

OFFICE FOR PUBLIC INTEGRITY
SOUTH AUSTRALIA

OPI Directions & Guidelines

FOR PUBLIC OFFICERS, PUBLIC AUTHORITIES AND INQUIRY AGENCIES

FROM THE ACTING DIRECTOR

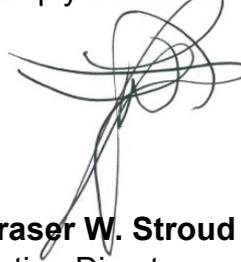
The *Independent Commission Against Corruption Act 2012 (ICAC Act)* imposes mandatory reporting obligations upon persons involved in public administration.

The Office for Public Integrity (**OPI**) relies upon persons involved in public administration to provide information that helps identify corruption with a view to improving integrity in public administration.

Persons involved in public administration are best placed to identify behaviour and anomalies that might reveal corruption or serious impropriety within an organisation. It is critical to maintaining a strong administration that those involved in public administration report any

reasonable suspicions they may have to the appropriate body.

It is essential for every person involved in public administration to understand their reporting obligations and to comply with them.



Fraser W. Stroud
Acting Director
Office for Public Integrity

REPORTING OBLIGATIONS

These Directions and Guidelines are issued by the Acting Director, pursuant to section 18B of the ICAC Act.

Subject to the below, a public officer, public authority or inquiry agency must make reports to the OPI in accordance with these Directions and Guidelines.

These Directions and Guidelines apply to '*public officers*', '*public authorities*' and '*inquiry agencies*'. Each of these terms is separately defined under the ICAC Act (and those definitions are included at the end of these Directions and Guidelines).

A *public authority* or an *inquiry agency* will either also be a *public officer*, or be comprised of, or act through, *public officers*. These Directions and Guidelines are therefore addressed to *public officers* on the basis that where a *public officer* makes a report to the OPI in accordance with these Directions and Guidelines, the corresponding *public authority* or *inquiry agency* of which the *public officer* forms part, will be taken to have complied with their reporting obligations.

These Directions and Guidelines oblige all public officers (unless otherwise stated) to report to the OPI any matter that is reasonably suspected of involving corruption in public administration, that occurred on or after 1 September 2013.

These Directions and Guidelines **do not apply to:**

» A designated officer, for the purposes of the *Police Complaints and Discipline Act 2016 (PCD Act)*, who reasonably suspects corruption in public administration

on the part of another designated officer and who has reported that suspicion to the South Australia Police (**SA Police**) Internal Investigation Section in accordance with section 12 of the PCD Act.

» A public officer where the information concerning the matter is subject to legal professional privilege or parliamentary privilege

» A judicial officer who has received any information concerning the matter while exercising their judicial functions.

» A member of Parliament who has received any information concerning the matter while exercising their functions as a member of Parliament.

» A member of staff of the State Courts Administration Council, where that staff member has received information concerning the matter for a purpose connected with the exercise of a judicial or administrative function by a judicial officer.

» The Solicitor-General and the Solicitor-General's staff, where information concerning the matter has been received by the Solicitor-General or the Solicitor-General's staff for a purpose connected with the giving of legal advice to the Attorney-General.

» The Crown Solicitor and the Crown Solicitor's staff, where information concerning the matter has been received by the Crown Solicitor or the Crown Solicitor's

staff for a purpose connected with the giving of legal advice to the Crown.

» The Director of Public Prosecutions and the Director of Public Prosecutions' staff, where information concerning the matter has been received by the Director of Public Prosecutions or the Director of Public Prosecutions'

staff for a purpose connected with the giving of legal advice to the Crown or conducting a prosecution.

The Directions and Guidelines that follow should be read in conjunction with these reporting obligations.

DIRECTIONS AND GUIDELINES FOR PUBLIC OFFICERS

A public officer **must** report to the OPI any matter that they reasonably suspect involves corruption in public administration **unless** the public officer knows that the conduct has already been reported to the OPI.

A public officer must report to the OPI as soon as practicable after they form a reasonable suspicion as to the matter.

