

Section 11

Report guidelines for ministers

Reporting corrupt conduct to the ICAC

1. About these guidelines

These guidelines are intended to help you as a minister understand your obligation under s 11 of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”) to report suspected corrupt conduct either to the NSW Independent Commission Against Corruption (ICAC) or to the head of any agency responsible to you. The guidelines also explain how to report to the ICAC and the process the ICAC follows once your report is received. An extract of s 11 is included at the end of these guidelines.

2. About the ICAC

The ICAC was established under the ICAC Act. The main purpose of the ICAC is to expose and minimise corruption in (and affecting) the NSW public sector, which includes all government departments, statutory authorities, local councils and public officials, including members of Parliament and the judiciary. It does this by conducting investigations, examinations and inquiries, providing corruption prevention advice, and informing and educating both the public sector and the community about the detrimental effects of corruption.

Most of the ICAC’s work arises from reports made by public authorities and information received from the public. Consequently, the quality of this information is a significant factor influencing the ICAC’s effectiveness in fighting corruption.

The ICAC is required, as far as practicable, to direct its attention to serious and systemic corrupt conduct and to take into account the responsibility and role other public authorities and public officials have in the prevention of corrupt conduct.

This means that only a very small number of reports made by public authorities end up being investigated by the ICAC.

3. Your obligation under the ICAC Act

Section 11(2) of the ICAC Act imposes an obligation on you in the following terms:

A person to whom this section applies is under a duty to report to the Commission any matter that the officer suspects on reasonable grounds concerns or may concern corrupt conduct.

However, s 11(3A) provides that:

A Minister of the Crown who is under a duty under this section to report a matter may (despite subsection (2)) report the matter either to the Commission or to the head of any agency responsible to the Minister.

Key terms and issues related to s 11 reporting are explained below.

Reasonable grounds for suspicion

The words *suspects on reasonable grounds* mean there is a real possibility that corrupt conduct is, or may be, involved. There needs to be more than an idle wondering but there can be less than a firm belief. Proof is not necessary. In some cases, you may hold the suspicion even though no individual has been identified. Such matters should still be reported.

The ICAC is often asked whether there is a cut-off point, whereby matters of a minor nature need not be reported. There is no easy answer to what constitutes a minor matter. In the ICAC’s experience, the real question is whether the conduct gives rise to a suspicion that it may involve corruption. For example, the fact that a staff member’s cash register is short by a small sum of money on one occasion is unlikely to give rise to a reasonable suspicion that they have stolen the money. Repeated occurrences may give rise to a suspicion that the person is either stealing money or is incompetent. In other words, there may be an explanation that does not involve corrupt conduct. However, if there is reasonable suspicion that corrupt conduct may be involved, the matter should be reported.

You can contact the ICAC to discuss particular matters that you may be unsure about or to seek clarification on any issue concerning reporting corrupt conduct. However, as a general rule, if you are unsure about a matter, you are encouraged to err on the side of caution and report it either to the ICAC or to the head of an agency responsible to you. You can, of course, report to both. If you report to the head of an agency, as a principal officer, they have a duty to report matters involving suspected corrupt conduct to the ICAC.

When must a report be made?

The brief answer to this question is as soon as you have a reasonable suspicion that corrupt conduct may have occurred or may be occurring. The ICAC Act contains no provision permitting delay in reporting. The ICAC prefers matters to be reported prior to disciplinary or other action being taken. To delay reporting can result in the loss of investigative opportunities.

If you obtain additional information after submitting your report, it will assist the ICAC if you provide it to us in a timely manner.

Matters must be reported to the ICAC regardless of any duty of secrecy or other restriction on disclosure. Your s 11 duty to report overrides any obligation to maintain secrecy.

Whether a referral under s 11 should be made public

There is no prohibition in the ICAC Act against making a referral under s 11 publicly known. However, it is the view of the ICAC that a referral should be made without advising the person(s) to whom the report relates and without publicity. Failure to handle reports to the ICAC confidentially may prejudice any subsequent investigation and may cause unnecessary damage or embarrassment to individuals.

Protections

Section 11 reporting is a statutory duty. Provided reports are made in good faith you are 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 untrue or unsubstantiated (see s 109(5) of the ICAC Act and also s 27 of the *Defamation Act 2005*).

4. What is corrupt conduct?

Corrupt conduct is defined in the ICAC Act. It involves deliberate or intentional wrongdoing involving (or affecting) a public official or public authority in NSW.

Public officials include people working in government departments, statutory authorities and local councils in NSW, as well as judges and magistrates and elected officials such as parliamentarians and local government councillors.

Conduct will not be “corrupt” for the purposes of the ICAC Act unless it could constitute or involve a criminal or disciplinary offence, be grounds for dismissal or, in the case of members of Parliament, involve a substantial breach of their code of conduct. However, at the point you report to the ICAC, you need not know with any certainty that this seriousness test can be satisfied as this will often be known only after a full investigation.

