

# Section 54 report guidelines

## What to include in your report to the ICAC

### About these guidelines

The Independent Commission Against Corruption (ICAC) is concerned with corrupt conduct in and affecting the NSW public sector. The ICAC has referred a matter regarding possible corrupt conduct to your authority. This referral requires you to investigate and provide a report to the ICAC. The purpose of these guidelines is to assist you to know what to include in your report. While the guidelines are not intended to tell you how to investigate, following them will, to some extent, guide the information you collect.

### Understanding the terminology

#### Section 53: Referral

Section 53 of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”) allows the ICAC to refer a matter to a relevant authority requiring that authority to investigate or take other specified action. The ICAC must consult the head of the authority prior to the referral being made.

#### Section 54: Report

The ICAC Act provides that the ICAC can require the authority to submit a report to the ICAC in relation to the action taken by the authority.

#### Section 56: Duty to comply

Section 56 of the ICAC Act creates a positive duty for your authority to comply with the requirements in the referral.

### The ICAC referral

The ICAC will tell you what it wants you to investigate in the letter of referral and will give you as much information as it can about the matter referred. The ICAC will only provide you with the identity of the complainant if the ICAC considers the identity may be relevant to your investigation. If the ICAC has not provided the identity of the complainant, your authority may apply to the ICAC Commissioner for the release of these details. The Commissioner will decide

whether it is in the public interest to do so. In some cases the source of the complaint may be a public official and the provisions of the *Public Interest Disclosures Act 2022* (“the PID Act”) will apply.

Once the matter has been referred to your authority, the ICAC will then agree on a timeframe for the investigation with the head of your authority or that person’s nominated delegate. If circumstances arise that suggest it may be difficult to complete the investigation and report within the agreed timeframe, you must submit any request for an extension in writing to the Deputy Commissioner of the ICAC, including reasons why the timeframe cannot be met.

The referral letter will specify whether the information sent to you under the referral is confidential and subject to the secrecy provisions of s 111 of the ICAC Act.

### Whose report is it?

The report your agency provides to the ICAC is your agency’s report. You can utilise it to conduct disciplinary action, if the findings warrant that course.

If you receive any enquiries about the investigation and/or the resultant report, be they from the media or from employees, please contact us to let us know. Ultimately, it is a matter for your agency as to how you respond to such queries, but there may be good reasons to keep the matter confidential until the results of the investigation are finalised.

### Investigation plan

An investigation plan defines what you do, when and why. Effective planning is essential to maximise the likelihood of a sound investigation. Your plan should cover the following:

- an overview, to set out how the investigation came into existence, its general ambit, the result of any initial enquiries and why it is being conducted
- scope and purpose of the investigation, detailing the boundaries of the investigation and what it is trying to achieve or establish
- the resources to be deployed, including people required and technical facilities

- the timeframe for the investigation, which may be an estimate at the initial stages
- the affected persons
- your risk management plan
- the information gathering tasks you will undertake.

The ICAC would appreciate receiving a copy of your investigation plan as soon as it has been completed. The ICAC would expect an investigation plan to be completed within two weeks of receipt of the referral documentation. If you have any queries in this regard, please contact either the ICAC officer nominated in the referral documentation or the manager of the Assessments Section on 02 8281 5999.

## Progress report

The ICAC would appreciate receiving in writing a progress report during the course of your investigation. This would ordinarily occur at about the half-way mark. This is to assist the ICAC in effectively overseeing your agency's investigation. If the agreed timeframe between your agency and the Commission is 12 weeks for completion of the investigation, please provide a progress report to the Commission at the six-week mark.

## Your investigation

The referral of this matter to your authority for investigation does not give your authority any powers that the ICAC may have when it investigates matters. The powers you have to investigate this matter are those that you ordinarily have when conducting internal inquiries on behalf of your authority.

When conducting your investigation, it is important to remember the requirements of procedural fairness. These requirements dictate that any affected persons (see "Scope of the investigation" below) should be given both the opportunity to respond before any final adverse findings of fact are made and the opportunity to be heard before any adverse action is taken against them.

The PID Act places certain restrictions in relation to the identity of public officials who provide information about corrupt conduct and other matters. Please consult your own legal advisors if you have questions on the applicability of the PID Act to your investigation.

## Your report

A report that covers the matters mentioned below will assist both your authority and the ICAC to identify:

- areas where, and reasons why, corrupt conduct may occur in the exercise of public official functions
- individuals who may be involved in corrupt conduct
- system weaknesses that present opportunities for the occurrence of corrupt conduct.

You should also be aware that the ICAC will assess the thoroughness of your investigation by examining your report.

## Content of your investigation report

It is suggested that your report to the ICAC should include the following sections:

1. executive summary
2. scope of the investigation
3. methodology used
4. the evidence
5. statements of fact
6. conclusions about individuals
7. outcomes for individuals
8. identification of system weaknesses
9. outcomes for systems.

