

DIRECTIONS AND GUIDELINES

**FOR INQUIRY AGENCIES, PUBLIC
AUTHORITIES AND PUBLIC OFFICERS**

**AND DIRECTIONS OR GUIDANCE FOR
INQUIRY AGENCIES AND PUBLIC AUTHORITIES**



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Please refer to the ICAC website for the most
up to date version of the Directions and Guidelines.
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These Directions and Guidelines are available for inspection on the Commissioner's website at www.icac.sa.gov.au. A copy can also be obtained, free of charge, from the Office for Public Integrity.

FOREWORD FROM THE COMMISSIONER

These Directions and Guidelines are issued pursuant to section 20 of the *Independent Commissioner Against Corruption Act 2012* ('the ICAC Act') and govern reporting obligations of inquiry agencies, public authorities and public officers to the Office for Public Integrity ('OPI'). Section 20(1) of the ICAC Act states that:

[t]he Commissioner must prepare directions and guidelines governing reporting to the Office of matters that an inquiry agency, public authority or public officer reasonably suspects involves corruption, misconduct or maladministration in public administration.

The implication in section 20 is that inquiry agencies, public authorities and public officers should report any reasonable suspicion involving corruption, misconduct and maladministration in public administration. The purpose of section 20 is to empower the Commissioner to provide directions and guidelines to ensure that those reports are made.

The reporting obligations created in these Directions and Guidelines are **in addition to** reporting obligations that may already exist under other legislation, regulations, codes of conduct or policy.

These Directions and Guidelines must be understood as identifying the **minimum** obligations for the reporting of matters to the OPI. Notwithstanding the obligations contained within these Directions and Guidelines, all persons, including public officers, are encouraged to report any matter which those persons reasonably suspect involves corruption, misconduct or maladministration in public administration.

All public officers are obliged to comply with these Directions and Guidelines. Failure to comply may itself amount to misconduct and the public officer may be liable for disciplinary action. It is, therefore, important that all public officers read these Directions and Guidelines carefully. If clarification is required in relation to these Directions and Guidelines, contact should be made with the OPI.



*The Hon. Bruce Lander QC
Independent Commissioner Against Corruption*



SECTION 1

**ABOUT THE INDEPENDENT
COMMISSIONER AGAINST
CORRUPTION AND THE OFFICE
FOR PUBLIC INTEGRITY**



SECTION 1

ABOUT THE INDEPENDENT COMMISSIONER AGAINST CORRUPTION AND THE OFFICE FOR PUBLIC INTEGRITY

The ICAC Act establishes the Independent Commissioner Against Corruption ('the Commissioner') and the OPI. The Commissioner's function is to identify, investigate and refer for prosecution corruption in public administration and as well to assist inquiry agencies and public authorities to identify and deal with misconduct and maladministration in public administration. To that end, the Commissioner must give directions and guidelines to inquiry agencies, public authorities and public officers in regard to reporting those issues.

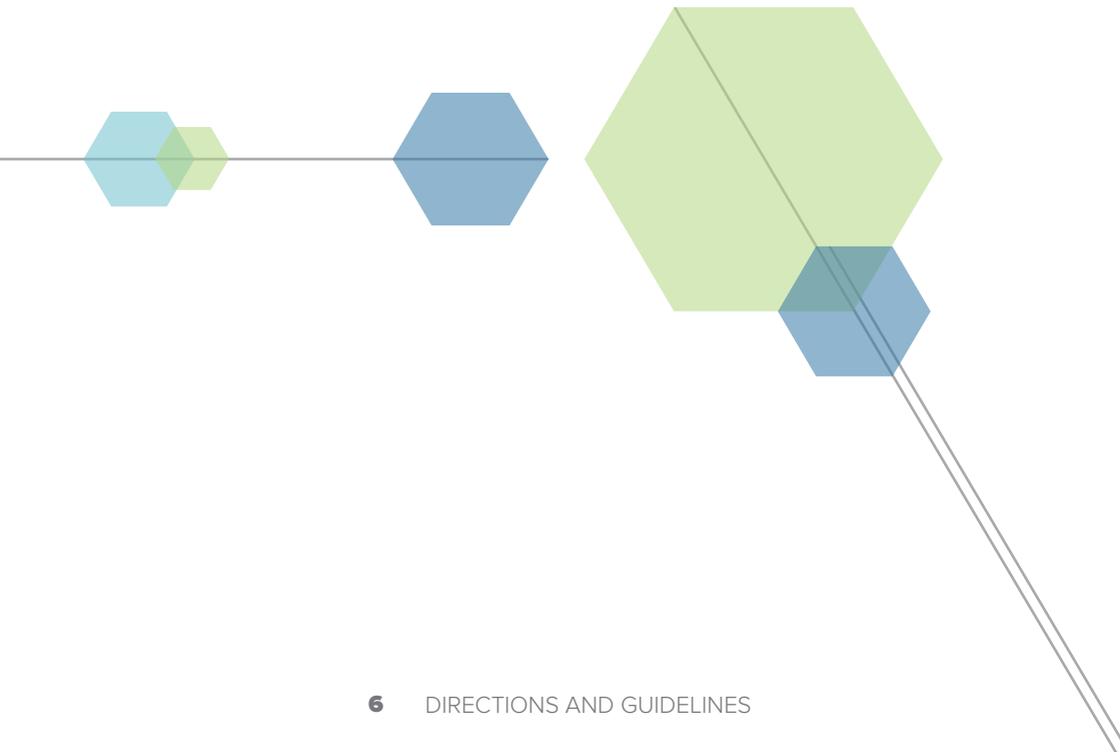
Pursuant to section 7(1) of the ICAC Act, the Commissioner has the following functions:

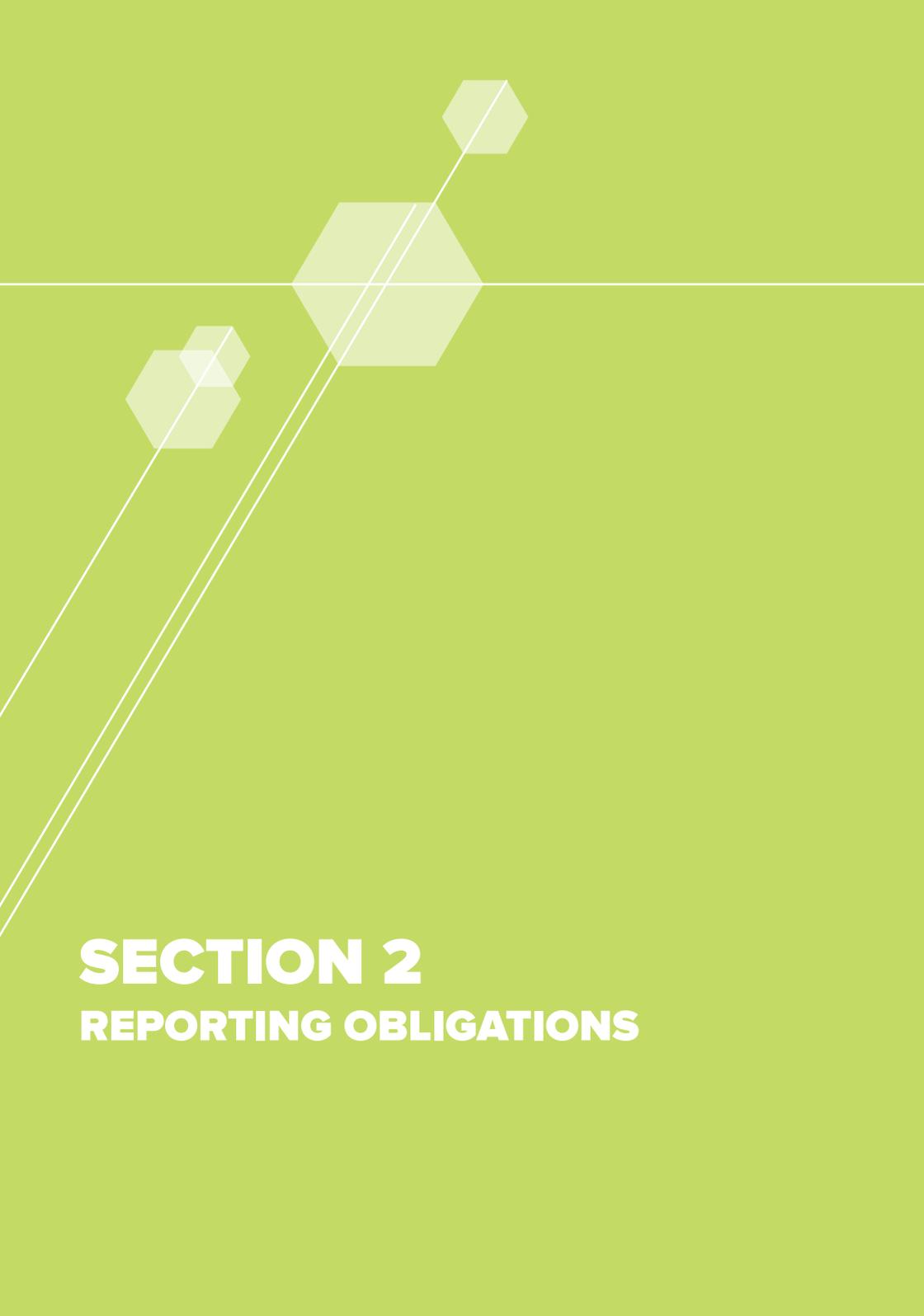
- (a) to identify corruption in public administration and to—
 - (i) investigate and refer it for prosecution; or
 - (ii) refer it to South Australia Police or the Police Ombudsman for investigation and prosecution;
- (b) to assist inquiry agencies and public authorities to identify and deal with misconduct and maladministration in public administration;
- (c) to give directions or guidance to inquiry agencies and public authorities, and to exercise the powers of inquiry agencies in dealing with misconduct and maladministration in public administration, as the Commissioner considers appropriate;
- (d) to evaluate the practices, policies and procedures of inquiry agencies and public authorities with a view to advancing comprehensive and effective systems for preventing or minimising corruption, misconduct and maladministration in public administration;
- (e) to conduct or facilitate the conduct of educational programs designed to prevent or minimise corruption, misconduct and maladministration in public administration;
- (f) to perform other functions conferred on the Commissioner by the ICAC Act or any other Act.

