

# Policy Directive



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

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**Functional Sub group** Corporate Administration - Governance

**Summary** This Policy Directive articulates the requirements for NSW Health Principal Officers to report suspected corrupt conduct to ICAC.

**Replaces Doc. No.** Corrupt Conduct - Reporting to the Independent Commission Against Corruption (ICAC) [PD2011\_070]

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**Applies to** Local Health Districts, Board Governed Statutory Health Corporations, Chief Executive Governed Statutory Health Corporations, Specialty Network Governed Statutory Health Corporations, Affiliated Health Organisations, Public Health System Support Division, NSW Ambulance Service, Ministry of Health, NSW Health Pathology, Cancer Institute (NSW)

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**Policy Manual** Not applicable

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### 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This Policy Directive may be varied, withdrawn or replaced at any time.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 CORRUPTION TO INDEPENDENT COMMISSION AGAINST CORRUPTION (ICAC)**

### **PURPOSE**

This Policy Directive and the associated procedures establish procedures which require all NSW Health Principal Officers to report possible corrupt conduct in accordance with the *Independent Commission Against Corruption Act 1988* (the Act) and to provide a copy of all such reports to the NSW Ministry of Health.

The Act imposes an obligation on Principal Officers of NSW Health Organisations, 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 a Principal Officer suspects on reasonable grounds concerns or may concern corrupt conduct (as defined by sections 8 and 9 of the Act) must be reported to ICAC in accordance with section 11 of the Act.

Each NSW Health organisation must establish an effective internal reporting system to facilitate the flow of corruption reports to the organisation's Chief Executive.

All notifications made to ICAC should be forwarded at the same time to the Compliance Unit, Legal and Regulatory Services Branch, NSW Ministry of Health.

### **IMPLEMENTATION**

#### **Principal Officers**

Principal Officers of NSW Health organisations are required under section 11 of the ICAC Act to report to ICAC any matter that they suspect, on reasonable grounds, concerns or may concern corrupt conduct.

Principal Officers are also required:

- To ensure that an effective internal reporting system is operating and communicated within the organisation
- To advise the NSW Ministry of Health's Compliance Unit, Legal and Regulatory Services Branch of any instance of possible corrupt conduct reported to ICAC, including matters that must also be reported in accordance with policy directive PD2016\_025 *Child Related Allegations, Charges and Convictions Against Employees*.  
To manage allegations, assess and investigate complaints of corrupt conduct as required
- When completing annual Corporate Governance Attestation Statements, to certify that all instances of corrupt conduct have been reported to ICAC and are 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 NSW Ministry of Health via a Reportable Incident Brief (RIB).

### All staff

All staff are required to report possible corrupt conduct through their organisation's internal reporting system or the external reporting systems available on ICAC's website.

Staff should also be aware of protection provided in relation to reporting serious wrongdoing, including corruption, under the *Public Interest Disclosures Act 1994* – see Policy Directive PD2016\_027 Public Interest Disclosures.

### NSW Ministry of Health

The NSW Ministry of Health will:

- Receive a copy of all ICAC notifications
- Review Corporate Governance Attestation Statements. Review SAC 1 corporate reportable incident briefs (RIBs) relating to corrupt conduct reported to the NSW Ministry of Health.

Further information on the responsibilities of public officials and Principal Officers to report suspected corruption are detailed in the procedures section of this policy directive and via links to the ICAC website.

## REVISION HISTORY

Version	Approved by	Amendment notes
July 2016 (PD2016_029)	Deputy Secretary, Governance, Workforce and Corporate	Updates the policy to reflect legislative amendments to the ICAC Amendment Act 2015 affecting the definition of corrupt conduct.
November 2011 (PD2011_070)	Deputy Director General Governance, Workplace and Corporate Services	Reinstates the requirement for Chief Executives to provide copies of ICAC notifications to the NSW Ministry of Health. Replaces PD2009_034.
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 <b>every</b> incident to the Department of Health.
May 2000 (PD2005_173)	Director General	New policy

## ATTACHMENTS

1. Corrupt Conduct – Reporting to ICAC: Procedures.

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**Issue date:** July 2016

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## 1 BACKGROUND

### 1.1 About this document

Corrupt conduct, as defined in the *Independent Commission Against Corruption Act 1988* (the Act), is deliberate or intentional wrongdoing, not negligence or a mistake. It has to involve or affect a NSW public official or public sector organisation.

This policy sets out the definition of corruption and makes clear that, for reporting suspected corruption to the Independent Commission Against Corruption (ICAC), the Principal Officer is to make a decision whether the suspected corruption meets the conditions in section 8 and 9 of the Act.

Section 11 of the Act requires Principal Officers to report to the Commission any matter where there is a reasonable suspicion that corrupt conduct has occurred or may occur.

