 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. Workers have a number of responsibilities under the *Work Health and Safety Act 2011* including keeping themselves and fellow workers safe and reporting unhealthy or unsafe practices to their supervisor or health and safety representative. There are substantial penalties for persons and corporations engaged in discriminatory conduct for prohibited reasons including if a worker has raised or intends to raise a health and safety matter, as set out in Part 6 of the *Work Health and Safety Act 2011*.

### NOTE

This Guideline should be read in conjunction with the NSWNMA Policy on Whistleblowing and Public Interest Disclosures.

#### ***The Public Interest Disclosure Bill 2021***

On 14 October 2021, the *Public Interest Disclosures Bill 2021* (the PID Bill) was introduced into the NSW Legislative Council. On commencement, the new PID Bill will replace the *Public Interest Disclosures Act 1994* in its entirety and represents a significant enhancement to whistleblower protections in NSW.