The OPI has been established to receive and assess all complaints and reports and make recommendations as to whether and by whom they should be investigated. Complaints and reports should not be made directly to the Commissioner. Although the OPI is responsible to the Commissioner for the performance of its functions, the Commissioner is not bound by the recommendations of the OPI.

Under section 24(1) of the ICAC Act, the Commissioner must investigate a matter raising a potential issue of corruption in public administration, or refer the matter to the South Australia Police, the Police Ombudsman or other law enforcement agency.

The Commissioner must refer a matter that raises a potential issue of misconduct or maladministration in public administration to an inquiry agency or public authority, or may exercise the powers of an inquiry agency in relation to the matter. The Commissioner has no judicial or prosecutorial function.





SECTION 2

REPORTING OBLIGATIONS

SECTION 2

REPORTING OBLIGATIONS

These Directions and Guidelines are issued pursuant to section 20 of the ICAC Act. They set out the matters required to be reported, and guidance on when and how they should be reported.

All inquiry agencies, public authorities and public officers must report to the OPI in accordance with these Directions and Guidelines, subject to the following:

1. An obligation to report a matter that is reasonably suspected of involving corruption, misconduct or maladministration in public administration, in accordance with these Directions and Guidelines, applies only where the matter comprises conduct which occurred on or after 1 September 2013 or has come to the attention of the inquiry agency, public authority or public officer on or after 1 September 2013.
2. An inquiry agency, public authority or public officer may still report a matter that is reasonably suspected of involving corruption, misconduct or maladministration in public administration, where the matter comprises conduct occurring prior to 1 September 2013, if the inquiry agency, public authority or public officer considers it appropriate.

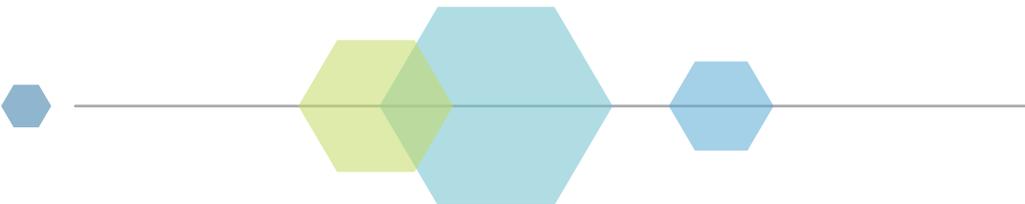
The reporting obligations created by these Directions and Guidelines **do not apply to:**

1. a judicial officer, where information concerning the matter reasonably suspected of involving corruption, misconduct or maladministration in public administration has been received by the judicial officer in the exercise of the judicial officer's judicial function;
2. a member of staff of the State Court's Administration Council, where information concerning the matter reasonably suspected of involving corruption, misconduct or maladministration in public administration has been received by a member of staff for a purpose connected with the exercise of a judicial or administrative function by a judicial officer;
3. the Solicitor-General and the Solicitor-General's staff, where information concerning the matter reasonably suspected of involving corruption, misconduct or maladministration in public administration 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;

4. the Crown Solicitor and the Crown Solicitor's staff, where information concerning the matter reasonably suspected of involving corruption, misconduct or maladministration in public administration 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;
5. the Director of Public Prosecutions and the Director of Public Prosecutions' staff, where information concerning the matter reasonably suspected of involving corruption, misconduct or maladministration in public administration 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;
6. (a) the Auditor-General and the Auditor-General's staff, where information concerning the matter reasonably suspected of involving misconduct or maladministration in public administration has come to the attention of the Auditor-General in the course of the Auditor-General's statutory duties, and will be or has been the subject of a comment in a report by the Auditor-General to Parliament;

(b) the Auditor-General's staff, where information concerning the matter reasonably suspected of involving corruption in public administration has been brought to the attention of the Auditor-General by staff members in the course of the Auditor-General's statutory duties, and will be or has been, reported by the Auditor-General to the OPI; or
7. require an inquiry agency, public authority (which, for the avoidance of doubt, includes the Commissioner of Police) or public officer to report a matter involving corruption in public administration where the inquiry agency, public authority or public officer reasonably suspects the conduct only involves an offence against the *Road Traffic Act 1961*.

The specific directions and guidelines that follow should be read in conjunction with this section.





SECTION 3

RELEVANT STATUTORY DEFINITIONS



SECTION 3

RELEVANT STATUTORY DEFINITIONS

The following definitions in the ICAC Act apply to these Directions and Guidelines:

SECTION 4 - INTERPRETATION

(5) **Inquiry agency** means—

- (a) the Ombudsman; or
- (b) the Police Ombudsman; or
- (c) the Commissioner for Public Sector Employment; or
- (d) a person declared by regulation to be an inquiry agency.

SECTION 5 - CORRUPTION, MISCONDUCT AND MALADMINISTRATION

(1) **Corruption in public administration** 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
- (c) any other offence (including an offence against Part 5 (Offences of dishonesty) of the *Criminal Law Consolidation Act 1935*) committed by a public officer while acting in his or her capacity as a public officer or by a former public officer and related to his or her former capacity as a public officer, or by a person before becoming a public officer and related to his or her capacity as a public officer, 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.

(2) If the Commissioner suspects that an offence that is not corruption in public administration (an incidental offence) may be directly or indirectly connected with, or may be a part of, a course of activity involving the commission of corruption in public administration (whether or not the Commissioner has identified the nature of that corruption), then the incidental offence is, for so long only as the Commissioner so suspects, taken for the purposes of this Act to be corruption in public administration.

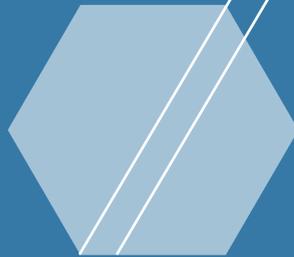
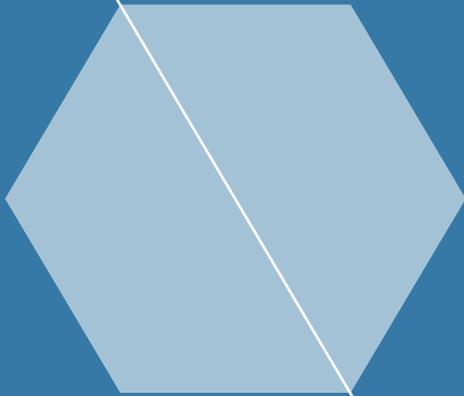
(3) **Misconduct in public administration** means—

- (a) contravention of a code of conduct by a public officer while acting in his or her capacity as a public officer that constitutes a ground for disciplinary action against the officer; or
- (b) other misconduct of a public officer while acting in his or her capacity as a public officer.

(4) **Maladministration in public administration—**

- (a) means—
 - (i) conduct of a public officer, or a practice, policy or procedure of a public authority, that results in an irregular and unauthorised use of public money or substantial mismanagement of public resources; or
 - (ii) conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and
- (b) includes conduct resulting from impropriety, incompetence or negligence; and
- (c) is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.

Anyone who has a reporting obligation under these Directions and Guidelines must acquaint themselves with the offences contained within paragraphs (a) and (b) of the definition of corruption in public administration (refer to page 13).



