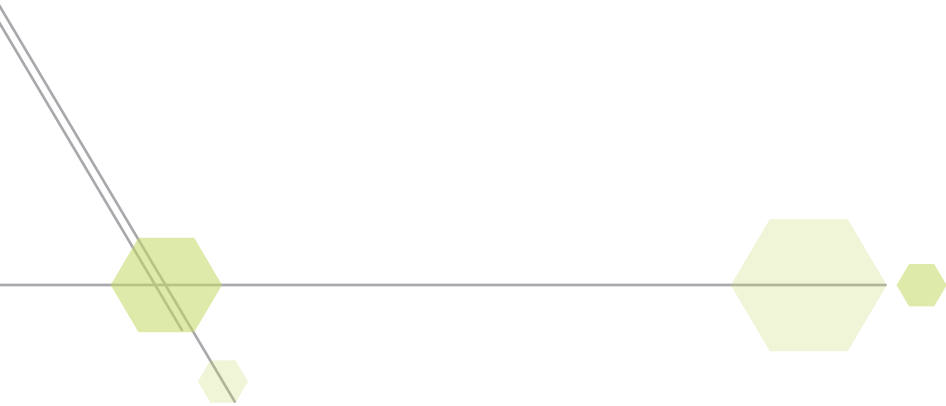


# **DIRECTIONS AND GUIDELINES**

FOR PUBLIC OFFICERS



Amended and republished  
March 2017  
Version 2.0



Please refer to the ICAC website for the most up to date version of the Directions and Guidelines.  
[www.icac.sa.gov.au](http://www.icac.sa.gov.au) (or scan this QR code)

## FROM THE COMMISSIONER

My office and the Office for Public Integrity (OPI) were established by the *Independent Commissioner Against Corruption Act 2012* (ICAC Act) with the purpose of preserving, safeguarding and enhancing the integrity of public administration in South Australia.

The functions of my office are set out in section 7 of the ICAC Act. Those functions include identifying, investigating and referring for prosecution, corruption in public administration. I must also assist inquiry agencies and public authorities to identify and deal with misconduct and maladministration in public administration.

For the most part, I cannot know what is going on in public administration unless someone makes a complaint or a report to the OPI, an office that is responsible to me for the performance of its functions. Those who are best placed to know what is going on in public administration are public officers. To that end, the ICAC Act requires me to publish Directions and Guidelines that govern the reporting obligations of public authorities and public officers to the OPI.

This publication outlines those Directions and Guidelines, which apply to all public officers (including those public officers who are also a public authority), unless otherwise stated, and should be understood as a minimum obligation for the reporting of matters to the OPI. A public officer is at liberty to report any matter that he or she wishes to bring to the attention of the OPI.

I have also published separate Directions and Guidelines for Inquiry Agencies and SAPOL public officers because their reporting obligations are different. You can access a copy of all my Directions and Guidelines on the ICAC website.

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

## REPORTING OBLIGATIONS

Directions and Guidelines issued by the Commissioner, pursuant to section 20 of the ICAC Act, oblige all public officers (unless otherwise stated) to report to the OPI, any matter that is reasonably suspected of involving corruption or serious or systemic misconduct and maladministration\* in public administration, that occurred on or after 1 September 2013.

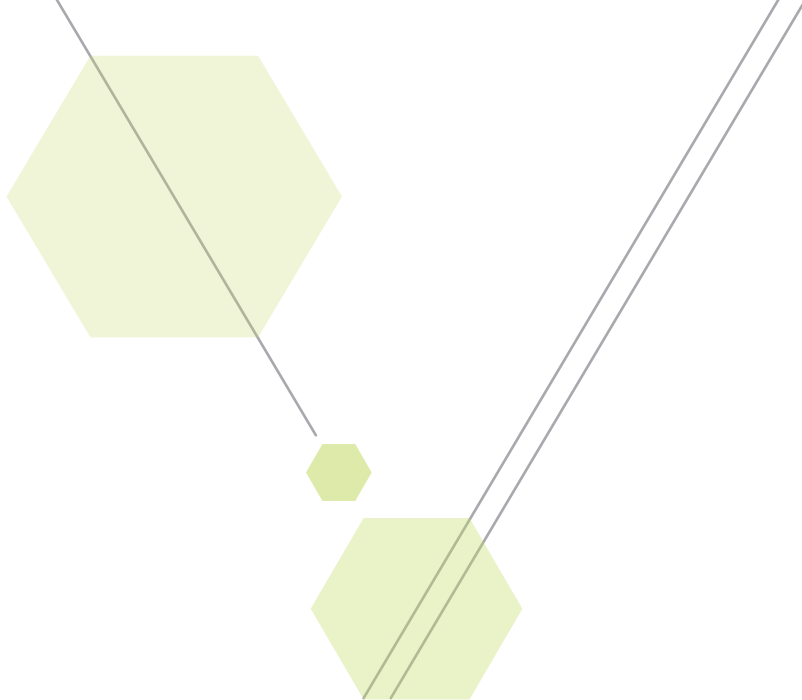
### **These Directions and Guidelines do not apply to:**

- » a judicial officer, where information concerning the matter has been received by the judicial officer in the exercise of the judicial officer's judicial function
- » a member of staff of the State Court's Administration Council, where information concerning the matter 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

- » 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

\*See statutory definition of serious or systemic misconduct or maladministration on page 6.



- » 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 Auditor-General and the Auditor-General's staff, where information concerning the matter 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
  - » the Auditor-General's staff, where information concerning the matter 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
  - » any matter that is an offence against the *Road Traffic Act 1961*
- The Directions and Guidelines that follow should be read in conjunction with these reporting obligations.