### 1.2 Key definitions

**Corrupt Conduct** - The ICAC Act (s8 and s9) defines corruption as:

8 (1) *Corrupt conduct is:*

- (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,*

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- (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 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.*

*(2A) Corrupt conduct is also any conduct of any person (whether or not a public official) that impairs, or that could impair, public confidence in public administration and which could involve any of the following matters:*

- (a) collusive tendering,*
- (b) fraud in relation to applications for licences, permits or other authorities under legislation designed to protect health and safety or the environment or designed to facilitate the management and commercial exploitation of resources,*
- (c) dishonestly obtaining or assisting in obtaining, or dishonestly benefiting from, the payment or application of public funds for private advantage or the disposition of public assets for private advantage,*
- (d) defrauding the public revenue,*
- (e) fraudulently obtaining or retaining employment or appointment as a public official.*

*(3) Conduct may amount to corrupt conduct under subsection (1), (2) or (2A) even though it occurred before the commencement of that subsection, and it does not matter that some or all of the effects or other ingredients necessary to establish such*

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*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. This subsection extends to a person seeking to become a public official even if the person fails to become 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) or (2A) 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 or expanding the scope of any other provision of this section.*

### **9 Limitation on nature of corrupt conduct**

- (1) *Despite section 8, conduct does not amount to corrupt conduct unless it could constitute or involve:*
- (a) a criminal offence, or*
  - (b) a disciplinary offence, or*
  - (c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or*
  - (d) in the case of conduct of a Minister of the Crown or a member of a House of Parliament—a substantial breach of an applicable code of conduct.*
- (2) *It does not matter that proceedings or action for such an offence can no longer be brought or continued, or that action for such dismissal, dispensing or other termination can no longer be taken.*

**Disciplinary Offence** - includes any misconduct, irregularity, neglect of duty, breach of discipline or other matter that constitutes or may constitute grounds for disciplinary action under any law (see also Policy Directive PD2014\_042 (section 8.2) *Managing Misconduct*).

**Health organisation** – For the purposes of this policy directive, a health organisation as defined under the *Health Services Act 1997*, NSW Ambulance, Health Infrastructure, HealthShare NSW, eHealth NSW, NSW Health Pathology, any other administrative unit of the Health Administration Corporation and all organisations under the control and direction of the Minister for Health or the Minister for Mental Health.

**NSW Health** – refers collectively to health organisations

**Principal Officer** – the principal officer of a public authority is the person who is the head of the public authority, its most senior officer or the person normally entitled to



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preside at its meetings. In NSW Health, it is usually the Chief Executive of a health organisation, or the Secretary, NSW Health (in relation to the NSW Ministry of Health).

### 1.3 Legal and legislative framework

[Section 11](#) of the ICAC Act applies to principal officers of all public authorities. Principal officers must report to the ICAC any matter that they suspect on reasonable grounds concerns, or may concern, corrupt conduct.

The jurisdiction of ICAC extends to all NSW public sector agencies (except the NSW Police Force) and employees, including government departments, local councils, members of Parliament, ministers, the judiciary and the governor. The ICAC's jurisdiction also extends to those performing public official functions.

The principal functions of ICAC are:

- To investigate and expose corrupt conduct in the NSW public sector
- To actively prevent corruption through advice and assistance, and
- To educate the NSW community and public sector about corruption and its effects.

### 1.4 Related Policies

[PD2015\\_049](#) *Code of Conduct*

[PD2016\\_025](#) *Child Related Allegations, Charges and Convictions Against Employees*

[PD2014\\_042](#) *Managing Misconduct*

[PD2016\\_027](#) *Public Interest Disclosures*

Under the NSW Health Code of Conduct, (s4.3) all staff must report to a more senior member of staff, (or to the appropriate external statutory body) any misconduct by others – including corruption - of which they become aware.

Under the *Public Interest Disclosures Act 1994*, staff who report certain categories of serious wrongdoing in their workplace, including corruption, are entitled to protection from detrimental action as a result of having made the report. More information can be found in the *NSW Health Public Interest Disclosures* policy.

## 2 REPORTING SUSPECTED CORRUPT CONDUCT

### 2.1 The requirement to report suspected corruption

#### 2.1.1 Principal Officers

Any person may make a report of corrupt conduct to ICAC, however pursuant to s11 of the ICAC Act, Principal Officers of agencies are required to report all instances of corruption to ICAC where there is a reasonable suspicion that corrupt conduct has, or may have occurred.

Corrupt conduct is conduct (as defined in s8 of the ICAC Act) which could constitute or involve a criminal offence, a disciplinary offence or reasonable grounds for dismissal.

