

Policy Directive: compliance is mandatory

Whistleblowers Protection Policy Directive

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Summary	The Policy intends to ensure compliance within SA Health with the <i>Whistleblowers Protection Act 1993</i> (WP Act) and related legislation when making or responding to a public interest disclose.
Keywords	Whistleblowers Protection, public interest disclosure, public interest information, complaint, corruption, mismanagement, maladministration, reasonable suspicion, investigation, policy directive, Ombudsman.
Policy history	Is this a new policy? <i>N</i> Does this policy amend or update an existing policy? <i>Y</i> Does this policy replace an existing policy? <i>Y</i> This Policy replaces the Whistleblowers Protection Policy Directive 2009 version.
Applies to	<i>All SA Health Portfolio</i>
Staff impacted	<i>All Staff, Management, Admin, Students; Volunteers</i>
EPAS compatible	<i>NA</i>
Registered with Divisional Policy	<i>Yes</i>
Contact Officer	
Policy doc reference no.	<i>D0155</i>

Version control and change history

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1.0	May 2009	November 2015	Original version
2.0	December 2014	November 2015	Revised version
2.1	11 November 2015	Current	Revised version updated

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Government
of South Australia

SA Health

Document control information

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Document history

Date	Author	Version	Change reference
May 2009	Workforce Development, Department for Health	V1	Original version.
19/12/2014	Workforce Operations, Workforce Directorate, System Performance and Service Delivery	V2	Formally reviewed in line with 1-5 year scheduled timeline for review.
9/11/2015	Workforce Operations, System Performance and Service Delivery	V2.1	PE Approved version.

Endorsements

Date	Endorsed by
11/11/15	Deputy Chief Executive, System Performance and Service Delivery

Approvals

Date	Endorsed by
11/11/15	Portfolio Executive, SA Health

Whistleblowers Protection Policy Directive

1. Objective

SA Health supports the South Australian Government's commitment to ensure that the Public Sector is free from corruption, misconduct, misuse of public resources and maladministration.

This policy intends to:

- Ensure compliance within SA Health with the *Whistleblowers Protection Act 1993* (WP Act) and related legislation when making or responding to a public interest disclose.
- “*Inform employees of their rights and responsibilities under Whistleblowers Protection Act 1993 and similar legislation*” as required of public sector agencies by the Code of Ethics for the South Australian Public Sector, page 21 “*Reporting Unethical Behaviour*”.
- Assist in promoting a culture of honesty and integrity in SA Health by protecting those who disclose public interest information as defined by the WP Act.

This Policy Directive must be read with the *Whistleblowers Protection Act 1993* (the WP Act) and relevant legislation, associated documents and related policies referred to in sections 9 and 10 below.

2. Scope

This Policy applies to all employees of SA Health making or receiving public interest disclosures under the WP Act. This includes SA Health employees receiving such disclosures relevant to SA Health from the public or non-employee workers, e.g. from volunteers; students on clinical placement, agency staff and contractors.

This Policy does not apply nor derogate from any responsibility for reporting under the *Health Practitioner Regulation National Law (South Australia) Act 2010* (HPRNL Act). Mandatory notifications made under the HPRNL Act are excluded from the provisions of the Policy.

3. Principles

3.1 Whistleblowers Protection

Where a person (whistleblower) makes, in accordance of the WP Act a disclosure:

- of a matter of public interest (e.g. of corruption; illegal activity; mismanagement of public resources; maladministration; or conduct that causes substantial risk to public health or safety, or to the environment);
 - in good faith - i.e. based on reasonable grounds or a reasonable suspicion;
 - to a person to whom it is under the circumstances reasonable and appropriate to make the disclosure;
- the informant is, under the WP Act protected from:
- disclosure of their identity (section 7);
 - victimisation (section 9); and
 - civil or criminal liability (section 5(1)).

Note that the WP Act allows that the identity of a whistleblower may be revealed “*to enable a proper investigation*”.

3.2 Whistleblower to assist with official investigation

Section 6 of the WP Act stipulate responsibilities to assist with an official investigation:

“(1) A person who discloses public interest information must assist with any investigation of the matters to which the information relates by the police or any other official investigating authority.

(2) Such a person is not, however, obliged to assist with an investigation by an authority or body to which, or a person to whom, the public interest information relates.