SECTION 4

RELEVANT STATUTORY OBLIGATIONS RELATING TO REPORTING



SECTION 4

RELEVANT STATUTORY OBLIGATIONS RELATING TO REPORTING

The reporting obligations contained within these Directions and Guidelines must be understood in light of the following sections of the ICAC Act:

SECTION 22

A person must not—

- (a) make a statement knowing that it is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in information provided in a complaint or report; or*
- (b) make a complaint or report knowing that there are no grounds for the making of the complaint or report.*

Maximum penalty: \$10 000 or imprisonment for 2 years.

SECTION 50

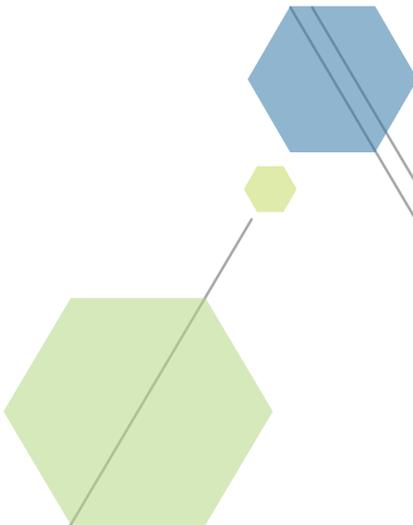
No obligation to maintain secrecy or other restriction on the disclosure of information applies for the purposes of a complaint, report, assessment, investigation or referral under this Act, except an obligation or restriction designed to keep the identity of an informant secret.



In making a report to the OPI, inquiry agencies, public authorities and public officers must have regard to their obligations under section 7 of the *Whistleblowers Protection Act 1993*, which provides:

- (1) a person to whom another makes an appropriate disclosure of public interest information must not, without the consent of that person, divulge the identity of that other person except so far as may be necessary to ensure that the matters to which the information relates are properly investigated; and*
- (2) the obligation to maintain confidentiality imposed by this section applies despite any other statutory provision, or a common law rule, to the contrary.*

Where an obligation to maintain the confidentiality of the identity of an informant applies, section 50 of the ICAC Act maintains that obligation.





SECTION 5

WHAT ARE PUBLIC AUTHORITIES AND PUBLIC OFFICERS



SECTION 5

WHAT ARE 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

PUBLIC OFFICERS	PUBLIC AUTHORITY	MINISTER
<p>a member of the staff of the State Courts Administration Council</p>	<p>State Courts Administration Council</p>	<p>Attorney-General</p>
<p>a person who constitutes a statutory authority or who is a statutory office holder</p>	<p>the Minister responsible for the administration of the Act under which the statutory authority is constituted or the statutory office holder is appointed</p>	<p>Premier</p>
<p>a person who is a member of the governing body of a statutory authority</p> <p>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</p>	<p>the statutory authority or statutory office holder</p>	<p>the Minister responsible for the administration of the Act constituting the statutory authority or statutory office holder</p>
<p>a member of a local government body</p> <p>an officer or employee of a local government body</p>	<p>the local government body</p>	<p>the Minister responsible for the administration of the Local Government Act 1999</p>
<p>the Local Government Association of South Australia</p>	<p>the Minister responsible for the administration of the <i>Local Government Act 1999</i></p>	<p>Premier</p>
<p>a person who is a member of the governing body of the Local Government Association of South Australia</p> <p>an officer or employee of the Local Government Association of South Australia</p>	<p>the Local Government Association of South Australia</p>	<p>the Minister responsible for the administration of the Local Government Act 1999</p>

PUBLIC OFFICERS	PUBLIC AUTHORITY	MINISTER
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 Police Act 1998
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 employing authority under the <i>Education Act 1972</i>	the employing authority under the <i>Education Act 1972</i>	the Minister responsible for the administration of the <i>Education Act 1972</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

PUBLIC OFFICERS	PUBLIC AUTHORITY	MINISTER
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
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 ICAC Regulations provides:

PUBLIC OFFICERS	PUBLIC AUTHORITY	MINISTER
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



SECTION 6

FORMING A REASONABLE SUSPICION



SECTION 6

FORMING A REASONABLE SUSPICION

These Directions and Guidelines create reporting obligations upon inquiry agencies, public authorities and public officers where the inquiry agency, public authority or public officer reasonably suspects that there is conduct that may amount to corruption, misconduct or maladministration in public administration.

Suspicion is a state of mind. A suspicion is different to a belief. In *George v Rockett* (1990) 170 CLR 104 the High Court said (at 115) that:

[t]he facts which can reasonably ground a suspicion may be quite insufficient reasonably to ground a belief.

However, there must be a factual basis for the suspicion.

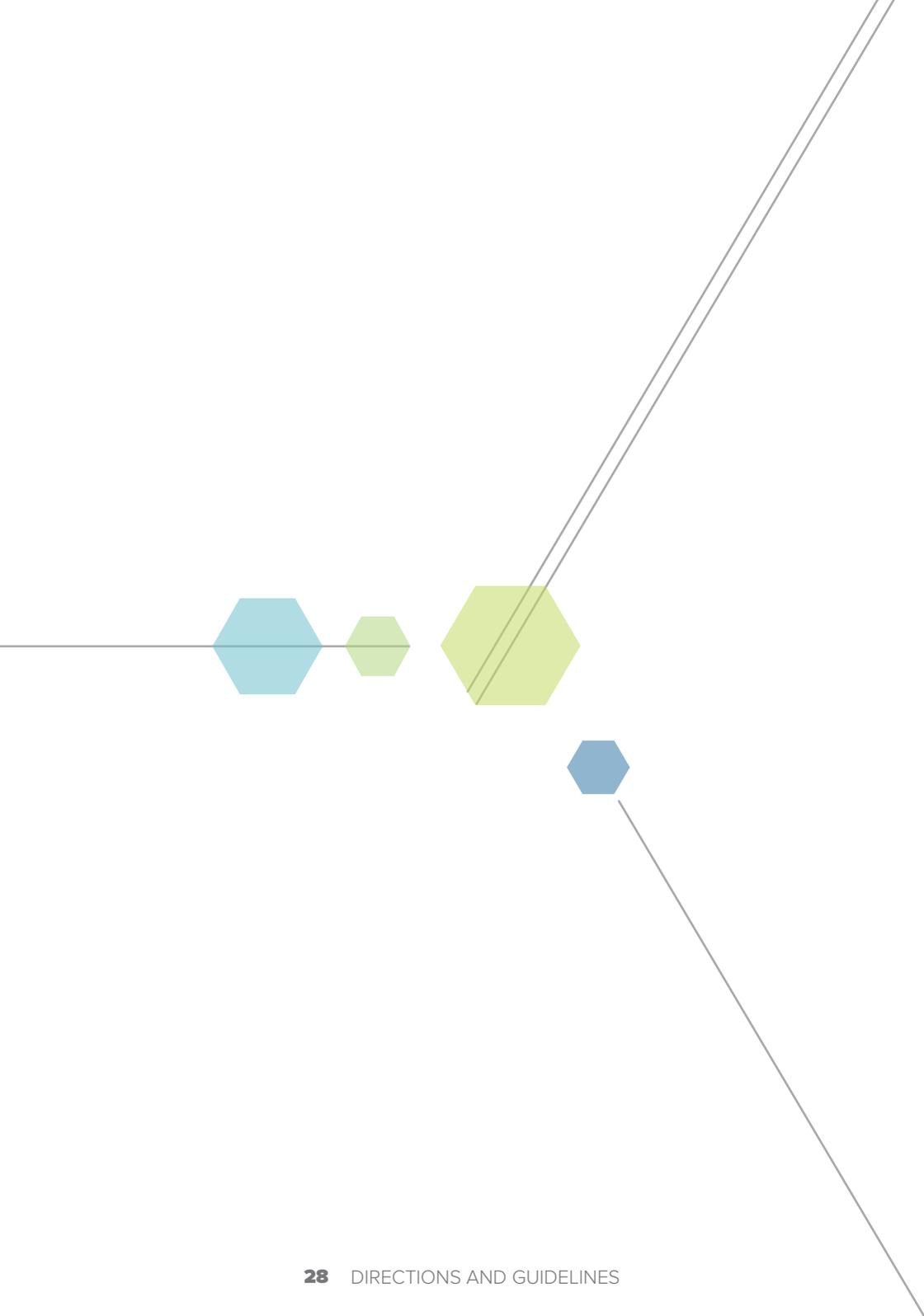
Whether or not a suspicion is reasonable will depend upon the surrounding circumstances.