Some examples of corrupt conduct that fall within this definition include:

- A company wanting to do business with the government and offering to pay a public official to ensure that the company wins a tender.
- A local council official accepting money or a gift to promote a development application.
- A public official bypassing recruitment procedures to employ friends or family members.
- A public official accessing confidential driver licence information as a favour to a friend.
- A minister misusing his/her allowances to pay for personal items.
- A public official extorting money from a disabled client in their care.
- A public official using a work computer and email address to run a private business.

As noted above, if you are unsure whether a complaint or suspected activity involves corrupt conduct, you are encouraged to err on the side of caution and report it to the ICAC.

5. Making a s 11 report to the ICAC

Generally a report to the ICAC should be made in writing. However, with serious matters it may be advisable to report initially by telephone if you consider that some urgent action may be required. A written report should then follow. If you have any queries, please contact the manager of the Assessments Section for advice on 02 8281 5786.

All s 11 reports should be addressed to the Commissioner of the ICAC, and marked to the attention of the manager of the Assessments Section.

What should be included in a report?

Your report should describe what has happened. The nature and the seriousness of the allegation should be clear from your report. Descriptions such as “theft”, “fraud”, “improper conduct”, “assault” or “failure to declare conflict of interest” are insufficient because they do not adequately describe the nature of what has occurred and do not enable the ICAC to assess the matter fully.

The checklist in the box opposite is a guide to what the report should include.

Section 11 report checklist

- a complete description of the allegations
- the name and position of any public official/s alleged to be involved
- the names of the person/s who made the allegation/s
- the name and role of any other person/s relevant to the matter
- the dates and/or timeframes in which the alleged conduct occurred
- an indication as to whether the conduct appears to be a one-off event or part of a wider pattern or scheme
- the date the allegation was made or the date you became aware of the conduct
- how you became aware of the conduct
- what steps you have taken in relation to the suspected conduct, including notification to any agency (for example, an agency responsible to you, the NSW Police Force or the NSW Ombudsman)
- the approximate amount of money or value of resources (if any) involved
- any other indicators of seriousness
- any other information deemed relevant to the matter
- copies of any relevant documents

6. How reports are assessed by the ICAC

The ICAC carefully reviews every s 11 report it receives. All reports are assessed by an Assessment Panel, made up of senior ICAC officers, which makes decisions about what action the ICAC should take. The possible range of options, depending on the seriousness of the reported information, includes:

- no further action to be taken on the basis that suspected corrupt conduct has not been disclosed
- further enquiries to be conducted by the ICAC to clarify issues
- further analysis to consider the significance of the information to the ICAC's corruption prevention work and whether advice should be provided to the public authority that is the subject of the allegations
- referral to a public authority, usually the one the allegations relate to, or possibly an oversight body, with

a requirement that the authority investigate and report back to the ICAC (the power to make such a referral is contained in s 53 of the ICAC Act)

- referral to another agency considered by the ICAC to be appropriately placed to deal with the information
- immediate allocation to an ICAC investigative team with a view to a preliminary or full investigation.

7. Feedback from the ICAC

The ICAC acknowledges all s 11 reports received. After your report has been assessed, a letter will be sent to you outlining the ICAC's decision and/or any further action to be taken in relation to your report.

8. The benefits of s 11 reporting

The ICAC uses the information in s 11 reports it receives to improve its understanding of the nature and scope of corruption in the NSW public sector. Whether or not a report is significant in its own right, its aggregation with other matters may assist to identify systemic corruption issues. This assists the ICAC to better target its work and better inform the public sector and the people of NSW about corruption-related issues. In particular, greater knowledge of trends in corruption supports the ICAC's work with the public sector to bring about long term changes to attitudes and practices.

The ICAC Act: s 11

Below is an extract from s 11 of the ICAC Act. The ICAC Act is available from the ICAC's website at www.icac.nsw.gov.au

Duty to notify Commission of possible corrupt conduct.

(1) *This section applies to the following persons:*

- (a) *the Ombudsman,*
- (b) *the Commissioner of Police,*
- (c) *the principal officer of a public authority,*
- (d) *an officer who constitutes a public authority,*
- (e) *a Minister of the Crown.*

(2) *A person to whom this section applies is under a duty to report to the Commission any matter that the person suspects on reasonable grounds concerns or may concern corrupt conduct.*

(3) *The Commission may issue guidelines as to what matters need or need not be reported.*

...

(3A) *A Minister of the Crown who is under a duty under*

this section to report a matter may (despite subsection (2)) report the matter either to the Commission or to the head of any agency responsible to the Minister.

- (4) This section has effect despite any duty of secrecy or other restriction on disclosure.*
- (5) The regulations may prescribe who is the principal officer of a public authority, but in the absence of regulations applying in relation to a particular public authority, the principal officer is the person who is the head of the authority, its most senior officer or the person normally entitled to preside at its meetings.*

Contacting the ICAC

For further information and assistance on reporting corrupt conduct in general, and other issues raised in these guidelines, please contact the manager of the Assessments Section on 02 8281 5786.

For corruption prevention advice on internal reporting mechanisms for corrupt conduct or improvement to procedures and work systems, please contact the Corruption Prevention Division on 02 8281 5999.

ICAC

INDEPENDENT COMMISSION
AGAINST CORRUPTION

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