(3) A person who fails, without reasonable excuse, to comply with the obligation imposed by subsection (1) forfeits the protection of this Act.”

3.3 Advice of the outcome

The WP Act (section 8) requires that an informant be notified of the outcome of any investigation into the matters to which the disclosure relates.

4. Detail

- If the alleged public interest information disclosed relates to matters falling within the responsibility of SA Health, employees are encouraged (but not legally obliged) to make that disclosure to a Responsible Officer. That officer will provide support and assistance to the Complainant.
- In order to gain the protection of the WP Act, a Complainant (i.e. the whistleblower) must act in good faith; and disclose public interest information to a person to whom it is, in the relevant circumstances, reasonable and appropriate to make the disclosure. This includes, but is not limited to an Appropriate Authority or a Responsible Officer. (Refer to Attachment C for more detail on Responsible Officers in SA Health).
- Potential Complainants are strongly recommended to read the WP Act.
- See Attachment A: *Guidelines for Making a Disclosure of Public Interest Information*.
- See Attachment B: *Guidelines for Responsible Officers Managing Disclosures of Public Interest Information*.
- If at any time after making a disclosure, a Complainant believes they are being victimised, they may seek redress as outlined in Section 9 (2) of the WP Act.
- Employee may also avail themselves of the industrial and grievance procedures in Part 3 of the *SA Health (Health Care Act) Human Resource Manual*; Part 7, Division 4, Subdivision 2 of the *Public Sector Act 2009* or relevant awards and agreements, if aggrieved by the manner the disclosure has been dealt with in SA Health.
- The collection, storage, access, correction and use of personal information will be in accordance with *Premier and Cabinet Circular 12 - Information Privacy Principles Instruction* and the destruction schedules issued under the *State Records Act 1997* (SA)
- Public sector employees who have a “reasonable suspicion” of conduct in public sector administration that may amount to corruption, or to serious or systemic misconduct or maladministration, have an obligation in terms of the *Independent Commissioner Against Corruption Act 2012* to report a matter to the Office for Public Integrity. (Refer to ICAC’s *Directions and Guidelines*. The online report format can be accessed at <http://www.icac.sa.gov.au/content/choose-right-form>. Frequently asked questions about reporting to ICAC are available at <http://www.icac.nsw.gov.au/reporting-corruption/faqs-about-reporting-corruption>.)

5. Roles and Responsibilities

5.1 The Chief Executive will facilitate the:

- establishment and maintenance of an effective policy to facilitate the making and managing of a disclosure of public interest information that falls under the WP Act;
- provision of appropriate information/training relative to the Policy content;
- protection of Complainants who make appropriate disclosures of public interest information, including protection from victimisation and;
- appropriate administration of the reporting and handling of disclosures of such information.

5.2 An employee who is a Complainant will:

- act in good faith when making a disclosure of public interest information and make such disclosure to an appropriate authority;
- assist in the investigation of the issues disclosed, if required;
- make a disclosure of public interest information in accordance with the WP Act.

Refer to: Attachment A: Guidelines for Making a Disclosure of Public Interest Information.

Attachment C: *List of Responsible Officers*:

5.3 A Responsible Officer will:

- provide advice regarding a potential public interest disclosure;
- receive disclosures of public interest information;
- advise a Complainant of their rights and obligations under the WP Act;
- keep the identity of the Complainant confidential except where they consent to it being divulged or when necessary to ensure that allegations are properly investigated;
- refer the matter to an appropriate body as necessary / appropriate;
- seek advice or request an investigation from the Crown Solicitor's Office where appropriate;
- where appropriate, facilitate investigations conducted by someone/agency other than CSO;
- ensure that the Complainant is kept informed of the progress of the investigation on a regular basis, and is provided with as much information as is practicable in regard to the outcome of the investigation, taking into account the sensitivity and confidentiality of the matter; and
- remind employees of the availability of SA Health's Employee Assistance Program.

Refer to Attachment B: *Guidelines for Responsible Officers Managing Disclosures of Public Interest Information*.

5.4 Employees:

- All employees must ensure awareness and compliance with the requirements of this Policy.

6. Reporting

The number of disclosures made to Responsible Officers under the WP Act in the respective Health Services is to be included in the Health Service's Annual Report.

