Policy

Directive: compliance is mandatory
Employees Charged with Criminal Offences

Objective file number: 2013-02255/1
Policy developed by: Workforce Directorate, System Performance
Approved at Portfolio Executive on: 4 April 2013
Next review due: 31 March 2015

Summary
This policy represents SA Health’s position in relation to the management of employees who have been charged with a criminal offence.

Keywords
Criminal offences, reporting, Code of Ethics, directive

Policy history
Is this a new policy? Y
Does this policy amend or update an existing policy? N
Does this policy replace an existing policy? N
If so, which policies?

Applies to
All SA Health Portfolio

Staff impact
All Staff

PDS reference
D0316

Version control and change history

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Employees Charged with Criminal Offences

Policy Statement
This Policy Directive applies in circumstances where an employee in SA Health has been charged with a criminal offence(s) and sets out the appropriate range of responses by management when it is advised or becomes aware of the matter.

SA Health has an obligation to appropriately respond to any risks identified as a result of an employee being charged with a criminal offence(s). This includes taking effective action to ensure patients, clients, carers, guardians and other employees are safe from any real or potential risk of harm and that community confidence is maintained in the public health system.

Employees have an obligation to act with honesty and integrity and conduct themselves in accordance with the objects under the Public Sector Act 2009 and the Code of Ethics for the South Australian Public Sector (the Code).

The Code requires an employee charged with a criminal offence to advise their manager at the earliest opportunity.

Definition
Criminal Offence
This Policy Directive, and in line with the Guideline issued by the Commissioner for Public Sector Employment - Extent of Obligation, applies to criminal offences where, if the employee charged with the offence(s) were found guilty, this would render them liable to be:

- imprisoned (including a suspended period of imprisonment); or
- fined and the alleged conduct that gave rise to the charge was or might be viewed by a reasonable person as connected to their employment or status as a public sector employee or as an officer of the Crown or to the performance of their duties.

Directive
Management of employees charged with criminal offences
Public sector employees are subject to far higher expectations in terms of their conduct than are members of the public and there is far greater prospect that conduct outside of working hours will be connected with their role as a public sector employee than is the case in most private sector employment.

Where employees are charged with a criminal offence this may result in them potentially breaching the Code. A proven breach of the Code constitutes misconduct and renders an employee liable to disciplinary action/sanction.

Where management becomes aware that an employee has been charged with a criminal offence(s), consideration is to be given to whether it is appropriate to suspend the employee from duty; or to assign or transfer them temporarily to alternative duties; or allow them to continue performing their substantive duties, but subject to restriction(s). If an employee is employed under Part 7 of the Public Sector Act 2009, and it is appropriate to suspend them from duty, consideration must be given as to whether such suspension should be without remuneration. An employee who is employed under the Health Care Act 2008 may be
suspended only with pay\(^1\). In all circumstances where suspension of an employee from duty is contemplated, advice **must** be sought from Human Resources/Workforce Relations.

Depending on the nature of the allegations and whether information is made available by South Australia Police (SAPoL) it may be appropriate for management to conduct an investigation. Such an investigation may be necessary to discern if there is evidence available that gives rise to allegations of misconduct and hence the need of a disciplinary process independent of any criminal proceedings in place. Investigation is also necessary in order to inform an assessment of any real or potential past or future risk of harm to any client/s, including children, or other employee/s.

**Suspected Criminal Behaviour in the Workplace**

All employees have an obligation under the Code of Ethics to report to an appropriate authority, workplace behaviour that a reasonable person would suspect violates any law or represents corrupt conduct, mismanagement of public resources, is a danger to public health or safety or to the environment or amounts to misconduct. Where such alleged/suspected conduct is criminal in nature, the appropriate authorities to report such behaviour may be management, SAPoL and the Office of Public Integrity.

**Risk(s) and Decision as to Whether to Inform**

Where a risk assessment has been undertaken, a Chief Executive Officer in consultation with the Chief Executive, SA Health, will consider whether it is prudent or necessary to advise patients/clients, parents, caregivers, carers or guardians of patients/clients about the fact that an employee has been charged with a criminal offence(s). Where it is considered prudent or necessary to advise patients/clients, parents, caregivers or carers of patients/clients, legal advice must be sought as to the content of correspondence.

**Responsibilities**

All SA Health employees are responsible for complying with this policy.

**Chief Executive Officers, Executives** are responsible for:

- Ensuring employees are aware of the content of this policy by communicating the content of it to all existing and new employees.
- Ensuring that the processes outlined for the management of incidences are followed.
- Immediately notifying the Chief Executive of any notification of any suspected criminal behaviour in the workplace, or criminal charges against any employee\(^2\).
- Seek, through the local Director of Workforce/Human Resources, Workforce Relations advice on how to proceed with the management of the matter.

**Managers**

- Managers are responsible for reporting to a senior manager of the local Human Resources Department any incidence of an employee reporting that they have been charged with a criminal offence(s). A full and thorough briefing must follow as soon as practicable which informs the CE in appropriate detail, the nature of the alleged offence, how and when the matter came to the attention of management and the actions subsequently taken. The briefing must also include relevant details of the employee’s work history including previous (if any) warnings, disciplinary action etc.

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\(^1\) An employee may not be entitled to remuneration for any period they are remanded in custody or otherwise incapable of performing their duties (e.g. home detention, loss of registration, bail conditions etc).

\(^2\) The Chief Executive SA Health must be informed immediately when any criminal charges, as defined, (or suspected criminal conduct in the workplace) are brought against an employee. A full and thorough briefing must follow as soon as practicable which informs the CE in appropriate detail, the nature of the alleged offence, how and when the matter came to the attention of management and the actions subsequently taken. The briefing must also include relevant details of the employee’s work history including previous (if any) warnings, disciplinary action etc.
Employees charged with a criminal offence, or any conduct within the workplace that is suspected to be of a criminal nature.

**Human Resources**

- If an employee or manager reports a criminal offence to a local Human Resources Department then the matter must be notified immediately to the relevant Chief Executive Officer or Executive Director and Director of Workforce. Advice must be sought from Workforce Relations.

**Employees**

All employees must comply with their obligation under the Code of Ethics to advise their manager at the earliest possible opportunity if they are charged with a criminal offence. Employees are to refer to the [Commissioner’s Guideline - Extent of Obligation](#) for guidance.

In some circumstances the fact an employee has been charged with a criminal offence comes to the notice of the SA Health management by other sources: for example, SAPoL or the media. The employee is still obliged to advise management.

**Reference and Related Documents**

- [South Australia Public Sector Act 2009](#)
- [South Australia Health Care Act 2008](#)
- [SA Health (Health Care Act) Human Resources Manual](#)
- [Code of Ethics for the South Australian Public Sector](#)
- [Guideline of the Commissioner for Public Sector Employment - Extent of Obligation](#)
- [Guideline of the Commissioner for Public Sector Employment - Managing Unsatisfactory Performance (Including Misconduct)](#)
- [The Reporting of Alleged Sexual Assault within a SA Health Facility](#)

**Communication**

The following core set of tools will be used to communicate information about the SA Health Employees Charged with Criminal Offences Policy Directive.

- CE Check
- Workforce Information Intranet page.

**Evaluation Criteria**

The SA Health Employees Charged with Criminal Offences Policy Directive will be reviewed after a 24 month period by Workforce in consultation with Executive and Managers with a view to making necessary adjustments to the policy content as required.