



Reporting Corrupt Conduct Policy

Date of publication: December 2012 **Record Number:** DD12/24488 **File Number:** FF10/046

Version: Final

Summary: This Policy is to assist Principal Officers and others to understand their obligations under the ICAC Act to report suspected corrupt conduct and how to make reports.

Applies to: Council members
Members of Council committees and associated regulatory bodies
HPCA staff

Author: Bronwyn Coop, Manager, HPCA Corporate Governance

Related legislation, Awards, Policy and Agreements:

- *Independent Commission Against Corruption Act 1988*
- *Public Interest Disclosures Act 1994*
- NSW Health, *Corrupt Conduct – Reporting to the ICAC, Policy Directive (PD2011_070)*
- Medical Council of NSW Code of Conduct for Members
- HPCA Public Interest Disclosures Procedures
- NSW Health *Public Interest Disclosures Policy Directive (PD2011_061)*

Review date: December 2017

Approved by: Medical Council of NSW

Approval date: 4 December 2012

INTRODUCTION

Members of the Medical Council of NSW (the Council) and staff must not engage in corrupt conduct.

The *Independent Commission Against Corruption Act 1988* (ICAC Act) imposes an obligation on Principal Officers to report possible corrupt conduct to the Independent Commission Against Corruption (ICAC). The President of each Council is a Principal Officer for reporting of corrupt conduct.

This Policy is to assist Principal Officers and others to understand their obligations under the ICAC Act to report suspected corrupt conduct and how to make reports.

KEY DEFINITIONS

Principal Officer is defined in section 11 of the ICAC Act as the person who is the head of the organisation, its most senior officer or the person normally entitled to preside at its meetings. The President of the Council is considered to be the “principal officer”. The Director-General is the Principal Officer for the NSW Ministry of Health and the Health Administration Corporation.

The Director, HPCA is not a Principal Officer for the Health Professional Councils Authority (HPCA) but may make a report to the ICAC in relation to HPCA staff, at the same time advising the Director-General that a report has been made.

President is the person appointed under Schedule 5C Part 2 Clause 10 of the *Health Practitioner Regulation National Law (NSW)* (the Law).

Member includes any member of the Council, a Council committee or an associated regulatory body such as Professional Standards Committee, Impaired Registrants Panel, Performance Review Panel members or non-judicial members of a Tribunal, section 150 Inquiry delegates, interviewers, panellists, assessors, experts and other ad hoc participants in Council activities.

Staff includes permanent, temporary or casual employees, contractors or consultants, working in a full-time or part-time capacity, at all levels of the HPCA.

What is corrupt conduct? (ICAC Act s 8)

Corrupt conduct can be generally understood as the dishonest or partial exercise of power or position resulting in one person being advantaged over another. It may also involve the conduct of non-public officials which adversely affects the honest and impartial exercise of a public official’s functions. The key notion is the misuse of public office.

Corruption can take many forms including, but not limited to official misconduct; bribery or blackmail; unauthorised use of confidential information; fraud and theft. For conduct to be considered corrupt under the ICAC Act definition it has to be serious enough to involve a criminal or disciplinary offence or be grounds for dismissal.

RESPONSIBILITIES

The Council President has the responsibilities of Principal Officer under the ICAC Act and must comply with the ICAC Act in relation to reporting suspected corrupt conduct. The President should inform the Director, HPCA of any reports of corrupt conduct made to ICAC, and must advise the Director, HPCA in relation to a report regarding staff.

The **Director, HPCA** is responsible for sending a report to the ICAC in relation to suspected corrupt conduct by a staff member, and at the same time informing the Director-General, and providing a copy of the report.

MEMBERS AND STAFF OBLIGATIONS UNDER THE ICAC ACT

Individual members and staff must report possible corrupt conduct through the internal reporting system or the external reporting system directly to the ICAC.

Internal Reporting System

The positions to whom a report may be made in accordance with the Act and this policy are:

- The Principal Officer, in relation to a Council
- The disclosure coordinator – HPCA Manager, Corporate Governance
- A nominated disclosure officer. Positions nominated for this purpose are:
 - HPCA Administration Manager (report by HPCA staff)
 - Council Executive Officer (report by member)

The Director, HPCA is not a Principal Officer but may make a report to the ICAC in relation to suspected corrupt conduct by staff at the same time advising the Director-General.