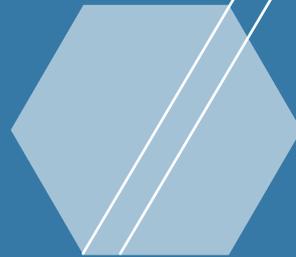
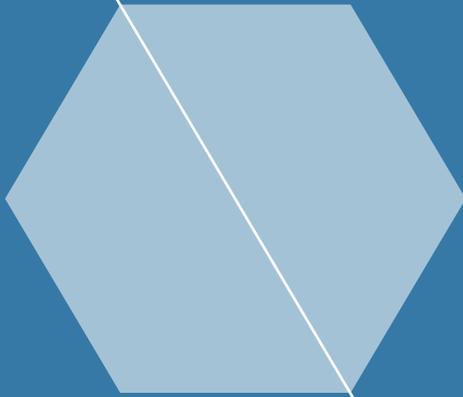
In *Hughes v Dempsey* (1915) 17 WALR 186 the Full Court of the Western Australian Supreme Court said that:

[r]easonable suspicion means that there must be something more than mere imagination or conjecture. It must be the suspicion of a reasonable man warranted by facts from which inferences can be drawn; but it is something which falls short of legal proof.

It is always necessary to identify the subject matter of the suspicion and whether or not the subject matter would, if established, amount to corruption, misconduct or maladministration in public administration.

It is not necessary for the inquiry agency, public authority or public officer to **believe** that the conduct amounts to corruption, misconduct or maladministration in public administration. What is required is a reasonable suspicion, based upon a proper consideration of the available facts.





SECTION 7

DIRECTIONS AND GUIDELINES FOR THE POLICE OMBUDSMAN



SECTION 7

DIRECTIONS AND GUIDELINES FOR THE POLICE OMBUDSMAN

The Police Ombudsman **must** report to the OPI any matter that the Police Ombudsman reasonably suspects involves corruption in public administration, **unless** the Police Ombudsman knows that the matter has already been reported to the OPI.

The Police Ombudsman **must** report to the OPI any matter that the Police Ombudsman reasonably suspects involves serious or systemic misconduct in public administration, **unless** the Police Ombudsman knows that the matter has already been reported to the OPI.

The Police Ombudsman **must** report to the OPI any matter that the Police Ombudsman reasonably suspects involves serious or systemic maladministration in public administration, **unless** the Police Ombudsman knows that the matter has already been reported to the OPI.

The Police Ombudsman **must** report to the OPI any matter that the Police Ombudsman reasonably suspects involves misconduct or maladministration in public administration in the office of the Police Ombudsman.

The Police Ombudsman may report to the OPI any other matter that the Police Ombudsman considers appropriate.

The report must be made as soon as practicable after the Police Ombudsman becomes aware that the matter is of a kind that must be reported.

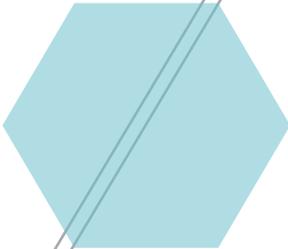
The report must be made by the Police Ombudsman transferring the following information electronically:

- » report title;
- » a summary of the matters the subject of the report;
- » sensitivity;
- » complainant details;
- » respondent details;
- » how the matter was received;
- » who received the information;
- » the date the information was received;

- » when the alleged conduct occurred;
- » issues arising from the matter; and
- » actions (if any) taken or to be taken.

The Police Ombudsman should not include the complainant's details if section 7 of the *Whistleblowers Protection Act 1993* applies and the complainant has not consented to the complainant's identity being divulged and the exception within the section does not apply.

The Police Ombudsman may request the OPI or the Commissioner to receive a report required to be made under this section in some other form and if the OPI or Commissioner directs the Police Ombudsman to report in some other form the Police Ombudsman must report as directed.





SECTION 8

**DIRECTIONS AND GUIDELINES
FOR THE SOUTH AUSTRALIAN
OMBUDSMAN**



SECTION 8

DIRECTIONS AND GUIDELINES FOR THE SOUTH AUSTRALIAN OMBUDSMAN

The Ombudsman **must** report to the OPI any matter that the Ombudsman reasonably suspects involves corruption in public administration, **unless** the Ombudsman knows that the matter has already been reported to the OPI.

The Ombudsman **must** report to the OPI any matter that the Ombudsman reasonably suspects involves serious or systemic misconduct in public administration, **unless** the Ombudsman knows that the matter has already been reported to the OPI.

The Ombudsman **must** report to the OPI any matter that the Ombudsman reasonably suspects involves serious or systemic maladministration in public administration, **unless** the Ombudsman knows that the matter has already been reported to the OPI.

The Ombudsman **must** report to the OPI any matter that the Ombudsman reasonably suspects involves misconduct or maladministration in public administration in the office of the Ombudsman.

The Ombudsman may report to the OPI any other matter that the Ombudsman considers appropriate.

The report must be made as soon as practicable after the Ombudsman becomes aware that the matter is of a kind that must be reported.

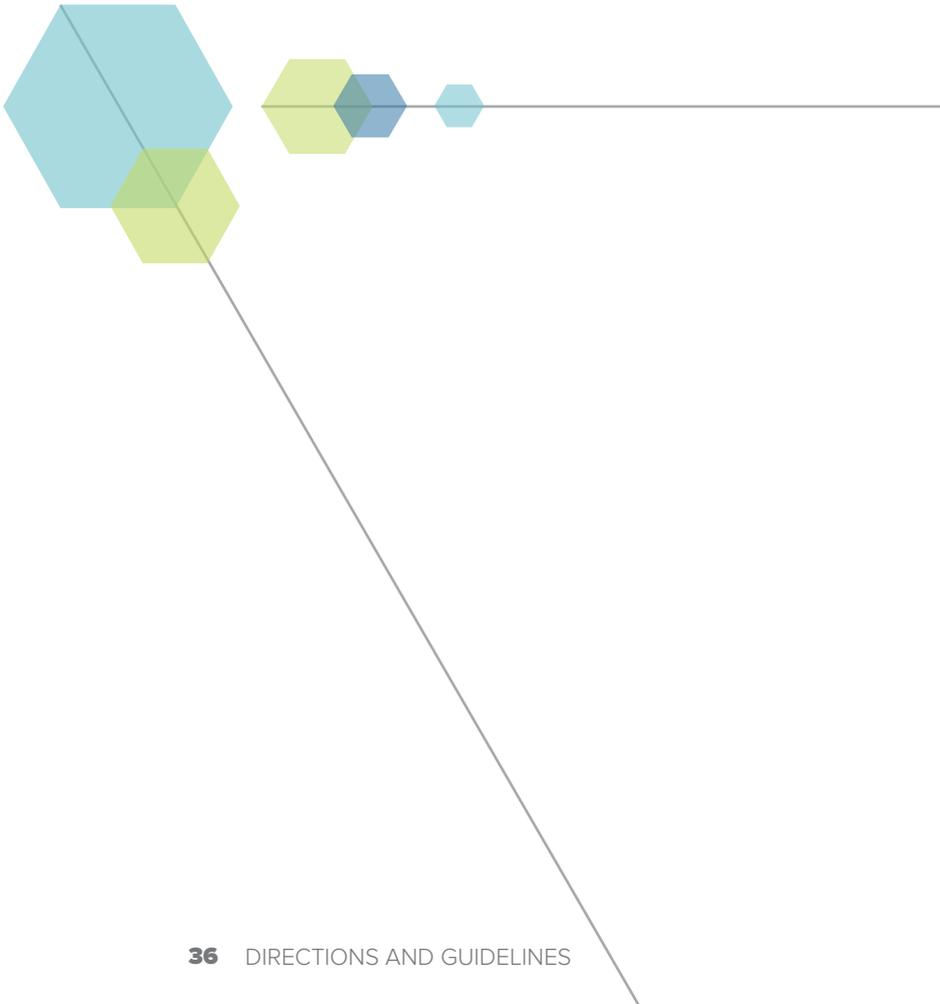
The report must be made by the Ombudsman transferring the following information electronically:

- » report title;
- » a summary of the matters the subject of the report;
- » sensitivity;
- » complainant details;
- » respondent details;
- » how the matter was received;
- » who received the information;
- » the date the information was received;
- » when the alleged conduct occurred;

- » issues arising from the matter; and
- » actions (if any) taken or to be taken.

The Ombudsman should not include the complainant's details if section 7 of the *Whistleblowers Protection Act 1993* applies and the complainant has not consented to the complainant's identity being divulged and the exception within the section does not apply.

The Ombudsman may request the OPI or the Commissioner to receive a report required to be made under this section in some other form and if the OPI or Commissioner directs the Ombudsman to report in some other form the Ombudsman must report as directed.





SECTION 9

**DIRECTIONS AND GUIDELINES
FOR THE COMMISSIONER
FOR PUBLIC SECTOR EMPLOYMENT**



SECTION 9

DIRECTIONS AND GUIDELINES FOR THE COMMISSIONER FOR PUBLIC SECTOR EMPLOYMENT

The Commissioner for Public Sector Employment (‘CPSE’) **must** report to the OPI any matter that the CPSE reasonably suspects involves corruption in public administration, **unless** the CPSE knows that the matter has already been reported to the OPI.