7. EPAS Considerations

N/A

8. Exemptions

N/A

9. Associated Policy Directives / Policy Guidelines

- [Code of Ethics for the South Australian Public Sector](#).
- [Directive - Fraud and Corruption Policy Procedure](#).
- [Fraud and Corruption Control Plan](#).
- [SA Health Risk Management Framework](#)
- [Protective Security Policy](#)

10. References, Resources and Related Documents

Legislation

- [Whistleblowers Protection Act 1993 \(SA\)](#).
- [Independent Commissioner Against Corruption Act 2012 \(SA\)](#) and [Directions and Guidelines](#) issued pursuant to the ICAC Act.
- [Ombudsman Act 1972 \(SA\)](#).
- [Public Sector Act 2009 \(SA\)](#).
- [Equal Opportunity Act 1984 \(SA\)](#).
- [Public Finance and Audit Act, 1987 \(SA\)](#).
- [State Records Act 1997 \(SA\)](#) and destruction schedules issued pursuant to that Act.
- [Health Practitioner Regulation National Law \(South Australia\) Act 2010](#).
- [SA Health \(Health Care Act\) Human Resource Manual](#).











Other documents:

- [Guideline of the Commissioner for Public Sector Employment - Management of Unsatisfactory Performance \(including Misconduct\)](#)
- [Determination 4- Determination of the Commissioner for Public Sector Employment: Qualifications for Designated Whistle Blower Contact Officers](#).

11. Other - N/A

N/A

12. National Safety and Quality Health Service Standards

									
<u>National Standard 1</u>	<u>National Standard 2</u>	<u>National Standard 3</u>	<u>National Standard 4</u>	<u>National Standard 5</u>	<u>National Standard 6</u>	<u>National Standard 7</u>	<u>National Standard 8</u>	<u>National Standard 9</u>	<u>National Standard 10</u>
<u>Governance for Safety and Quality in Health Care</u>	<u>Partnering with Consumers</u>	<u>Preventing & Controlling Healthcare associated infections</u>	<u>Medication Safety</u>	<u>Patient Identification & Procedure Matching</u>	<u>Clinical Handover</u>	<u>Blood and Blood Products</u>	<u>Preventing & Managing Pressure Injuries</u>	<u>Recognising & Responding to Clinical Deterioration</u>	<u>Preventing Falls & Harm from Falls</u>
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13. Risk Management

N/A

14. Evaluation

N/A

15. Attachments

Attachment A:	Guidelines for Making a Disclosure of Public Interest Information:
Attachment B	Guidelines for Responsible Officers Managing Disclosures of Alleged Public Interest Information.
Attachment C:	List of Responsible Officers.

16. Definitions

Public Interest Information is defined in the WP Act as:

.... information that tends to show—

- (a) that an adult person (whether or not a public officer), body corporate or government agency is or has been involved (either before or after the commencement of this Act)—
 - (i) in an illegal activity; or
 - (ii) in an irregular and unauthorised use of public money; or
 - (iii) in substantial mismanagement of public resources; or
 - (iv) in conduct that causes a substantial risk to public health or safety, or to the environment; or
- (b) that a public officer is guilty of maladministration in or in relation to the performance (either before or after the commencement of this Act) of official functions.

Appropriate Disclosure is described in section 5(2) and (3) of the Act as follows:

- (2) A person makes an appropriate disclosure of public interest information for the purposes of this Act if, and only if—
 - (a) the person—
 - (i) believes on reasonable grounds that the information is true; or
 - (ii) is not in a position to form a belief on reasonable grounds about the truth of the information but believes on reasonable grounds that the information may be true and is of sufficient significance to justify its disclosure so that its truth may be investigated; and
 - (b) the disclosure is made to a person to whom it is, in the circumstances of the case, reasonable and appropriate to make the disclosure.
- (3) A disclosure is taken to have been made to a person to whom it is, in the circumstances of the case, reasonable and appropriate to make the disclosure if it is made to an appropriate authority (but this is not intended to suggest that an appropriate authority is the only person to whom a disclosure of public interest information may be reasonably and appropriately made).

