

Section 11

Report guidelines for principal officers

Reporting suspected corrupt conduct to the ICAC

1. About these guidelines

These guidelines are intended to help you as a principal officer understand your obligation under s 11 of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”) to report suspected corrupt conduct to the NSW Independent Commission Against Corruption (ICAC). The guidelines also explain how to report to the ICAC and the process the ICAC follows once your report is received. Separate guidelines exist regarding ministerial reporting obligations.

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 does not attempt to investigate every matter it receives and could not do so with the resources available to it. However, even if the resources were available, the ICAC considers that such a strategy would be counter-productive because public sector managers and their organisations are primarily the ones responsible for preventing, detecting and responding to corruption. The ICAC’s role is to deal with those matters that the public sector cannot or should not deal with. The ICAC also works with public authorities to ensure they have the skills and commitment to undertake most of the day-to-day corruption prevention and investigation work.

This approach means that only a very small number of reports made by public authorities end up becoming full investigations

or the subject of public inquiries. Nevertheless, the reporting requirement benefits your organisation and the broader public sector in a number of ways which are outlined below.

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 person suspects on reasonable grounds concerns or may concern corrupt conduct.

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

Who is a principal officer?

A *principal officer* is the person who heads the authority, its most senior officer or the person who usually presides at its meetings. This is most commonly the secretary or chief executive officer of a state government authority, or the general manager of a local council. You should contact the ICAC for advice if you are uncertain about who is the principal officer in your agency.

Duty to report suspected corrupt conduct

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. The duty extends to any matter that you become aware of and not just those concerning your own agency.

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 idle speculation 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 be reported.

Agencies often ask 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.

You are encouraged to contact the ICAC to discuss particular matters that you may be unsure about or to seek clarification on any issue of 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 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 that 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.

Internal reporting systems

Agencies need to have effective internal reporting systems in place to enable corrupt conduct to be reported. It is important that all staff members are aware of these systems, consider them safe and believe that appropriate action will result from reports being made.

The ICAC can assist you with advice on how to develop internal reporting systems and to deal with problems sometimes encountered with such systems.

Maintaining confidentiality

It is important that reports to the ICAC 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.

Protection of the principal officer

Section 11 reporting is a statutory duty. It has effect despite any duty of secrecy or other restriction on disclosure. Provided reports are made in good faith you, as the principal officer, 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(d) 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.

For conduct to be considered corrupt under the ICAC Act definition it has to be serious enough to 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 by public officials that fall within this definition include:

- A company wants to do business with the government and pays a public official to choose that company for the job.
- A public official accepts money or a gift to promote a development application.
- A public official bypasses recruitment procedures to employ friends or family members.
- A public official accesses confidential driver licence information as a favour to a friend.
- A public official uses a corporate credit card to pay for personal items.
- A public official extorts money from a disabled client in their care.
- A public official uses a work computer and email address to run a private internet business.

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 should be made in writing. However, with serious matters it may be advisable to report initially by telephone if you consider that some urgent investigative 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.

If your agency has significant numbers of relatively minor matters to report, you may seek approval from the ICAC to report some categories of matters by way of a schedule.

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

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.

The checklist in the box below 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 name/s 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
- what your organisation has done about the suspected conduct, including notification to any other agency (for example, the NSW Police Force or the NSW Ombudsman)
- what further action you propose
- 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
- the name of the relevant contact officer
- whether or not the matter is a public interest disclosure under the *Public Interest Disclosures Act 1994*.

If the matter is a public interest disclosure under s 27 of the *Public Interest Disclosures Act 1994*, we may need to notify the disclosant of the action the ICAC has taken, or proposes to take, within six months of the disclosure occurring. We will therefore require the contact details, unless the information was received anonymously, of any person who has made a public interest disclosure.

The ICAC’s website at www.icac.nsw.gov.au includes a s 11 template reporting form that you can download.

6. What to do after a report has been made

The ICAC will assess the information you have provided. We may contact you for more information.

In the meantime, you should discuss with us any proposed steps you wish to take before you take them. It can prejudice any action we may take if you commence an investigation without consultation.

Reporting to the ICAC does not affect obligations to report or refer matters to other bodies, such as the NSW Police Force, the Audit Office of NSW or the NSW Ombudsman, or to carry out disciplinary procedures after consultation with the ICAC. For example, if you have reported a criminal matter to the ICAC, you should also report it to the NSW Police Force.

7. How reports are assessed by the ICAC

The ICAC carefully reviews every s 11 report it receives. All reports are referred to a panel of senior officers who make decisions about what action the ICAC should take. Most often that panel decides that s 11 matters should be left with the reporting authorities to deal with. Depending on the seriousness of the reported information, the possible range of options includes:

- further assessment to consider the significance of the information to the ICAC’s prevention work and whether advice should be provided to the reporting agency
- referral to an appropriate authority with a requirement that it investigate and report back to the ICAC. (the power to make such a referral is contained in s 53 of the ICAC Act; should such a referral be proposed you will be consulted

with regard to the terms of the referral and provided with information about how to meet the requirements of the referral)

- referral to another agency considered by the ICAC to be appropriately placed to deal with the information
- initial enquiries to be conducted by the ICAC
- immediate allocation to an ICAC investigative team with a view to formal investigation.

8. Feedback from the ICAC

The ICAC acknowledges all reports received. After a report is 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.

9. The benefits of s 11 reporting

Developing and maintaining an effective capacity to satisfy this statutory obligation will enable you to be better informed. This is because it will require your organisation to have in place effective internal reporting systems for staff to report concerns or suspicions about corruption and an effective mechanism for receiving and responding to information from customers or contractors that may concern corruption.

The ICAC uses the information in s 11 reports it receives to improve its understanding of the nature and scope of corruption and corruption risks 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. 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 is available from the ICAC website at www.icac.nsw.gov.au

Contacting the ICAC

For further information and assistance on reporting corrupt conduct in general, and other issues raised in these guidelines, including any queries about public interest disclosures, please contact the manager of the Assessments section on 02 8281 5786.

For corruption prevention advice, contact the Corruption Prevention Division on 02 8281 5999.

I·C·A·C

INDEPENDENT COMMISSION
AGAINST CORRUPTION

NEW SOUTH WALES

Level 7, 255 Elizabeth Street
Sydney NSW 2000 Australia

Postal Address: GPO Box 500
Sydney NSW 2001 Australia

T: 02 8281 5999

1800 463 909 (toll free for callers outside
metropolitan Sydney)

TTY: 02 8281 5773 (for hearing-impaired
callers only)

F: 02 9264 5364

E: icac@icac.nsw.gov.au
www.icac.nsw.gov.au

Business Hours: 9 am - 5 pm Monday to Friday