

Policy Title: WHISTLEBLOWERS PROTECTION

Campus:	Bayside Health	Control No.:	BH0702
Category:	Administration	Related Policy No.:	
Responsibility for Review:	Manager, Governance & Executive Support	Rev.:	002
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PURPOSE

This policy statement is made in accordance with the Victorian Whistleblowers Protection Act, which came into effect on 1 January 2002. The aim is to establish an objective system to encourage and provide support to those making disclosures, ie whistleblowers, to investigate allegations of improper conduct, corrupt conduct or detrimental action against a person making a disclosure, and to enable appropriate action to be taken in accordance with the Whistleblowers Protection Act 2001.

NOTE

Bayside Health is committed to the highest standards of ethics and probity in its performance of its duties and the delivery of its services to the community.

Bayside Health has a number of policies and processes in place to manage complaints from staff, who are encouraged to raise issues of concern with their supervisor, senior management or the Human Resources department in the first instance.

Bayside Health also has a number of policies and processes in place to manage complaints from patients, carers, contractors and other members of the public, who are encouraged to raise issues of concern with the relevant staff member, patient advocate or senior management in the first instance.

POLICY

1. Consistent with the Act, Bayside Health encourages and facilitates the making of disclosures related to alleged improper or corrupt conduct in the management or conduct of Bayside Health, where these are supported by reasonable grounds.
2. A staff member or member of the public who wishes to take advantage of the protections provided by the Whistleblowers Protection Act and who has reasonable grounds to believe improper or corrupt conduct has occurred, is occurring or is about to occur in the management or conduct of Bayside Health, including apprehension of detriment (defined below), is encouraged to disclose this to the relevant campus Protected Disclosure Officer, the Bayside Health Protected Disclosure Coordinator or the Victorian Ombudsman when the disclosures are serious allegations which, if proven, would warrant dismissal or lead to criminal charges.
3. Disclosures may be made in person, in writing, by telephone or electronically via e-mail or the internet and may be made anonymously.
4. The disclosure must be about behaviour that is corrupt, a substantial mismanagement of public resources, a substantial risk to public health or safety, or a substantial risk to the environment

and must set out the specific allegations, the grounds for making the allegations and any supporting documentation.

5. Information received as a result of handling or in the course of the investigation of a protected disclosure **must not** be disclosed to any other person except in certain limited circumstances. A breach of the confidentiality of protection constitutes a criminal offence.
6. To the extent possible in the circumstances, the confidentiality of the whistleblower and the person who is the subject of the disclosure must be maintained.
7. Disclosures made under this policy will be assessed and investigated in accordance with the Whistleblowers Protection Act and the Ombudsman's Guidelines.

ROLES

Chief Executive - the responsible officer of Bayside Health who must ensure that the appropriate policies and procedures are in place and are adhered to and that Bayside Health complies with all the provisions of the Whistleblowers Protection Act.

Chair of the Board - the person to whom the Protected Disclosure Coordinator reports in the case of a disclosure in which the Chief Executive may be implicated.

Ombudsman - has a central role in handling disclosures made under the Act, including receiving disclosures, determining whether a disclosure is a public interest disclosure, determining whether a disclosure warrants investigation, monitoring investigations and monitoring the action taken by public bodies where the findings reveal that improper conduct has occurred.

Protected Disclosure Coordinator - a person appointed by the Chief Executive to be responsible for overall management of the reporting system. The Protected Disclosure Coordinator must receive all disclosures, impartially assess each disclosure to determine whether it is a public interest disclosure, refer any public interest disclosures to the Ombudsman, carry out or appoint and oversee an investigator appointed to carry out an investigation, appoint a welfare manager to support the whistleblower, manage a confidential filing system and maintain liaison with the whistleblower.

Protected Disclosure Officer - a person appointed by the Chief Executive to provide advice to staff about the operation of the Act, receive and assess disclosures by whistleblowers about improper conduct and refer all disclosures and supporting evidence to the Protected Disclosure Coordinator.

Welfare Manager - a person appointed by the Protected Disclosure Coordinator to support and advise the whistleblower and to keep an ongoing record of all aspects of the case management of the whistleblower, including all contact and follow-up action.

Investigator - a person appointed by the Protected Disclosure Coordinator who is responsible for carrying out an investigation into a disclosure where the Ombudsman has referred a matter to Bayside Health. The investigator may be a person from within Bayside Health or a consultant engaged for the purpose.