Pursuant to section 5(4):

- (4) For the purposes of subsection (3), a disclosure of public interest information is made to an **appropriate authority** if it is made to a Minister of the Crown or—
 - (a) where the information relates to an illegal activity—to a member of the police force;
 - (b) where the information relates to a member of the police force—to the Police Ombudsman;
 - (c) where the information relates to the irregular or unauthorised use of public money—to the Auditor-General;
 - (d) where the information relates to a public sector employee—to the Commissioner for Public Sector Employment;
 - (e) where the information relates to a member of the judiciary—to the Chief Justice;
 - (f) where the information relates to a member of Parliament—to the Presiding Officer of the House of Parliament to which the member belongs;
 - (g) where the information relates to a public officer (other than a member of the police force or a member of the judiciary)—to the Ombudsman;

- (h) where the information relates to a matter falling within the sphere of responsibility of an instrumentality, agency, department or administrative unit of government—to a responsible officer of that instrumentality, agency, department or administrative unit;*
- (i) where the information relates to a matter falling within the sphere of responsibility of a local Government body—to a responsible officer of that body;*
- (j) where the information relates to a person or a matter of a prescribed class—to an authority declared by the regulations to be an appropriate authority in relation to such information.*
- (5) If a disclosure of information relating to fraud or corruption is made, the person to whom the disclosure is made must pass the information on as soon as practicable to—*
- (a) in the case of information implicating a member of the police force in fraud or corruption—the Police Ombudsman;*
- (b) in any other case—the Anti-Corruption Branch of the police force.*

Complainant is the person who in good faith reveals public interest information to an appropriate authority.

Confidentiality - the identity of the Complainant is not to be disclosed except with their consent or when necessary to ensure that any allegation is properly investigated. If the matter progresses to court, it is possible that the court will require disclosure between the parties to the action, i.e. confidentiality surrounding the Complainant's identity may not be maintained.

Victimisation is detriment caused to a person because they have made a disclosure under the Act, they are intending to make a disclosure, or they have supported someone who has made a disclosure under the Act. Such victimisation might include:

- . injury, damage or loss;
- . intimidation or harassment;
- . discrimination, disadvantage or adverse treatment in relation to a person's employment; and/or
- . threats of reprisal.

Responsible Officers in SA Health are nominated by the Chief Executive to receive disclosures of public interest. (More detail is in Attachment C).

Attachment A: Guidelines for Making a Disclosure of Public Interest Information:

Before making a Disclosure

In order to gain the protection of the WP Act, a Complainant must, in good faith, disclose public interest information to a person to whom it is, in the circumstances, reasonable and appropriate to make the disclosure. This includes, but is not limited to, an appropriate authority or a Responsible Officer. Protection afforded by the Act extends to immunity from any civil or criminal action. However, if a person knowingly makes a false complaint, they are guilty of an offence and not protected by the WP Act.

It is strongly recommended that prospective Complainants read the WP Act. Having done that, they should think about the outcomes they seek by making a disclosure and causing an investigation. Allegations of the types of information covered by the WP Act are serious and prospective Complainants may wish to seek independent legal advice prior to making a disclosure.

When making a Disclosure

It is recommended (but not required) that any disclosure of alleged public interest information is in writing, documented and dated, and that a copy of the allegations and any evidence that has been obtained is kept by the Complainant in a safe and secure place.

Documented allegations should include the following information:

- the specific allegation/s;
- where and when the alleged conduct occur;
- any witnesses and their identity;
- whether the matter complained of was the first time the alleged conduct has occurred or whether there have been any other alleged instances;
- any documentary evidence (such as e-mails, letters, or invoices) that relate to and/or corroborate the disclosure; and
- detail of others who it is believed knows about the alleged matter/s.

A Complainant should provide this information to an appropriate authority (this may be a Responsible Officer) and keep written documentation of the date and time the provided it. A Complainant may be required to assist in the investigation of the complaint. (See section 6 of the WP Act).

Making a Disclosure to a Responsible Officer

If a Complainant makes a disclosure of alleged public interest information to a Responsible Officer, it will be dealt with in strict accordance with the WP Act and the guidelines outlined in Attachment B: Guidelines for Responsible Officers Managing Disclosures of Alleged Public Interest Information.

Confidentiality

A Complainant's identity will be kept confidential, except where they consent to it being divulged or in so far as may be necessary to ensure that matters to which the information relates are properly investigated. Complainants need to be aware that in order to progress a disciplinary or criminal process, disclosure of their identity may be required.

