

Providing advice on corruption issues

A guide for community leaders

Are you a community leader?

People who have concerns about possible public sector corruption tend not to report the matter directly, but discuss it in the first instance with someone whose opinion they respect – a community leader.

Community leaders are recognised within communities as well-informed and trusted sounding boards for advice. They might be a doctor, an elder, an accountant, a police officer, a member of Parliament, a chamber magistrate, an office holder in a local community group or a senior family member.

As a community leader, people look to you for advice on how to deal with a wide range of matters, including matters related to corruption. In order to offer the right advice, however, you too need accurate information. This brochure will provide you with an overview of what corruption in the NSW public sector is and, more importantly, how to report it.

What is the ICAC?

The Independent Commission Against Corruption (ICAC) was established as an independent and accountable body by the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”) in response to growing community concern about the integrity of public administration in NSW.

The principal objectives of the ICAC are to:

- investigate, expose and prevent corruption
- educate public authorities, public officials and members of the public about corruption and its detrimental effects.

The ICAC receives and analyses complaints from members of the public and public officials, and reports made by the principal officers of public sector organisations and ministers of the Crown. The ICAC also conducts research to identify specific areas of corruption risk, and helps agencies to minimise corrupt conduct through its prevention and education programs.

The ICAC has extensive powers of investigation and may conduct hearings to obtain evidence of corruption. It works to minimise corruption by providing advice, information resources and training to public sector organisations to remedy existing or potential corruption problems. It also helps organisations to identify and deal with significant corruption risks so as to promote the integrity and good repute of public administration.

The ICAC is a public authority but is independent of the government of the day. It is accountable to the people of NSW through the NSW Parliament.

What is corruption?

The ICAC can only investigate allegations of corrupt conduct involving the NSW public sector.

People employed by government departments, statutory authorities and local councils in NSW are public officials, as are those employed by the NSW Parliament, NSW magistrates, judges, local councillors and politicians. Public authorities are diverse and include public utilities, state-owned corporations, public universities, boards and committees.

Not all wrongdoing is corruption. Corrupt conduct occurs when a NSW public official uses their power or position in a dishonest way for the express purpose of improperly benefiting one or more people or an organisation. The conduct must be serious and intentional and not due to error.

Corrupt conduct is defined in the ICAC Act. Corrupt conduct can take many forms. Here are some examples:

- A public official improperly uses their knowledge, power or resources to help themselves or others.
- A public official dishonestly exercises their official functions, breaches public trust or misuses information or material acquired as a result of their position.
- A member of the public influences a public official to use their position in a way that is dishonest or partial.

- A public official or a member of the public engages in conduct that impairs public confidence in public administration and which could involve collusive tendering, fraud in relation to applications for certain licences, using public funds for private advantage, defrauding the public revenue or fraudulently gaining or retaining employment as a public official.

Public sector corruption can include non-public officials – that is, members of the public, private business, government suppliers or consultants – when they participate in a public official’s corrupt scheme or if they attempt to influence a public official’s decision through corrupt means. For example:

- a contractor colludes with a public official in a corrupt scheme whereby work is awarded to the contractor at inflated prices and, in return, the public official receives kickbacks
- an individual gives a public official an expensive gift or money in order to expedite a decision on a development application or an approved occupation certificate.

Corruption involving or affecting the public sector leads to poor or partial government decisions and defective or poor quality infrastructure. It wastes public resources, produces inequality and breaks down the community’s trust in government. It needs to be reported.

If you or members of your community need advice on whether a particular individual is a public official, whether a particular organisation is a public authority or if a situation involves corrupt conduct, contact the ICAC.

Who can make a report?

Anyone can make a complaint or provide information to the ICAC about suspected corrupt conduct involving or affecting the NSW public sector.

Community leaders can make complaints, provide information on behalf of a member of their community or can help the complainant contact the ICAC. Once a matter has been reported, the ICAC will usually take the matter up directly with the person who originally provided the information.

If there is uncertainty about a matter, you or the person you are assisting can contact the ICAC for advice and assistance on what to do.

How do you report corruption?

Enquiries and reports regarding suspected corrupt conduct can be made to the ICAC by:

- telephone on 02 8281 5999 or freecall 1800 463 909 (callers outside Sydney)
- writing to GPO Box 500 Sydney NSW 2001 or faxing 02 9264 5364
- online at www.icac.nsw.gov.au
- email icac@icac.nsw.gov.au.

The ICAC also accepts enquiries and reports in person at its premises, located at Level 7, 255 Elizabeth Street, Sydney.

If you or a person you are advising are unsure of whether or not a particular matter should be reported to the ICAC, you can call the ICAC for assistance.

What information should be included?

In order for the ICAC to decide on what action to take, sufficient information needs to be submitted. It is not necessary, however, for a person reporting suspected corruption to attempt to gather evidence before reporting a matter to the ICAC.