DEFINITIONS

- (a) **Improper conduct** means conduct that is corrupt, a substantial mismanagement of Bayside Health's resources, or conduct involving substantial risk to public health or safety, or to the environment. The improper conduct must be sufficiently serious to establish, if proved, a criminal offence or reasonable grounds for dismissal from employment. A disclosure of alleged improper conduct may relate to Bayside Health or to an employee of Bayside Health.
- (b) **Corrupt conduct** includes conduct by any person, not necessarily an employee, that adversely affects the honest performance of an employee or of the functions of Bayside Health; an employee performing their functions dishonestly or with inappropriate partiality; conduct by an employee, a former employee or by Bayside Health that amounts to a breach of public trust, or a misuse of information or material acquired in the course of performing their official functions; or a conspiracy or attempted conspiracy to engage in corrupt conduct.
- (c) **Detrimental action** is action taken or threatened against a person disclosing alleged improper conduct and includes action causing injury, loss or damage, intimidation or harassment, discrimination, disadvantage, or adverse treatment to a person's employment, career, profession, trade or business and includes the taking of disciplinary action because of the fact of a disclosure of alleged improper conduct.
- (d) **Protected Disclosure** means a disclosure that is made by a person who believes on reasonable grounds that a public officer or public body has engaged, is engaging or proposes to engage in improper conduct in their capacity as a public officer or public body, or has taken, is taking or proposes to take detrimental action in contravention of the Act, to a member of that public body or the Ombudsman, orally or in writing, in accordance with the prescribed procedures.
- (e) **Public Interest Disclosure** means a protected disclosure that satisfies the Ombudsman that the disclosure shows or tends to show that a public officer or public body has engaged, is engaging or proposes to engage in improper conduct in their capacity as a public officer or public body, or has taken, is taking or proposes to take detrimental action in contravention of the Act.

PENALTIES

It is a statutory offence:

- (a) For a person to take detrimental action against a person in reprisal for a protected disclosure.
(fine or 2 years imprisonment or both)
- (b) For a person to reveal confidential information received in the course of or as a result of a protected disclosure except as provided for under the Act.
(fine or 6 months imprisonment or both)
- (c) For a person to wilfully obstruct, hinder or fail to comply with a lawful requirement of the Ombudsman.
(fine or 2 years imprisonment or both)
- (d) For a person to knowingly mislead or attempt to mislead the Ombudsman.
(fine or 2 years imprisonment or both)
- (e) For a person to knowingly provide false information to Bayside Health, intending it to be acted on as a disclosed matter.
(fine or 2 years imprisonment or both)

DISCLOSURES

Disclosures may be made to the following officers:

The Alfred and Bayside Health (organisation wide)

Ms Alison Duncan-Marr
Protected Disclosure Coordinator
Bayside Health
C/- The Alfred
Commercial Road
Melbourne
VIC 3004
Phone (03) 9076 6974
Fax (03) 9076 3409
E-mail a.duncan-marr@alfred.org.au

Caulfield General Medical Centre

The Executive Director Caulfield General Medical Centre, who has been appointed as the Protected Disclosure Officer for that campus, or the Protected Disclosure Coordinator listed above:

Executive Director
Protected Disclosure Officer, CGMC
C/- Caulfield General Medical Centre
260 Kooyong Road
Caulfield
VIC 3162
Phone (03) 9076 6601
Fax (03) 9076 6321
E-mail a.lilly@cgmc.org.au

Sandringham & District Memorial Hospital

The Executive Director Sandringham & District Memorial Hospital, who has been appointed as the Protected Disclosure Officer for that campus, or the Protected Disclosure Coordinator listed above:

Executive Director
Protected Disclosure Officer, SDMH
C/- Sandringham & District Memorial Hospital
193 Bluff Road
Sandringham
VIC 3191
Phone (03) 9076 1487
Fax (03) 9076 1539
E-mail m.abbott@sdmh.org.au

OR

The Ombudsman
Level 3, South Tower
459 Collins Street
Melbourne
VIC 3000
Phone (03) 9613 6222
Fax (03) 9614 0246
Toll Free: 1800 806 314
E-mail: ombudvic@ombudsman.vic.gov.au
Web: www.ombudsman.vic.gov.au

A copy of the Act, a summary of its provisions and the guidelines published by the Ombudsman are available for inspection at the office of the Manager, Governance & Executive Support, Bayside Health, telephone (03) 9076 6974. Bayside Health will follow the Ombudsman's guidelines in dealing with a disclosure and any related investigation.

PROCEDURES FOR HANDLING DISCLOSURES

Bayside Health has established the following procedures to facilitate the making of disclosures, the investigation of disclosures, support for persons making disclosures and the protection of persons making disclosures from reprisals by Bayside Health, or any other member or employee of Bayside Health.

A disclosure may be made to Bayside Health **or** to the Ombudsman, but not to both. A matter that has been referred to the Ombudsman cannot also be investigated by Bayside Health although the Ombudsman may intervene in a matter under investigation by Bayside Health.