Victimisation

If a Complainant believes that they have been victimised as a result of making a disclosure of alleged public interest information they should make notes of what has occurred and how they believe they have been victimised. They should notify a Responsible Officer of any alleged victimisation at the earliest opportunity. The Responsible Officer can discuss options to address the alleged behaviour and/or refer the Complainant to another appropriate person/body for advice/action.

Attachment B

Guidelines for Responsible Officers Managing Disclosures of Alleged Public Interest Information

Responsible Officers should:

1. Establish the legitimacy of the disclosure

Any disclosure, complaint or report that, in the view of the responsible officer, is in the public interest, as defined, must treat that disclosure, complaint or report as if it were made under the WP Act unless otherwise advised by the person making the disclosure, complaint or report.

Advise the Complainant of their rights and obligations under the WP Act and the procedures which need to be followed to ensure the protection under the WP Act is attracted and maintained. Refer to the WP Act.

2. Maintain accurate, detailed records

Keep accurate records of the complaint. A SA Health file on the disclosure should be opened and kept in a secure location. Ensure that electronic and hard copy records are secure.

3. Maintain confidentiality

Keep the Complainant's identity confidential, except where they consent to it being divulged or in so far as may be necessary to ensure that matters to which the information relates are properly investigated.

Advise the Complainant that, if the matter progresses to a court or tribunal, it is possible that their identity will need to be divulged in order for the matter to progress (and that it might not progress if it is not divulged).

4. Discuss victimisation

Advise the Complainant of their options to address any alleged victimisation. If at any time after making a disclosure, a Complainant believes they are being victimised, they may seek redress by making a civil claim or by lodging a victimisation complaint with the Equal Opportunity Commission as outlined in Section 9 (2) of the WP Act.

5. Address the disclosure

Disclosures must be dealt with strictly in accordance with the WP Act.

Consider whether the disclosure should be:

- Investigated internally, e.g. in the instance of alleged poor administrative practices which have resulted in maladministration; and/or
- Reported to another appropriate authority, e.g. if the disclosure is about financial irregularities, it may be wise to refer the disclosure to the Auditor-General and/or to the South Australia Police.

Note: Corruption, or serious or systemic misconduct or maladministration in public administration must be reported to the Office for Public Integrity (OPI) in accordance with the *Independent Commissioner Against Corruption Act 2012*. (<http://www.icac.sa.gov.au/content/choose-right-form>). If the disclosure relates to fraud, corruption or other criminality, the Responsible Officer must provide the information on as soon as possible to the Anti-Corruption Branch of the South Australia Police.

If the Responsible Officer considers that the disclosure should be investigated internally, it must be referred to the Director of Workforce (or equivalent position) in the first instance. The Director will advise the Chief Executive (Officer) as to the need to undertake a formal investigation of the disclosure and/or whether it should be referred to an external person/body.

6. Provide support and assistance throughout the process

Provide appropriate support to the Complainant throughout the process, including referral to the Employee Assistance Program if appropriate. Clarify to the Complainant that they have no right to determine or influence how a complaint is investigated or as to any decisions made following an investigation.

7. Notify the Complainant of the outcome of the investigation

Notify the informant of the outcome of any investigation of matters to which the disclosure relates.

Attachment C: List of Responsible Officers

Any person contemplating making a disclosure of public interest information may make contact with one of the appropriate authorities listed in the WP Act or a Responsible Officer within the SA Health.

Disclosures of alleged public interest information can be made to one of the following Responsible Officers in SA Health:

- The Chief Executive, SA Health.
- The Executive Director, People and Culture, System Performance and Service Delivery.
- The Group Director, Risk and Assurance Services.
- The Chief Executive Officers of Health Networks and the SA Ambulance Service; and the Executive Director Statewide Clinical Support Services.
- Directors of Workforce or equivalent positions in Health Networks; the Department for Health and Ageing; Statewide Clinical Support Services and the SA Ambulance Service.

Determination of the Commissioner for Public Sector Employment - Determination 4 - Qualifications for Designated Whistleblower Contact Officers, Responsible Officers for the purpose of the Act, will possess the following attributes and qualities:

- knowledge of the content and operation of the *Whistleblowers' Protection Act 1993* and other relevant legislation and policies;
- appropriate seniority and standing within the agency and with recognised status and reputation; and
- tact, discretion and sophisticated communication skills.