Reasonable suspicion means that there is a reasonable possibility that corruption is, or may be, involved. No proof is required. There is no need to assess whether the corruption is “serious” when deciding whether or not to report, although it is important to bear in mind the provisions of s9 of the Act, which provide that conduct would not be considered “corrupt” unless it could constitute a criminal offence, a disciplinary offence or reasonable grounds for dismissal.

This means that conduct which meets the requirements of s8 but is so trivial in nature that it would not constitute grounds for disciplinary action would not meet the definition of corrupt conduct.

There is no provision in the ICAC Act to permit a delay in reporting. It is advisable to report the suspected corrupt conduct to ICAC early, as to delay could result in a loss of investigative opportunities for the ICAC.

The obligation to report the suspected corrupt conduct to ICAC overrides any obligations of confidentiality. As the duty is a statutory duty, a principal officer is protected from criminal or civil liability when making a report under section 11.

### **2.1.2 All staff**

In accordance with the core values of NSW Health – Collaboration, Openness, Respect and Empowerment – all NSW Health staff who become aware of wrongdoing, including corruption, should report it to a more senior member of staff in accordance with their organisations internal reporting system.

The NSW Health Code of Conduct, (s4.3.21) requires all staff to report any misconduct by others of which they become aware to a more senior member of staff (or to the appropriate external statutory body).

NSW Health strives to create a culture where staff are confident that they will be protected from any detrimental action as a result of reporting suspected corrupt conduct. Staff who report serious wrongdoing, including corruption, in their workplace are entitled to protection from reprisal under the *Public Interest Disclosures Act 1994*, and the *NSW Health Public Interest Disclosures Policy*, Policy Directive PD2016\_027.

## **3 FURTHER INFORMATION ABOUT MANAGING SUSPECTED CORRUPTION**

### **3.1.1 Reporting to other agencies**

Reporting a matter to ICAC does not affect any obligations which may require the matter to be reported to other agencies, for example the NSW Police force, or the NSW Ombudsman’s office.

### **3.1.2 Taking other action following the report**

Having reported a matter to ICAC does not prevent appropriate action being taken at a local level, for example internal investigation or disciplinary action. In all matters it will be important to undertake a preliminary risk assessment, to determine what, if any, immediate management action should be taken.

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Following an assessment about what action will be taken, ICAC will advise the person who made the report of the outcome of the decision. The Manager Assessments at ICAC is able to advise when a decision is likely to be made on a report.

It is important to communicate with ICAC in relation to matters where immediate local action may be warranted, such as where concerns relating to patient safety or loss mitigation arise.

Usually ICAC advises agencies to await an assessment decision from ICAC in relation to the report prior to taking further steps to investigate the matter or proceed with disciplinary action where appropriate to avoid unintentionally impeding any potential ICAC investigation. Where immediate action is required, ICAC may be able to either fast-track the assessment process or take steps to ensure that any subsequent investigation will not be impeded by the local action.

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

Information for Principal Officers:

<http://www.icac.nsw.gov.au/principal-officers-duty-to-report>

Template reporting form for s11 reports:

[Section 11 reporting template](#)

Information for public officials:

[Protections for public officials](#)

## 4 REPORTING TO THE NSW MINISTRY OF HEALTH

Principal Officers should forward a copy of their section 11 notification to the Compliance Unit, NSW Ministry of Health as soon as practical after making the notification. section 11 notifications can be forwarded via email to [compliance@doh.health.nsw.gov.au](mailto:compliance@doh.health.nsw.gov.au) or to the Compliance Unit, NSW Ministry of Health, Locked Mail Bag 961, North Sydney 2059.

Providing ICAC reports to the Compliance Unit enables the NSW Ministry of Health to:

- Identify instances of corruption which have the potential to occur more broadly across NSW Health or to affect multiple health organisations
- Identify trends or state wide implications in relation to instances of corruption reported and
- Provide assistance and support to Health organisations in relation to issues related to corruption and reporting.

## 5 LIST OF ATTACHMENTS

1. Implementation Checklist

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### Attachment 1: Implementation checklist

<b>LHD/Facility:</b>			
<b>Assessed by:</b>		<b>Date of Assessment:</b>	
<b>IMPLEMENTATION REQUIREMENTS</b>	<b>Not commenced</b>	<b>Partial compliance</b>	<b>Full compliance</b>
1. Instances of suspected corruption are reported to ICAC in accordance with section 11 of the ICAC Act	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<u>Notes:</u>		
2. Staff are aware of their reporting obligations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<u>Notes:</u>		
3. An effective internal reporting system is in place to facilitate the flow of reports of corruption to the principal officer.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<u>Notes:</u>		
4. Copies of reports under section 11 of the ICAC Act are provided to the Ministry of Health	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<u>Notes:</u>		
5.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<u>Notes:</u>		
6.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<u>Notes:</u>		