The CPSE **must** report to the OPI any matter that the CPSE reasonably suspects involves serious or systemic misconduct in public administration, **unless** the CPSE knows that the matter has already been reported to the OPI.

The CPSE **must** report to the OPI any matter that the CPSE reasonably suspects involves serious or systemic maladministration in public administration, **unless** the CPSE knows that the matter has already been reported to the OPI.

The CPSE **must** report to the OPI any matter the CPSE reasonably suspects involves misconduct or maladministration in public administration in the office of the CPSE.

The CPSE may report to the OPI any other matter that the CPSE considers appropriate.

The report must be made as soon as practicable after the CPSE becomes aware that the matter is of a kind that must be reported.

The report must:

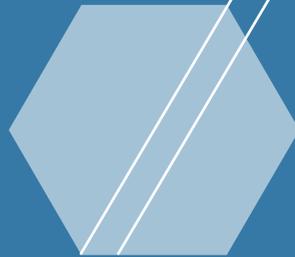
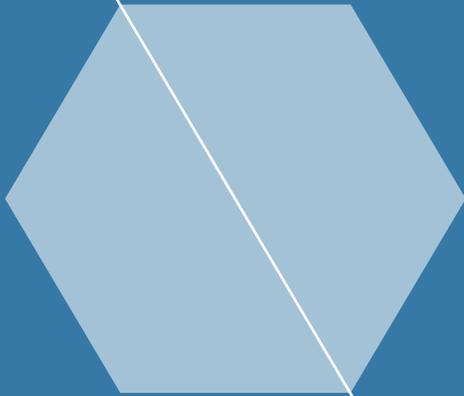
- (a) identify the matter by reference to the conduct that the CPSE suspects is corruption, misconduct or maladministration in public administration; and
- (b) identify which of corruption, misconduct or maladministration the CPSE suspects the conduct to be; and
- (c) identify any public officer or other person suspected of having engaged in the conduct; and
- (d) be accompanied by:
 - (i) a statement as to how the CPSE became aware of the conduct; and
 - (ii) the evidence known to the CPSE including any documentation relevant to the conduct; and

- (iii) a list of those persons who the CPSE believes can give evidence relevant to the conduct.

A report to the OPI by the CPSE in accordance with these Directions and Guidelines must be made on the online report form available at www.icac.sa.gov.au.

The CPSE should not include the complainant's details if section 7 of the Whistleblowers Protection Act 1993 applies and the complainant has not consented to the complainant's identity being divulged and the exception within the section does not apply.

The CPSE may request the OPI or the Commissioner to receive a report required to be made under this section in some other form and if the OPI or Commissioner directs the CPSE to report in some other form the CPSE must report as directed.



SECTION 10

DIRECTIONS AND GUIDELINES FOR PUBLIC AUTHORITIES



SECTION 10

DIRECTIONS AND GUIDELINES FOR PUBLIC AUTHORITIES

For the purposes of this section, an inquiry agency and the Commissioner of Police is not a public authority. The reporting obligations of inquiry agencies and the Commissioner of Police are dealt with elsewhere in these Directions and Guidelines.

A public authority **must** report to the OPI any matter that the public authority reasonably suspects involves corruption in public administration **unless** the public authority knows that the matter has already been reported to the OPI.

A public authority **must** report to the OPI any matter that the public authority reasonably suspects involves serious or systemic misconduct in public administration, **unless** the public authority knows that the matter has already been reported to an inquiry agency or the OPI.

A public authority **must** report to the OPI any matter that the public authority reasonably suspects involves serious or systemic maladministration in public administration **unless** the public authority knows that the matter has already been reported to an inquiry agency or the OPI.

Notwithstanding that the public authority knows that a matter reasonably suspected of involving misconduct or maladministration in public administration has been reported to an inquiry agency, the public authority may still report the matter to the OPI if the public authority considers it appropriate.

The report must be made as soon as practicable after the public authority becomes aware that the matter is of a kind that must be reported.

The report must:

- (a) identify the matter by reference to the conduct that the public authority suspects is corruption, misconduct or maladministration in public administration; and
- (b) identify which of corruption, misconduct or maladministration the public authority suspects the conduct to be; and
- (c) identify any public officer or other person suspected of having engaged in the conduct; and

- (d) be accompanied by:
- (i) a statement as to how the public authority became aware of the conduct; and
 - (ii) the evidence known to the public authority including any documentation relevant to the conduct; and
 - (iii) a list of those persons who the public authority believes can give evidence relevant to the conduct.

A report to the OPI by a public authority in accordance with these Directions and Guidelines must be made on the online report form available at www.icac.sa.gov.au.

The public authority should not include the complainant's details if section 7 of the *Whistleblowers Protection Act 1993* applies and the complainant has not consented to the complainant's identity being divulged and the exception within the section does not apply.

The public authority may request the OPI or the Commissioner to receive a report required to be made under this section in some other form and if the OPI or Commissioner directs the public authority to report in some other form the public authority must report as directed.



SECTION 11

**DIRECTIONS AND GUIDELINES
FOR PUBLIC OFFICERS
(OTHER THAN SAPOL
PUBLIC OFFICERS)**



SECTION 11

DIRECTIONS AND GUIDELINES FOR PUBLIC OFFICERS (OTHER THAN SAPOL PUBLIC OFFICERS)

This section does not require a public officer who is employed by an inquiry agency to report any conduct that is reasonably suspected of involving corruption, misconduct or maladministration in public administration that has come to the public officer's attention only by reason that the conduct is the subject of a complaint or report to the inquiry agency in which the public officer is employed.

The reporting obligations of inquiry agencies are dealt with elsewhere in these Directions and Guidelines.

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

A public officer **must** report to the OPI any matter that the public officer reasonably suspects involves serious or systemic misconduct in public administration **unless** the public officer knows that the matter has already been reported to an inquiry agency or the OPI.

A public officer **must** report to the OPI any matter that the public officer reasonably suspects involves serious or systemic maladministration in public administration **unless** the public officer knows that the matter has already been reported to an inquiry agency or the OPI.

Notwithstanding that the public officer knows that a matter reasonably suspected of involving misconduct or maladministration in public administration has been reported to an inquiry agency, the public officer may still report the matter to the OPI if the public officer considers it appropriate.

The report must be made as soon as practicable after the public officer becomes aware that the matter is of a kind that must be reported.

The public officer must state in the report:

- (a) the public officer's identity; and
- (b) the public authority responsible for the public officer; and

- (c) the public officer's workplace:
 - (i) address; and
 - (ii) telephone number; and
 - (iii) email address.

The report must:

- (a) identify the matter by reference to the conduct that the public officer suspects is corruption, misconduct or maladministration in public administration; and
- (b) identify which of corruption, misconduct or maladministration the public officer suspects the conduct to be; and
- (c) identify any public officer or other person suspected of having engaged in the conduct; and
- (d) be accompanied by:
 - (i) a statement as to how the public officer became aware of the conduct; and
 - (ii) the evidence known to the public officer including any documentation relevant to the conduct; and
 - (iii) a list of those persons who the public officer believes can give evidence relevant to the conduct.

A report to the OPI by a public officer in accordance with these Directions and Guidelines must be made on the online report form available at www.icac.sa.gov.au.

The public officer should not include the complainant's details if section 7 of the *Whistleblowers Protection Act 1993* applies and the complainant has not consented to the complainant's identity being divulged and the exception within the section does not apply.

The public officer may request the OPI or the Commissioner to receive a report required to be made under this section in some other form and if the OPI or Commissioner directs the public officer to report in some other form the public officer must report as directed.



SECTION 12

**DIRECTIONS AND GUIDELINES
FOR SAPOL PUBLIC OFFICERS
AND THE COMMISSIONER
OF POLICE**



SECTION 12

DIRECTIONS AND GUIDELINES FOR SAPOL PUBLIC OFFICERS AND THE COMMISSIONER OF POLICE

Because of the provisions of Schedule 1 of the ICAC Act, a public officer includes:

1. a police officer;
2. a community constable;
3. a special constable appointed pursuant to the Police Act 1998;
4. a police cadet;
5. a police medical officer;
6. a public sector employee employed in the South Australia Police ('SAPOL'); and
7. a protective security officer

(each of whom is, for the purposes of this section, a SAPOL public officer).

Because of the provisions of Schedule 1 of the ICAC Act, the Commissioner of Police is a public authority.

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

The Commissioner of Police **must** report to the OPI any matter that the Commissioner of Police reasonably suspects involves corruption in public administration **unless** the Commissioner of Police knows that the matter has already been reported to the OPI.

The Commissioner of Police **must** report to the OPI any matter that the Commissioner of Police reasonably suspects involves misconduct in public administration involving a SAPOL public officer **unless** the Commissioner of Police knows that the matter has already been reported, or will be reported, to an inquiry agency or the OPI.