A public officer's report to the OPI should:

- » include the public officer's identity and the public authority responsible for the public officer; and
- » provide the public officer's contact details.

A public officer can make a report to the OPI via the online form on the OPI website:

(<https://www.publicintegrity.sa.gov.au>)

The report **must**:

- » provide details of the matter that the public officer suspects is corruption in public administration;

- » identify all persons and entities suspected of having been involved;

- » provide a statement as to how the matter became known to the public officer;

- » detail any evidence (including any and all documentation that may be relevant to the matter); and

- » provide the names of persons who can give evidence relevant to the matter.

On occasion, a public officer will make a report to the OPI based on information received from another person. Where a public officer is making a report to the OPI based on information provided by another person, the public officer should consider whether section 8 of the *Public Interest Disclosure Act 2018* (**PID Act**) applies to protect the identity of that other person. Section 8 of the PID Act creates an obligation to keep the identity of a person who makes an appropriate disclosure of public interest information confidential (subject to some exceptions).

FORMING A REASONABLE SUSPICION

Suspicion is a state of mind that requires more than mere conjecture, but which is less than a knowledge or belief as to the existence of relevant events.

A suspicion must have a factual basis.

Whether or not a suspicion is reasonable will depend on the surrounding circumstances.

RELEVANT STATUTORY DEFINITIONS

Corruption in public administration is defined by section 5(1) of the ICAC Act and means conduct that constitutes –

(a) an offence against Part 7 Division 4 (Offences relating to public officers) of the *Criminal Law Consolidation Act 1935*, which includes the following offences:

- (i) bribery or corruption of public officers;
- (ii) threats or reprisals against public officers;
- (iii) abuse of public office;
- (iv) demanding or requiring benefit on basis of public office;
- (v) offences relating to appointment to public office; or

(b) an offence against the *Public Sector (Honesty and Accountability) Act 1995* or the *Public Corporations Act 1993*, or an attempt to commit such an offence; or

(ba) an offence against the *Lobbyists Act 2015*, or an attempt to commit such an offence; or

(d) any of the following in relation to an offence referred to in a preceding paragraph:

- (i) aiding, abetting, counselling or procuring the commission of the offence;
- (ii) inducing, whether by threats or promises or otherwise, the commission of the offence;
- (iii) being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;
- (iv) conspiring with others to effect the commission of the offence.

A **Designated Officer** is defined by section 3(1) of the PCD Act.

Designated officer means a person who is-

- (a) a member of SA Police; or
- (b) a police cadet; or
- (c) a special constable.

An **Inquiry Agency** is defined by section 4(1) of the ICAC Act.

An Inquiry Agency, for the purposes of the ICAC Act, means:

- (a) The Independent Commission Against Corruption;
- (b) The Ombudsman;
- (c) The Judicial Conduct Commissioner.

PUBLIC AUTHORITIES AND PUBLIC OFFICERS

Public authorities and public officers are, for the purposes of the ICAC Act, those authorities and officers listed in Schedule 1 of the ICAC Act, which provides:

Public officers	Public authority	Minister
Governor	Attorney-General	Premier
a person appointed to an office by the Governor	Governor Attorney-General	Premier
a Member of the Legislative Council an officer of the Legislative Council a person under the separate control of the President of the Legislative Council	Legislative Council	
a Member of the House of Assembly an officer of the House of Assembly a person under the separate control of the Speaker of the House of Assembly	House of Assembly	
a member of the joint parliamentary service	Joint Parliamentary Service Committee	
the principal officer of a judicial body a judicial officer that constitutes a judicial body	Attorney-General	Premier
a judicial officer (other than a judicial officer who is the principal officer of a judicial body or who constitutes a judicial body)	the principal officer of the judicial body of which the judicial officer is a member Attorney-General	Premier
a member of the staff of the State Courts Administration Council	State Courts Administration Council	Attorney-General

