

Section 11

Tip sheet for principal officers

As a principal officer, this tip sheet is intended to help you 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).

More detailed guidance in relation to your reporting obligation is contained in the [Section 11 Report guidelines for principal officers](#).

1. Your duty as a principal officer

You are under a duty to report to the ICAC **any matter** that you suspect on **reasonable grounds** concerns or may concern **corrupt conduct**.

“Suspecting” something on reasonable grounds is not a high threshold; there simply needs to be a real possibility that corrupt conduct is, or may be, involved. For instance:

- you are not required to have already formed a view that the alleged conduct has occurred
- proof or admissible evidence is not required
- you do not need a “smoking gun”
- you may hold a reasonable suspicion, even though no specific individual who engaged in the alleged conduct has (yet) been identified.

2. The conduct to be reported

It is also not a high threshold for a matter to **concern** or **may concern** corrupt conduct. You do not need to know with absolute certainty that the alleged conduct is “corrupt conduct”.

The definition of corrupt conduct can be found in the ICAC Act. Generally speaking, it involves deliberate or intentional wrongdoing involving a NSW public official, public authority in NSW or NSW public official functions.

The duty to report arises whenever you suspect alleged conduct might involve corruption. For this reason, matters must still be reported to the ICAC where:

- you suspect only minor or one-off incidents of corrupt conduct

- any subject public official has since resigned, is otherwise no longer a NSW public official and/or no longer performs public official functions.

Even if you believe that the ICAC already knows about the matter, the matter is in the public domain and/or another principal officer has already reported the matter to the ICAC, this does not extinguish your duty to report the matter to the ICAC if you have formed a suspicion on reasonable grounds that the matter concerns or may concern corrupt conduct.

As a general rule, 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.

3. When you must make a report to the ICAC

You must report to the ICAC as soon as you have formed a reasonable suspicion that corrupt conduct may have occurred or may be occurring. The ICAC Act does not contain any provision permitting delay in reporting and once you have formed a suspicion on reasonable grounds that a matter concerns or may concern corrupt conduct, you are obliged to report the matter to the ICAC. This is because s 11 of the ICAC Act imposes a “duty” to notify the ICAC. You do not have any discretion not to report the matter to the ICAC. This is so even if you do not consider the suspected corrupt conduct to be serious or systemic.

The ICAC prefers matters to be reported prior to disciplinary or other action being taken, including prior to a decision being made by an employer to proceed with a matter following making an initial assessment under the *Government Sector Employment Act 2013* and its associated rules and regulations, and prior to the subjects of the allegations becoming aware of those allegations against them. There are also no procedural fairness requirements to notify individuals prior to making a report to the ICAC.

Delays in reporting or advising subjects of the allegations before reporting the matter can result in witnesses colluding, the loss of evidence or the loss of other investigative opportunities. Such actions by agencies

in handling matters, which cannot be justified, may be the subject of adverse comments in an ICAC report.

Section 11 reporting is a statutory duty and overrides any other obligation to maintain secrecy or other restriction on disclosure; for example, under the legislation governing your agency's functions or privacy legislation. As long as reports are made in good faith to the ICAC, you – as the principal officer – are protected from any criminal or civil liability.

What is corrupt conduct under the ICAC Act? Here are some examples.

- 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 local councillor votes in favour of a planning matter in which the councillor has an undisclosed financial interest.
- A public official awards a tender to a business in relation to which the public official has a personal and/or financial interest.
- A public official bypasses recruitment procedures to employ friends or family members.
- A public official accesses confidential information as a favour to a friend or family member.
- A former public official sells confidential information gained while working in an official capacity.
- A public official uses a corporate credit card to pay for personal items.
- A public official extorts money from a client with disability in their care.
- A public official uses a work computer and email address to run a private business.
- A person falsifies their qualifications and work experience to obtain employment as a public official.
- Contractor businesses engage in collusive tendering during a procurement process undertaken by a NSW public authority, resulting in at least one of the contractors gaining an unfair advantage and becoming the successful tenderer.
- Phishing scams or attempts to fraudulently obtain payment from a NSW public authority including via false invoices or emails from entities imitating public officials or suppliers requesting changes to EFT or bank account details.

4. Making an s 11 report to the ICAC

Please make s 11 reports to the ICAC in writing. Details about how to make an s 11 report and what information should be included in it are available on the ICAC's website [here](#).

For serious matters or those that may require urgent investigative action, please contact the ICAC via the numbers below immediately and report the matter initially over the telephone. Then, provide an s 11 report to the ICAC in writing. ICAC staff can usually provide prompt guidance about the course of action to be taken.

5. Response from the ICAC to your report

The ICAC acknowledges all reports received. After the ICAC assesses your report, we will send you a letter outlining what action, if any, the ICAC will take in relation to the issues. The ICAC aims to provide you with advice of its decision within 28 days of receiving your report. If there is a degree of urgency associated with the matter, advise the ICAC and we will endeavour to advise you of the decision as soon as possible.

6. Contacting the ICAC

For assistance on the issues raised in these guidelines, please contact the manager of the Assessments Section on 02 8281 5999.

The logo for the Independent Commission Against Corruption (ICAC) in New South Wales. It features the letters 'I·C·A·C' in a large, bold, serif font, with dots between the letters. Below the logo is a horizontal line.

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