The Commissioner of Police **must** report to the OPI any matter that the Commissioner of Police reasonably suspects involves maladministration in public administration in SAPOL **unless** the Commissioner of Police knows that the matter has already been reported, or will be reported, to an inquiry agency or the OPI.

Notwithstanding that the SAPOL public officer knows that a matter reasonably suspected of involving misconduct or maladministration in public administration has been reported to the Commissioner of Police, the SAPOL public officer may still report the matter to the OPI if the SAPOL public officer considers it appropriate.

The SAPOL public officer must state in the report:

- (a) the SAPOL public officer's identity; and
- (b) the SAPOL public officer's workplace:
 - (i) address; and
 - (ii) telephone number; and
 - (iii) email address.

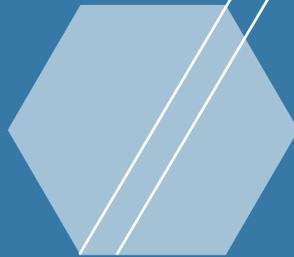
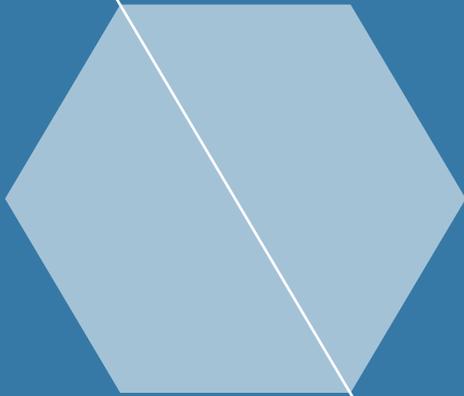
The report must:

- (a) identify the matter by reference to the conduct that the SAPOL public officer suspects is corruption, misconduct or maladministration in public administration; and
- (b) identify which of corruption, misconduct or maladministration the SAPOL public officer suspects the conduct to be; and
- (c) identify any public officer or other person suspected of having engaged in the conduct; and
- (d) be accompanied by:
 - (i) a statement as to how the SAPOL public officer became aware of the conduct; and
 - (ii) the evidence known to the SAPOL public officer including any documentation relevant to the conduct; and
 - (iii) a list of those persons who the SAPOL public officer believes can give evidence relevant to the conduct.

A report to the OPI by a SAPOL public officer in accordance with these Directions and Guidelines must be made on the online report form available at www.icac.sa.gov.au.

The SAPOL public officer should not include the complainant's details if section 7 of the *Whistleblowers Protection Act 1993* applies and the complainant has not consented to the complainant's identity being divulged and the exception within the section does not apply.

The SAPOL public officer may request the OPI or the Commissioner to receive a report required to be made under this section in some other form and if the OPI or Commissioner directs the SAPOL public officer to report in some other form the SAPOL public officer must report as directed.



SECTION 13

**DIRECTIONS OR GUIDANCE
ISSUED TO AN INQUIRY AGENCY
PURSUANT TO SECTION
24(2) OF THE ICAC ACT**



SECTION 13

DIRECTIONS OR GUIDANCE ISSUED TO AN INQUIRY AGENCY PURSUANT TO SECTION 24(2) OF THE ICAC ACT

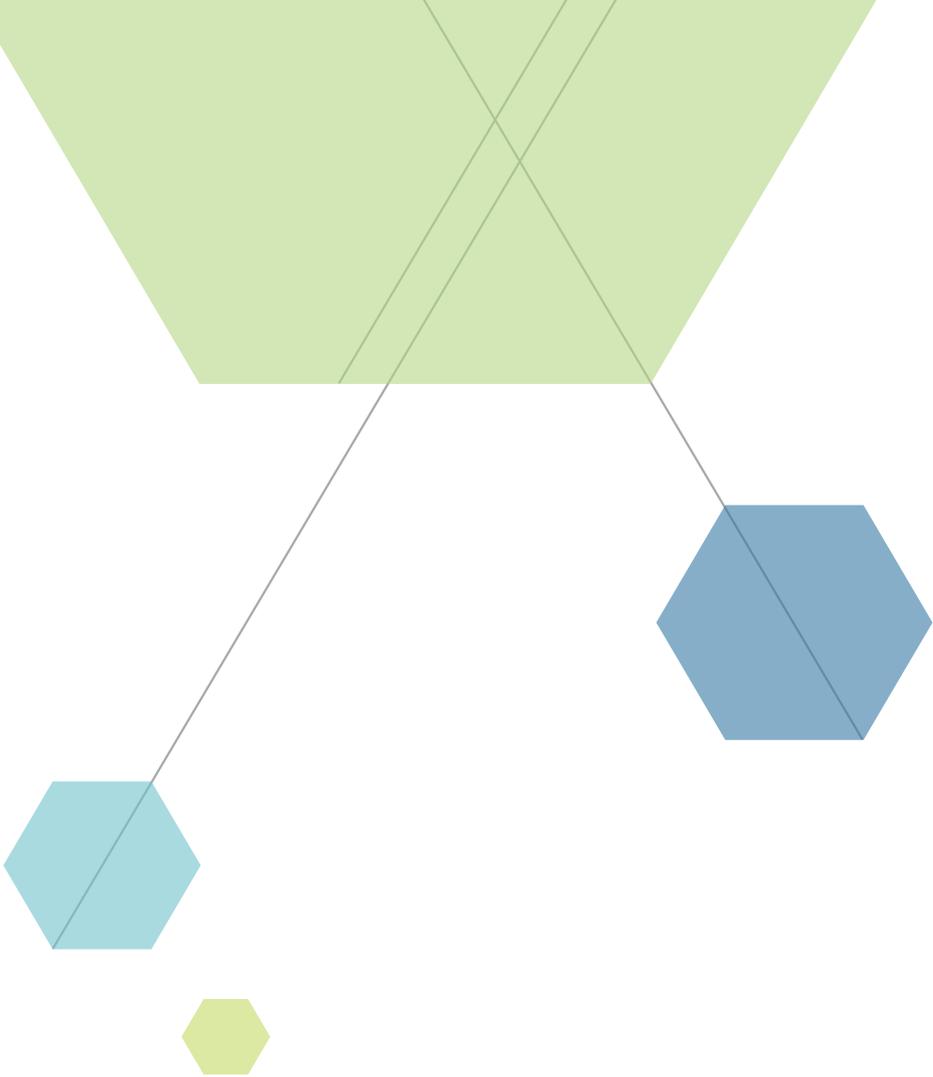
Pursuant to section 24(2) of the ICAC Act, the Commissioner may refer a matter which raises a potential issue of misconduct or maladministration in public administration to an inquiry agency and, if the Commissioner considers it appropriate, the Commissioner may give directions or guidance in respect of the matter.

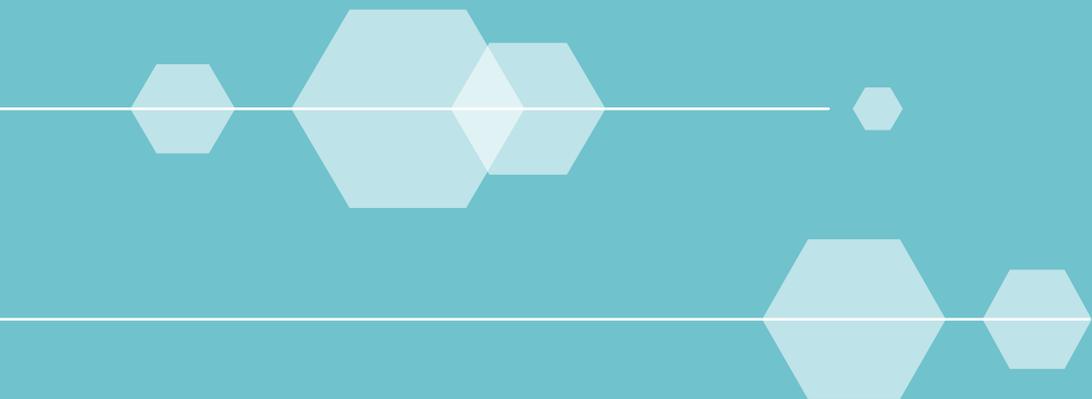
The Commissioner will, before referring a matter to an inquiry agency, obtain the views of the inquiry agency.

When a referral is made, the Commissioner will determine what (if any) directions or guidance are issued to an inquiry agency. The Commissioner will take into account whether the matter has been previously referred to the inquiry agency in formulating any directions or guidance.

However, unless other directions or guidance are issued by the Commissioner, an inquiry agency must:

- (1) Report to the Commissioner within 56 days of the referral or such extended time as may be directed by the Commissioner:
 - (i) the issues addressed; and
 - (ii) the action taken and the reasons for that action, or, if no action was taken, the reason why no action was taken.
- (2) Where directed by the Commissioner, report to the complainant or reporting agency the matters referred to in (1).