Public officers	Public authority	Minister
a person who constitutes a statutory authority or who is a statutory office holder	the Minister responsible for the administration of the Act under which the statutory authority is constituted or the statutory office holder is appointed	Premier
a person who is a member of the governing body of a statutory authority an officer or employee of a statutory authority or statutory office holder or a Public Service employee assigned to assist the statutory authority or statutory office holder	the statutory authority or statutory office holder	the Minister responsible for the administration of the Act constituting the statutory authority or statutory office holder
a member of a local government body an officer or employee of a local government body	the local government body	the Minister responsible for the administration of the <i>Local Government Act 1999</i>
the Local Government Association of South Australia	the Minister responsible for the administration of the <i>Local Government Act 1999</i>	Premier
a person who is a member of the governing body of the Local Government Association of South Australia an officer or employee of the Local Government Association of South Australia	the Local Government Association of South Australia	the Minister responsible for the administration of the <i>Local Government Act 1999</i>
the chief executive of an administrative unit of the Public Service	the Minister responsible for the administrative unit	Premier
a Public Service employee (other than a chief executive)	the chief executive of the administrative unit of the Public Service in which the employee is employed	the Minister responsible for the administrative unit
a police officer	Commissioner of Police	the Minister responsible for the administration of the <i>Police Act 1998</i>

Public officers	Public authority	Minister
a protective security officer appointed under the <i>Protective Security Act 2007</i>	Commissioner of Police	the Minister responsible for the administration of the <i>Protective Security Act 2007</i>
an officer or employee appointed by the Chief Executive under the <i>Education and Children's Services Act 2019</i>	the Chief Executive under the <i>Education and Children's Services Act 2019</i>	the Minister responsible for the administration of the <i>Education and Children's Services Act 2019</i>
a person appointed by the Premier under the <i>Public Sector Act 2009</i>	Premier	Attorney-General
a person appointed by the Minister under the <i>Public Sector Act 2009</i>	the Minister responsible for the administration of the <i>Public Sector Act 2009</i>	Premier
any other public sector employee	the public sector agency that employs the employee	if the public sector agency is the Premier, the Attorney-General if the public sector agency is a Minister other than the Premier, the Premier in any other case, the Minister responsible for the public sector agency or the Premier
a person to whom a function or power of a public authority or a public officer is delegated in accordance with an Act	the public authority or the public authority responsible for the public officer (as the case requires)	if the public authority is the Premier, the Attorney-General if the public authority is a Minister other than the Premier, the Premier in any other case, the Minister responsible for the public authority
a person who is, in accordance with an Act, assisting a public officer in the enforcement of the Act	the public authority responsible for the public officer	the Minister responsible for the public authority

Public officers	Public authority	Minister
a person performing contract work for a public authority or the Crown	if the work is performed for a public authority, the public authority or, in any other case, the Premier	the Minister responsible for the public authority
a person declared by regulation to be a public officer	the person declared by regulation to be the public authority responsible for the public officer	the Minister declared by regulation to be responsible for the public authority and its public officers

Regulation 19 of the *Independent Commission Against Corruption Regulations 2013* provides:

Public officers	Public authority	Minister
an accredited professional within the meaning of the <i>Planning, Development and Infrastructure Act 2016</i> (other than an accredited professional who only performs the functions of a relevant authority under that Act as a member of an assessment panel or as an assessment manager for an assessment panel)	the Minister responsible for the administration of the <i>Planning, Development and Infrastructure Act 2016</i>	Premier
a member of a joint planning board or a subsidiary of a joint planning board established under the <i>Planning, Development and Infrastructure Act 2016</i>	the joint planning board	the Minister responsible for the administration of the <i>Planning, Development and Infrastructure Act 2016</i>
an employee of a joint planning board or a subsidiary of a joint planning board		
a private certifier within the meaning of the <i>Development Act 1993</i>	the Minister responsible for the administration of the <i>Development Act 1993</i>	Premier
an authorised examiner appointed under the <i>Motor Vehicles Act 1959</i> (other than a police officer)	the Registrar of Motor Vehicles under the <i>Motor Vehicles Act 1959</i>	the Minister responsible for the administration of the <i>Motor Vehicles Act 1959</i>