# DIRECTIONS AND GUIDELINES FOR PUBLIC OFFICERS (EXCLUDING SAPOL PUBLIC OFFICERS)\*

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 conduct has already been reported to the OPI.

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

A public officer **must** report to the OPI as soon as practicable after the public officer forms 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
- » provide the public officer's contact details

A public officer's report to the OPI must:

- » provide details of the matter that the public officer suspects is corruption, misconduct or maladministration 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 documentation that may be relevant to the matter
- » provide the names of persons who can give evidence relevant to the matter

A public officer should make a report to the OPI via the online report form on the ICAC website.

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 7 of the *Whistleblowers Protection Act 1993* applies to protect the identity of that other person.

The OPI or the Commissioner may request a SAPOL public officer to report in some other form and the SAPOL public officer should report as requested.



*\*Separate Directions and Guidelines have been published for SAPOL public officers.*

## FORMING A REASONABLE SUSPICION

The obligation for public officers to report conduct to the OPI is predicated on a public officer having formed a reasonable suspicion that the conduct may amount to corruption, or serious or systemic misconduct or maladministration in public administration.

Suspicion is a state of mind. It is different to knowledge or a belief. It requires more than mere conjecture but does not need to be sufficient to form a belief as to the existence of events.

There must be a factual basis for the suspicion. Whether or not a suspicion is reasonable will depend upon the surrounding circumstances.

It is not necessary for the officer to know or 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. In the end this is a matter of judgement that must be exercised by each public officer individually.

# RELEVANT STATUTORY DEFINITIONS

## SECTION 4 – INTERPRETATION

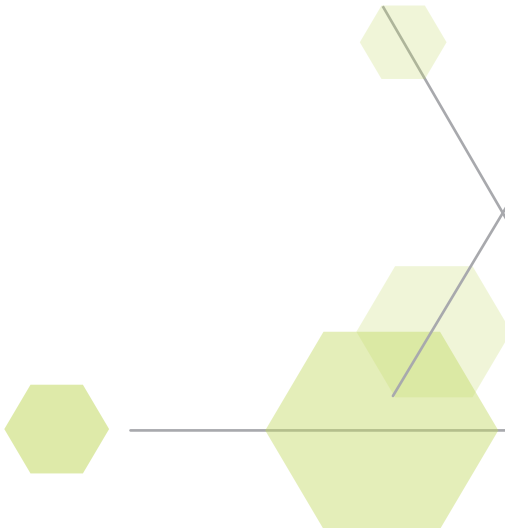
(1) **Inquiry agency** means –

- (a) the Ombudsman; or
- (b) the Police Ombudsman\*; or
- (d) a person declared by regulation to be an inquiry agency.

### **Serious or systemic**

(2) For the purpose of the Act, misconduct or maladministration in public administration will be taken to be **serious or systemic** if the misconduct or maladministration –

- (a) is of such a significant nature that it would undermine public confidence in the relevant public authority, or in public administration generally; and
- (b) has significant implications for the relevant public authority or for public administration generally (rather than just for the individual public officer concerned).



*\*The Office of the Police Ombudsman is expected to cease operation in September 2017.*



- (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
  - (ba) an offence against the *Lobbyists Act 2015*, 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.

(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.

(5) Without limiting or extending the conduct that may comprise corruption, misconduct or maladministration in public administration, this Act applies to conduct that -

(a) occurred before the commencement of this Act; or

(b) occurs outside this State; or

(c) comprises a failure to act; or

(d) is conduct of a person who was a public officer at the time of its occurrence but who has since ceased to be a public officer; or

(e) is conduct of a person who was not a public officer at the time of its occurrence but who has since become a public officer.

(6) A reference in subsection (3) to a code of conduct does not include any statement of principles applicable in relation to the conduct of members of Parliament.

# 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	Legislative Council	
an officer of the Legislative Council		
a person under the separate control of the President of the Legislative Council		
a Member of the House of Assembly	House of Assembly	
an officer of the House of Assembly		
a person under the separate control of the Speaker of the House of Assembly		
a member of the joint parliamentary service	Joint Parliamentary Service Committee	
the principal officer of a judicial body	Attorney-General	Premier
a judicial officer that constitutes a judicial body		
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

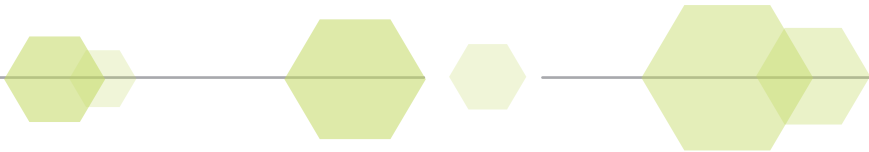
PUBLIC OFFICERS	PUBLIC AUTHORITY	MINISTER
a member of the staff of the State Courts Administration Council	State Courts Administration Council	Attorney-General
a person who constitutes a statutory authority or who is a statutory office holder	the Minister responsible for the administration of the Act 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

PUBLIC OFFICERS	PUBLIC AUTHORITY	MINISTER
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>
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
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

PUBLIC OFFICERS	PUBLIC AUTHORITY	MINISTER
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 *Independent Commissioner Against Corruption Regulations 2013* 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
an authorised examiner appointed under paragraph (b) or (c) of the definition of authorised examiner in section 5(1) of the <i>Motor Vehicles Act 1959</i>	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>





## 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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