SECTION 14

**DIRECTIONS OR GUIDANCE
ISSUED TO A PUBLIC AUTHORITY
PURSUANT TO SECTION 24(2)
OF THE ICAC ACT**



SECTION 14

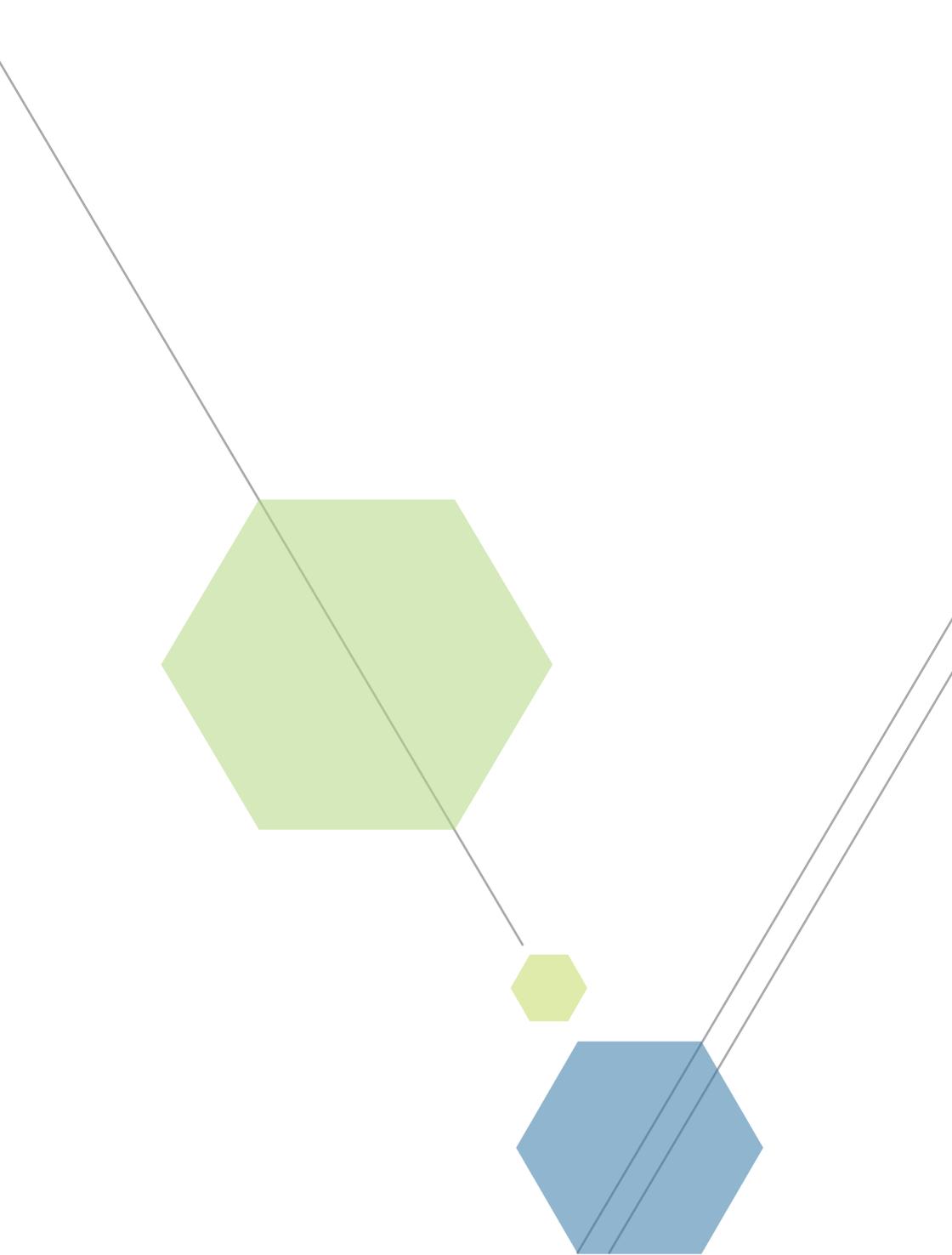
DIRECTIONS OR GUIDANCE ISSUED TO A PUBLIC AUTHORITY PURSUANT TO SECTION 24(2) OF THE ICAC ACT

Pursuant to section 24(2) of the ICAC Act, the Commissioner may refer a matter which raises a potential issue of misconduct or maladministration in public administration to a public authority and, if the Commissioner considers it appropriate, the Commissioner may give directions or guidance in respect of the matter.

The Commissioner will, before referring a matter to a public authority, obtain the views of the public authority.

When a referral is made, the Commissioner will determine what (if any) directions or guidance are issued to a public authority. However, unless other directions or guidance are issued by the Commissioner, a public authority must comply with the following directions:

- (1) Identify all issues of misconduct and/or maladministration which are to be assessed;
- (2) Obtain all information from the witnesses who can give information relevant to the issues to be assessed;
- (3) Obtain all documentation relevant to the issues;
- (4) Make relevant findings in relation to the issues;
- (5) Take appropriate action, or alternatively determine not to take action; and
- (6) Report to the Commissioner within 56 days of the referral or such extended time as may be directed by the Commissioner:
 - (i) the issues addressed;
 - (ii) the findings made and the reasons for those findings; and
 - (iii) the action taken and the reasons for that action, or, if no action was taken, the reason why no action was taken.
- (7) Where directed by the Commissioner, report to the complainant or reporting agency the matters referred to in (6).





SECTION 15
PUBLICATION OF
COMPLAINTS
AND REPORTS



SECTION 15

PUBLICATION OF COMPLAINTS AND REPORTS

Inquiry agencies and public authorities should advise persons who might make a complaint to the inquiry agency or public officers who might make a report to the public authority that if a complaint or report about conduct suspected to be corruption, misconduct or maladministration in public administration is made to the inquiry agency or the public authority that the inquiry agency or the public authority may be obliged to report that complaint or report to the OPI in accordance with the ICAC Act and the Directions and Guidelines made under the ICAC Act.

Where a report is made to the OPI under the ICAC Act and in accordance with these Directions and Guidelines, the inquiry agency, public authority or public officer must comply with section 56 of the ICAC Act, which provides that:

[a] person must not, except as authorised by the Commissioner or a court hearing proceedings for an offence against this Act, publish, or cause to be published—

- (a) information tending to suggest that a particular person is, has been, may be, or may have been, the subject of a complaint, report, assessment, investigation or referral under this Act; or*
- (b) information that might enable a person who has made a complaint or report under this Act to be identified or located; or*
- (c) the fact that a person has made or may be about to make a complaint or report under this Act; or*
- (d) information that might enable a person who has given or may be about to give information or other evidence under this Act to be identified or located; or*
- (e) the fact that a person has given or may be about to give information or other evidence under this Act; or*
- (f) any other information or evidence publication of which is prohibited by the Commissioner.*

Maximum penalty:

- (a) in the case of a body corporate—\$150 000;*
- (b) in the case of a natural person—\$30 000.*

Publish is defined in the ICAC Act as follows:

publish means publish by—

- (a) newspaper, radio or television; or*
- (b) internet or other electronic means of creating and sharing content with the public or participating in social networking with the public; or*
- (c) any similar means of communication to the public.*

Persons engaged in the administration of the ICAC Act must not, directly or indirectly, disclose information obtained in the course of the administration of the ICAC Act in connection with a matter that forms or is the subject of a complaint, report, assessment, investigation, referral or evaluation under the ICAC Act except –

- (a) for the purposes of the administration or enforcement of the ICAC Act;
- (ab) for the purposes of referring a matter in accordance with the ICAC Act to a law enforcement agency, inquiry agency, public authority or public officer; or
- (b) for the purposes of a criminal proceeding or a proceeding for the imposition of a penalty; or
- (c) for the performance of the functions of the Commissioner under another Act; or
- (ca) in accordance with an authorisation of the Commissioner given in accordance with the regulations; or
- (d) as otherwise required or authorised by the ICAC Act or another Act.

(see section 54(1) ICAC Act)

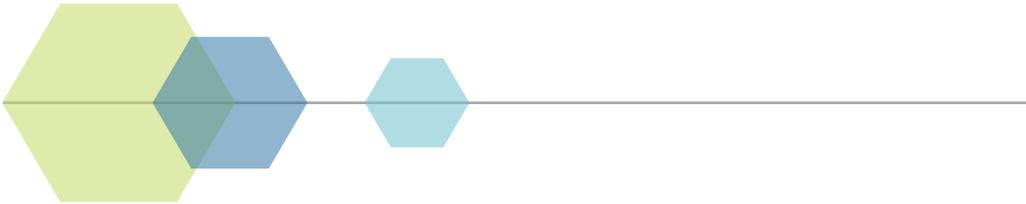
A person who **receives** disclosed information connected with a matter that is the subject of a complaint, report, assessment, investigation, referral or evaluation under the ICAC Act will be taken to have received that information on the understanding that the information is confidential unless the person to whom the information is disclosed is informed in writing to the contrary by the Commissioner: see section 54(2) ICAC Act.