The Council President in the role as a Principal Officer should advise the Director, HPCA of all reports made to ICAC.

External Reporting System

Anyone may report corrupt conduct allegations directly to the ICAC. Information on making a report and the online reporting form are available on the ICAC website, www.icac.nsw.gov.au.

The *Public Interest Disclosure Act 1994* provides protection to public officials who voluntarily report suspected corrupt conduct. The NSW Health Public Interest Disclosures policy and procedures provides further information ([PD2011_061](#)).

PRINCIPAL OFFICERS OBLIGATIONS UNDER THE ICAC ACT

Section 11(2) of the ICAC Act imposes an obligation on a Principal Officer to report to the Commission any matter that the officer suspects on reasonable grounds concerns or may concern corrupt conduct.

At the point a report is made to the ICAC, the Principal Officer need not know with any certainty that this seriousness test can be satisfied as this will often only be known after a full investigation.

Duty to report

The duty to report resides with the Principal Officer and **cannot be delegated**. Where another person is acting as Principal Officer during periods of leave or other absence, the duty applies to that person.

Reasonable grounds for suspicion

The words “suspects on reasonable” grounds means there is a real possibility that corrupt conduct is or may be involved. Proof is not necessary. In some cases there may be a suspicion even though no individual has been identified. Such matters should be reported to the Principal Officer.

The Principal Officer should contact the ICAC to discuss particular matters of uncertainty or to seek clarification on any issue related to reporting corrupt conduct. As a general rule, the Principal Officer should err on the side of caution and report it to the ICAC.

When must a report be made?

A report must be made as soon as there is a reasonable suspicion that corrupt conduct may have occurred or may be occurring. The ICAC Act contains no provision permitting delay in reporting. Matters must be reported regardless of any duty of secrecy or other restriction on disclosure.

Maintaining confidentiality

Reports to the ICAC must be made without advising the person/s to whom the report relates and without publicity. Failure to handle reports confidentially may prejudice any subsequent investigation and may cause unnecessary hurt or embarrassment to individuals.

Protection for the Principal Officer

Reporting under section 11 of the *ICAC Act* is a statutory duty. Provided that reports are made in good faith the Principal Officer is protected from any criminal or civil liability. This is the case even if the suspicion on which the report is based turns out to be groundless.

Corrupt conduct can be generally understood as the non-impartial or dishonest exercise of public official functions. It may also involve the conduct of non-public officials which adversely affects the honest and impartial exercise of a public official's functions.

Making a report

Generally the Principal Officer should make a report in writing describing what has happened and making clear the nature and seriousness of the allegation.

The ICAC website contains an online reporting form and provides advice on the information that should be provided when a report is made.

Reporting to the ICAC does not affect obligations to report or refer matters to other bodies such as the Police, Auditor-General, Ombudsman or the HCCC or to carry out disciplinary procedures as required. For example, if a criminal matter has been reported to the ICAC it should be reported to the Police and in the case of a health

practitioner a notification (complaint) should be made to the HCCC or the Australian Health Practitioner Regulation Agency (AHPRA).

TRAINING AND EDUCATION

Induction programs for Council members and staff include a session on ethical decision-making and corruption prevention. This Policy is available from the Council Executive Officer and is on the Council and HPCA websites. Information from the NSW Ombudsman and the ICAC is also readily available.

All members sign the *Council Code of Conduct for Members*, and staff sign the NSW Health Code of Conduct which include undertakings regarding corruption.

REFERENCES AND RESOURCES

1. Medical Council of NSW Code of Conduct for Members
2. HPCA Public Interest Disclosures Procedures
3. NSW Health *Public Interest Disclosures Policy Directive* (PD2011_061)
4. Independent Commission Against Corruption (ICAC) website (www.icac.nsw.gov.au)
5. NSW Health, *Corrupt conduct – Reporting to the Independent Commission Against Corruption (ICAC)*, Policy Directive PD2011_070.