

Corrupt Conduct - Reporting to Independent Commission Against Corruption (ICAC)

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Functional Sub group Corporate Administration - Governance
Personnel/Workforce - Conduct and ethics

Summary Articulates the requirement for NSW Health entities to report possible corrupt conduct to ICAC.

Replaces Doc. No. Corrupt Conduct-Reporting Possible Corrupt Conduct to the Independent Commission Against Corruption [PD2005_173]

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Applies to Area Health Services/Chief Executive Governed Statutory Health Corporation, Board Governed Statutory Health Corporations, Affiliated Health Organisations - Non Declared, Affiliated Health Organisations - Declared, Public Health System Support Division, NSW Ambulance Service, NSW Dept of Health

Audience All staff

Distributed to Public Health System, NSW Ambulance Service, NSW Department of Health

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Status Active

Director-General

This Policy Directive may be varied, withdrawn or replaced at any time. Compliance with this directive is **mandatory** for NSW Health and is a condition of subsidy for public health organisations.

CORRUPT CONDUCT REPORTING TO THE INDEPENDENT COMMISSION AGAINST CORRUPTION (ICAC)

PURPOSE

This policy document prescribes policy and procedures that requires all NSW Health Chief Executives to report possible corrupt conduct in accordance with the *Independent Commission Against Corruption Act 1988 (the Act)*.

The Act imposes an obligation on Chief Executives of NSW Health Organisations, as “Principal Officers”, to report possible corrupt conduct to the Independent Commission Against Corruption (ICAC). The quality of information reported to ICAC is a significant factor influencing its effectiveness in fighting corruption.

MANDATORY REQUIREMENTS

Any matter that the Chief Executive suspects on reasonable grounds concerns or may concern corrupt conduct as described in Section 8 of the Act must be reported to ICAC.

An effective internal reporting system (refer PD2005_135 Protected Disclosures Procedures in Health Services) must be established in each NSW Health organisation to facilitate the flow of corruption reports to the organisation’s Chief Executive.

IMPLEMENTATION

Roles and Responsibilities

Chief Executives (however designated) are required:

- As “Principal Officers” (see Definitions Section) (under section 11 of the ICAC Act) to report any matter that he/she suspects on reasonable grounds, concerns or may concern corrupt conduct (see Definitions Section) to ICAC. The words *suspects on reasonable grounds* mean there is a real possibility that corrupt conduct is or may be involved. Certainly, proof is not necessary. In some cases you may hold the suspicion even though no individual has been identified. Such matters should be reported. A report should be made as soon as you have a reasonable suspicion that corrupt conduct may have occurred or may be occurring. The Act contains no provision permitting delay in reporting. The ICAC prefers matters to be reported prior to disciplinary or other action being taken. Matters must be reported to the ICAC regardless of any duty of secrecy or other restriction on disclosure.
- To ensure that an effective internal reporting system is operating and communicated within the organisation.
- To advise the Department’s Corporate Governance and Risk Management Branch of any instance of possible corrupt conduct reported to ICAC that has serious NSW Health wide implications, involves innovative (not encountered previously) corrupt conduct that should be brought to the attention of other health organisations or matters that must be reported in accordance with policy directive [PD2006_025](#) *Child Related Allegations, Charges and Convictions Against*

- *Employees and [PD2006_026 Criminal Allegations, Charges and Convictions Against Employees](#). This requirement does not abrogate the Chief Executive's responsibility for investigating and managing allegations or complaints of corrupt conduct.*
- For those Chief Executives required to complete a Corporate Governance Statement, certification is required that all instances of corrupt conduct have been reported to ICAC. The number of instances reported to ICAC must also be quantified in the statement.
- To ensure that corrupt conduct that qualifies as a SAC 1 (e.g. fraud over \$100,000) is reported to the Department via a Reportable Incident Brief (RIB).

Individual Employees

- Must report possible corrupt conduct through their organisation's internal reporting system or the external reporting systems available on ICAC's website. Employees should also be aware of protection provided under the Protected Disclosures Act – see Policy Directive PD2005_135 and refer to local procedures.