Reports of suspected corrupt conduct made to the ICAC should include:

1. Name and contact details (optional). Anyone is entitled to make an anonymous complaint. This can, however, hamper the effectiveness of an investigation, since the ICAC may need to verify matters or obtain further details, which can be difficult without contact information. With an anonymous complaint, the ICAC is also not able to advise you of any decisions or action on the matter.
2. Names of NSW agencies and public sector officials involved and their roles.
3. Details of any private individuals or organisations involved.

4. How you became aware of the matter (include any relevant dates and the name and position of any person with whom you interacted or observed).
5. A summary of the matter (include names, dates, locations and all other relevant information).
6. Other people aware of the matter and that may be able to assist the ICAC.
7. Other organisations you have contacted and their response.
8. Documentary material that supports your allegation (include details on any relevant documents or other information that may help the ICAC in its assessment). The actual documentation does not need to be included in the report.
9. Whether you consent to your identity being disclosed (optional).

What if there are concerns about reporting?

Individuals are often afraid to report corruption because they fear reprisals. In NSW, if you report public sector corrupt conduct in good faith to the ICAC, you are protected by law from reprisals.

The ICAC Act protects individuals who provide the ICAC with information about suspected corrupt conduct or assist it in other ways. The ICAC Act:

- protects people who are not public officials
- protects people who are public officials
- makes it a crime to victimise a person in reprisal for the person giving the ICAC information or assisting it in other ways. This includes protection against dismissal or disadvantage to anyone in their employment.

If a person you are advising has concerns about protection, encourage them to contact the ICAC or enquire on their behalf.

Individuals who are public officials can make disclosures within their organisations. In doing so, they may avail themselves of protections provided under the *Public Interest Disclosures Act 1994*. These protections can also apply if the public official reports the matter directly to the ICAC.

Should a complainant keep their report confidential?

It is advisable not to pass on details of matters reported to the ICAC to others. A complaint about corrupt conduct that is made to the ICAC in good faith is protected from defamation proceedings, but no protection against defamation is provided if the complaint (which may be a defamatory statement) or material about the complaint is made or published in another forum.

Making matters known publicly (for example, through the media) could also potentially compromise an ICAC investigation.

The ICAC will generally neither confirm nor deny that a particular complaint has been received. The ICAC also does not comment on any matter that is the subject of ongoing investigation or consideration.

What happens to information reported?

Following a report or complaint about suspected corrupt conduct, the ICAC will:

- register the matter onto a database
- acknowledge receipt of the matter
- ask the complainant for more information, if necessary
- if the matter is within the ICAC's jurisdiction, compile a report to the ICAC Assessment Panel for consideration and decision on a course of action
- if the matter is not within the ICAC's jurisdiction, possibly refer the matter to another agency. For example, the ICAC would refer a complaint about corrupt conduct by a NSW police officer to either the Police Integrity Commission or the NSW Ombudsman, depending on the level of seriousness.

The Assessment Panel decides the course of action that will be taken on matters, reports and complaints within the ICAC's jurisdiction. Depending on the nature, the panel may decide to:

- take no action because the matter complained about does not constitute corrupt conduct under the ICAC Act
- direct either the agency that is the subject of the complaint or an appropriate supervisory agency to investigate and report back to the ICAC
- conduct assessment enquiries to establish, for example, whether the agency involved has already dealt with the matter. Depending on these enquiries, the ICAC may decide to take no further action, refer it to another agency or undertake an investigation

- provide corruption prevention advice for the organisation concerned, if the matter is about systemic problems rather than corrupt conduct
- launch an investigation.

When will a complainant hear back from the ICAC?

The ICAC aims to notify the person who submitted the corruption allegations of the planned action and reasons as soon as possible.

What happens during ICAC investigations?

The ICAC Act gives the ICAC the discretion to decide whether or not it will conduct or discontinue an investigation. This discretion applies to all information received, except matters referred by both Houses of the NSW Parliament, which the ICAC must investigate.

Only a small number of matters investigated reach the level of a public inquiry. When the ICAC concludes a public inquiry, it is required to publish a report. These reports make findings of fact, and, in cases where the ICAC has determined that there is serious corrupt conduct, whether a person engaged in corrupt conduct, as well as make recommendations to prevent the conduct from recurring. The ICAC does not prosecute individuals who are the subject of these findings. It can recommend that the Director of Public Prosecutions consider prosecuting them for specific offences.

How is the ICAC held to account?

The Parliamentary Committee on the ICAC is responsible for monitoring and reviewing ICAC activities. The committee, however, cannot investigate particular conduct or reconsider decisions the ICAC has made on a particular matter.

The Inspector of the ICAC is responsible for overseeing the ICAC's use of its investigative powers and investigating any complaints against staff.

Further information

Call the ICAC on (02) 8281 5999, or toll free if the caller is outside Sydney on 1800 463 909, between 9am and 5pm (weekdays).

If you would like to talk to the ICAC in your own language, call the Telephone Interpreter Service on 131 450 and ask them to call the ICAC on 1800 463 909.

Email a question to icac@icac.nsw.gov.au.

Go online: www.icac.nsw.gov.au.

ICAC

INDEPENDENT COMMISSION
AGAINST CORRUPTION

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Business Hours: 9 am - 5 pm Monday to Friday