The following procedures apply where a disclosure is made to Bayside Health:

1. Any disclosure of alleged improper conduct relating to Bayside Health or any of its campuses may be made direct to the Protected Disclosure Coordinator.
2. Any disclosure of alleged improper conduct relating to CGMC or SDMH may be made to the Protected Disclosure Officer at the relevant campus or to the Protected Disclosure Coordinator.
3. Any staff member who receives such a disclosure must refer it to the CGMC or SDMH Protected Disclosure Officer (if the matter relates to that campus) or to the Protected Disclosure Coordinator immediately (any matter) and **MUST NOT** disclose the information to any other person. A breach of the confidentiality of protected disclosures constitutes a criminal offence.
4. On receipt of a disclosure the campus Protected Disclosure Officer shall promptly:
 - (a) make, sign and date contemporaneous notes of any telephone call or conversation about the disclosure with the person making the disclosure;
 - (b) assess the disclosure and form a view of whether it meets the conditions for a protected disclosure under the Act;

- (c) take all necessary steps to ensure the identity of the whistleblower and the identity of the person who is the subject of the disclosure are kept confidential;
 - (d) refer all disclosures and supporting evidence to the Protected Disclosure Coordinator **hand to hand**. Such information should not be transmitted by e-mail, fax or internal mail.
5. On receipt of a disclosure either directly or from a campus Protected Disclosure Officer, the Protected Disclosure Coordinator shall:
- (a) meet with the person making the disclosure (unless it is provided anonymously), ascertain the details of the disclosed matter and invite the person making the disclosure to provide a detailed written statement in confidence;
 - (b) make sign and date contemporaneous notes of any telephone call or conversation about the disclosure with the person making the disclosure;
 - (c) assess the disclosure to determine whether it has been made in accordance with Part 2 of the Act and is therefore a protected disclosure, and if so, assign a welfare manager to the person making the disclosure. If the disclosure is assessed as not being a protected disclosure, the matter is not dealt with under the Whistleblowers Protection Act, but if appropriate, may be investigated under other procedures. The Protected Disclosure Coordinator shall notify the person who made the disclosure of the decision unless it was provided anonymously;
 - (d) assess a disclosure that is determined to be a protected disclosure to establish whether the disclosure is a public interest disclosure, ie shows or tends to show that the employee to whom the disclosure relates:
 - has engaged or is engaging or proposes to engage in improper conduct in his or her capacity as a public officer; or
 - has taken, is taking or proposes to take detrimental action in reprisal for the making of a protected disclosure;

and notify the person who made the disclosure of the decision within 45 days of the receipt of the disclosure;
 - (e) refer the disclosure and such details as have been provided by the person who made the disclosure to the Ombudsman, if the disclosure is assessed to be a public interest disclosure or, if the disclosure is assessed as not being a public interest disclosure, notify the person who made the disclosure of the decision and advise that person that within 28 days of receipt of the notification, he or she may request that the disclosure be referred to the Ombudsman for a formal determination as to whether the disclosure is a public interest disclosure.
6. The Ombudsman will review the disclosure and such details as have been provided and make a formal determination as to whether the disclosure is a public interest disclosure under the Act.
7. If the Ombudsman determines that the disclosure is a public interest disclosure, the Ombudsman may conduct an investigation, refer the matter back to Bayside Health to be investigated or refer the matter to another external authority such as Victoria Police or the Auditor General.

If it is referred back to Bayside Health, the Protected Disclosure Coordinator shall assign an investigator, who may be a senior employee or external solicitor/consultant, to investigate the disclosure in accordance with the detailed guidelines issued by the Ombudsman and report direct to the Protected Disclosure Coordinator.

8. In accordance with the principles of natural justice the person who is the subject of the disclosure is to be informed of the allegations and have the opportunity to respond to them before the conclusion of the investigation. This does not mean that the person will be advised of the allegations as soon as the disclosure is received or an investigation has commenced. The timing of the notification should ensure that the investigation is not compromised, eg in some cases this should not occur until evidence has been collected.
9. The Chief Executive shall refer the report of the investigation to the Ombudsman.
10. If the disclosure relates to the Chief Executive, the Protected Disclosure Coordinator shall report to the Board Chair, who shall refer the report to the Ombudsman.
11. The Protected Disclosure Coordinator may refer an investigation to the Ombudsman where the investigator advises that the investigation is being obstructed by uncooperative key witnesses or the investigation has revealed conduct that may constitute a criminal offence.
12. Disclosure and investigation material will be treated with the utmost confidentiality and security. Such material is only to be accessed by the Chief Executive, the Protected Disclosure Coordinator and the investigator. The assigned welfare manager may have access only to material necessary to fulfil that function.
13. If an investigation finds that the disclosed conduct has occurred, the Protected Disclosure Coordinator will provide a written report to the Ombudsman and the whistleblower setting out the finding of the investigation and any remedial steps taken. Where the investigation concludes that the disclosed conduct did not occur, this will be reported to the whistleblower and the Ombudsman.
14. Bayside Health is required to include in its annual reports its current procedures established under Part 6 of the Act and information about the number and types of disclosures made to it during that year.

RELATED DOCUMENTATION

Whistleblower Protection Guidelines and Fact Sheets – www.ombudsman.vic.gov.au

Whistleblowers Protection Act 2001 (Vic)

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