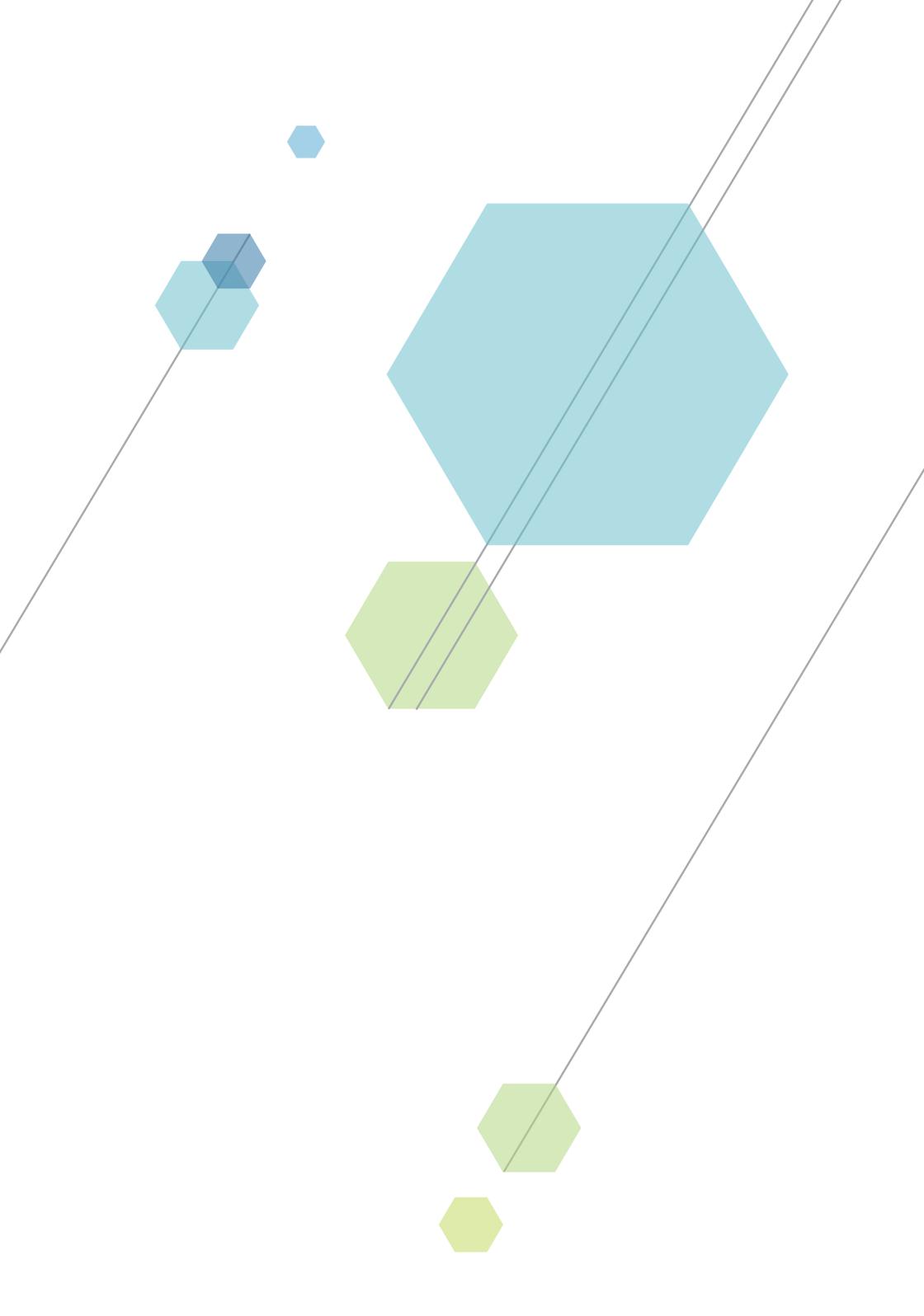
If a matter is reported by an inquiry agency or public authority to the OPI, the inquiry agency or public authority may seek the Commissioner's authority to advise the complainant or public officer who made the complaint or report to the inquiry agency or the public authority that the complaint or report:

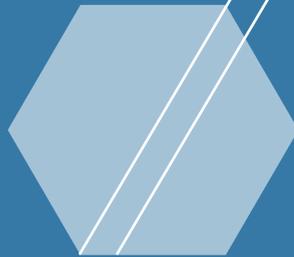
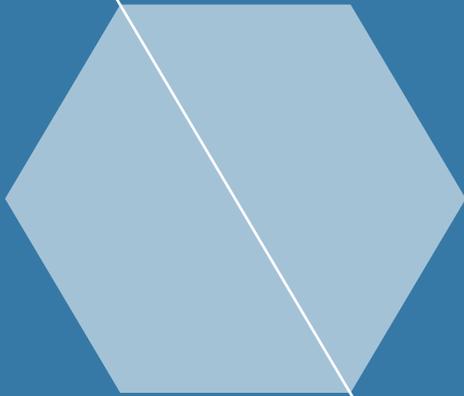
- (a) is being assessed by the OPI; or
- (b) has been assessed by the OPI and the action taken.

If the Commissioner authorises an inquiry agency or public authority to provide information to a complainant or public officer, the Commissioner may require the inquiry agency or public authority, as a condition of the authority, to advise the complainant or public officer:

- (a) of section 54 of the ICAC Act; and
- (b) that the complainant or public officer must not publish, or cause to be published, the information provided to the complainant or public officer (see section 56 of the ICAC Act).







SECTION 16

**CONTACT THE OFFICE FOR
PUBLIC INTEGRITY**



SECTION 16

CONTACT THE OFFICE FOR PUBLIC INTEGRITY



COMPLAINTS LINE
(08) 8207 1777
OR 1300 782 489
Cost of a local call for country callers



ONLINE COMPLAINT
WWW.ICAC.SA.GOV.AU

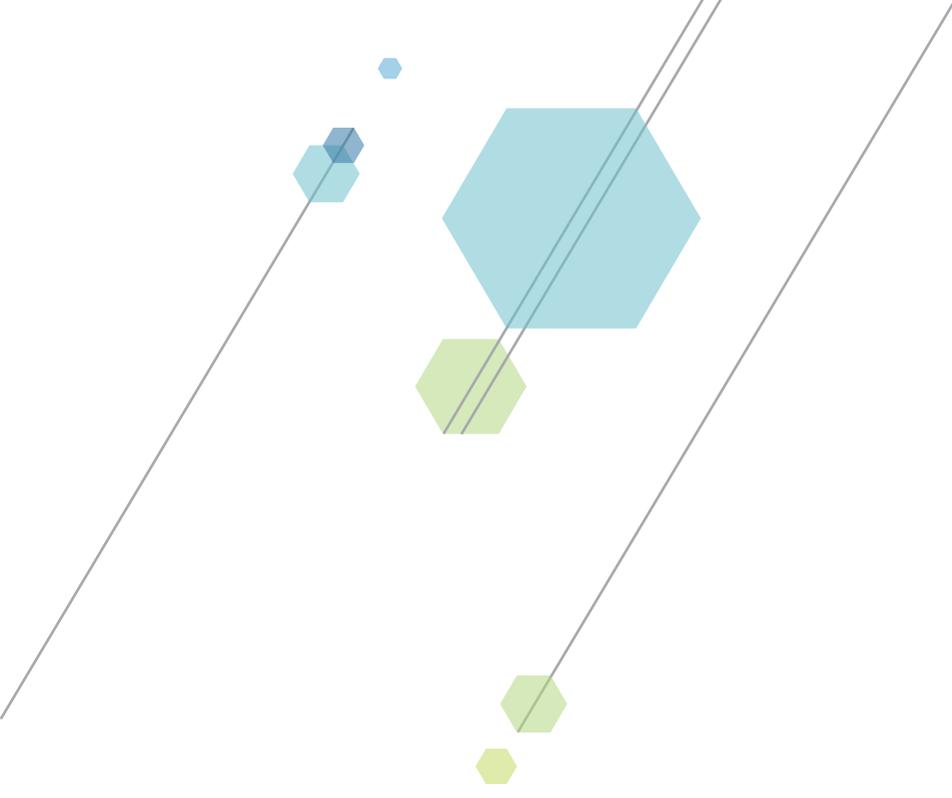


LEVEL 1, 55 CURRIE ST.
GPO BOX 11066
ADELAIDE SA 5001



OPI

Office for Public Integrity
SOUTH AUSTRALIA



CONTACT US



COMPLAINTS LINE

(08) 8207 1777

OR 1300 782 489

Cost of a local call for country callers



ONLINE COMPLAINT

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LEVEL 1, 55 CURRIE ST.



GPO BOX 11066

ADELAIDE SA 5001