Corporate Governance and Risk Management Branch, Department of Health (CGRM) will:

- Receive reports from Chief Executives of serious, unprecedented or systemic corrupt conduct where the reported instance of corruption has potential to recur across other health organisations within NSW Health and promulgate the lessons learnt from the reports to those organisations.
- Review Corporate Governance Statements to ensure that Chief Executives have certified that all instances of corrupt conduct have been reported to ICAC.
- Review SAC 1 corporate reportable incident briefs (RIBs) of a corrupt conduct nature reported to the Department.

Further information on the responsibilities of public officials and principal officers, as well as ICAC policies and procedures, are detailed in the Associated Documents section of this policy directive and by links to ICAC.

REVISION HISTORY

Version	Approved by	Amendment notes
May 2000 (PD2005_173)	Director-General	New policy
June 2009 (PD2009_034)	Deputy Director General Health System Support	Revision of Policy Directive PD2005_173. Removes the requirement that NSW Health organisations have to report every incident to the Department of Health.

ASSOCIATED DOCUMENTS

1. Associated Document: Section 1 Definitions;
Section 2 Website;
Section 3 Related Policies

SECTION 1 DEFINITIONS

A. Corrupt Conduct

The Independent Commission Against Corruption Act (S8) defines corrupt conduct as:

- (1)
 - (a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or
 - (b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or
 - (c) any conduct of a public official or former public official that constitutes or involves a breach of public trust, or
 - (d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.
- (2) Corrupt conduct is also any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority and which could involve any of the following matters:
 - (a) official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition);
 - (b) bribery;
 - (c) blackmail;
 - (d) obtaining or offering secret commissions;
 - (e) fraud;
 - (f) theft;
 - (g) perverting the course of justice;
 - (h) embezzlement;
 - (i) election bribery;
 - (j) election funding offences;
 - (k) election fraud;
 - (l) treating;
 - (m) tax evasion;
 - (n) revenue evasion;
 - (o) currency violations;
 - (p) illegal drug dealings;
 - (q) illegal gambling;
 - (r) obtaining financial benefit by vice engaged in by others;
 - (s) bankruptcy and company violations;
 - (t) harbouring criminals;
 - (u) forgery;
 - (v) treason or other of offences against the Sovereign;
 - (w) homicide or violence;
 - (x) matters of the same or a similar nature to any listed above;
 - (y) any conspiracy or attempt in relation to any of the above.

- (3) Conduct may amount to corrupt conduct under this section even though it occurred before the commencement of this subsection, and it does not matter that some or all of the effects or other ingredients necessary to establish such corrupt conduct occurred before that commencement and that any person or persons involved are no longer public officials.
- (4) Conduct committed by or in relation to a person who was not or is not a public official may amount to corrupt conduct under this section with respect to the exercise of his or her official functions after becoming a public official.
- (5) Conduct may amount to corrupt conduct under this section even though it occurred outside the State or outside Australia, and matters listed in subsection (2) refer to: (a) matters arising in the State or matters arising under the law of the State, or (b) matters arising outside the State or outside Australia or matters arising under the law of the Commonwealth or under any other law.
- (6) The specific mention of a kind of conduct in a provision of this section shall not be regarded as limiting the scope of any other provision of this section.

B. NSW Health "Principal Officers"

The following positions are considered to be "principal officers":

- (a) the Director-General, Department of Health, and also while acting as a corporation sole in respect to the Health Administration Corporation;
- (b) the chief executive (however designated) of a public health organisation as listed in Schedules 1, 2 or 3 of the Health Services Act 1997;
- (c) the chief executive of the Ambulance Service of NSW;
- (d) the chief executive (however designated) of the Mental Health Review Tribunal and the NSW Institute of Psychiatry;
- (e) Chairperson or President of the boards administered by the Health Professional Registration Board.

SECTION 2 INFORMATION FROM ICAC-WEB LINKS

Further information from ICAC

All policies and procedures relating to reporting corrupt conduct to ICAC can be accessed on ICAC's website: <http://www.icac.nsw.gov.au>

Information for public officials:

<http://www.icac.nsw.gov.au/go/reporting-corruption/information-for-public-officials>

Information for principal officers:

<http://www.icac.nsw.gov.au/go/reporting-corruption/information-for-principal-officers>

SECTION 3 RELATED POLICY DIRECTIVES

[PD2006_025](#) *Child Related Allegations, Charges and Convictions Against Employees*

[PD2006_026](#) *Criminal Allegations, Charges and Convictions Against Employees.*