Checklists of the type of information to be included in each of these sections, as well as explanatory comments where necessary, are outlined below.

### 1. Executive summary

- As investigation reports may be very detailed and lengthy, it would assist the ICAC and senior officers of your authority if such reports contained an executive summary.

### 2. Scope of the investigation

- The report should outline the allegations that have been referred to your authority by the ICAC for investigation.
- If the ICAC has requested that specific questions be addressed in relation to these allegations, these questions should be restated in this introductory section.
- Describe the activities or functions of your authority that are the subject of investigation (for example, a tender process, a recruitment process, or the particular duties or functions of an officer such as supervision, cash handling, use of information and travel payments). Provide a brief description of the rules, policies and procedures that should be followed when exercising the function(s). Do not just attach copies of documents.
- List the individuals or bodies affected by the investigation. A public official or authority, private company or citizen may be affected by your investigation if adverse findings of fact or adverse conclusions may be drawn against them. People, or other bodies, affected by your investigation may not just be those mentioned in the initial referral. The list of affected people may change during the course of your investigation.
- List the individuals or bodies otherwise involved with the matter being investigated; provide details of

potential witnesses and anyone who had supervisory responsibility for the activities or functions being examined (for example, members of a tender committee or supervisors with review functions).

### 3. Methodology used

- Identify who conducted the investigation:
  - was the matter dealt with by your authority's in-house internal investigators? If so, please specify which area (for example, Internal Audit or Human Resources)
  - was the matter contracted to an external investigator? If so, provide details about the investigator and outline the reasons that person or company was considered suitable to undertake the investigation.
- Identify any documents that were examined as part of your investigation.
- Identify any people interviewed during the course of your investigation.
- Identify other evidence that was gathered during your investigation.
- Consider factors that may have limited your ability to conduct this investigation (for example, missing records, relevant staff being unavailable for interview because they no longer work for the authority, and the inability to discuss the allegations with the person who raised them). If factors such as these applied, please indicate how they affected your investigation.

### 4. The evidence

A summary of the evidence used to make your statements of fact (see below) should be included in your report. In particular, the summary should include:

- a brief description of the relevant parts of the evidence
- your assessment of the reliability of the evidence.

If copies of the evidence are attached (for example, transcripts of interviews) place them in an appendix to the report.

### 5. Statements of fact

Statements of fact are arrived at by drawing inferences from relevant and reliable evidence. They are historical statements inferred from the evidence and should not be confused with your recommendations or outcomes. In reporting to the ICAC, you are not expected to abide by the rules of evidence, as applicable in courts, when investigating the facts surrounding the matter referred. Statements of fact are usually descriptions of:

- what a person actually did and how they did it, including omissions and failures to act (for example, details of the person's conduct or behaviour)
- when the conduct occurred (for example, date, time and location)
- why they did it (for example, stated motivations or reasons for the conduct).

### 6. Conclusions about individuals

For each public official or authority, private company or citizen in your list of affected people (see "Scope of the investigation") specify any adverse criticisms. In particular, whether:

- there were any breaches of your authority's policies and/or procedures
- you suspect the occurrence of corrupt conduct? (see the definition of corrupt conduct in s 8 and s 9 of the ICAC Act)
- the facts demonstrate or suggest a person might be the subject of disciplinary action
- the facts suggest that a criminal offence might have occurred.

### 7. Outcomes for individuals

For each individual who was the subject of adverse criticism, if any, please describe:

- what is happening, or has happened, to that individual (for example, has the individual involved been promoted, remained in their current position, had a lateral transfer, been demoted, dismissed, or resigned? Has the individual been required to pay back any money? Have any criminal charges been laid?).

### 8. Identification of system weaknesses

For each of the functions involved in the matter investigated, (see "Scope of the investigation") your report should include whether your investigation identified any failings or weaknesses that might allow corrupt conduct to occur in:

- policies or procedures
- organisational culture.

### 9. Outcomes for systems

What is being done about:

- improving policies or procedures?
- strategies aimed at improving organisational culture?

At a later date, it may be necessary to update the ICAC, in relation to both outcomes for individuals and outcomes for systems.

## Further action by the ICAC

If the ICAC is satisfied with the action taken by your authority to deal with the matter, you will be advised of this in writing, usually within four weeks. If the ICAC is dissatisfied with the report of your investigation, or clarification of some aspects is required, the ICAC may seek additional information from you.

If the ICAC is dissatisfied with the action taken by an authority in relation to the referral, the provisions of s 55 of the ICAC Act may be used. This means that the ICAC may, after consultation with your authority, prepare a report and submit it to the relevant minister setting out the grounds of dissatisfaction.

## Further information

For further information and assistance on preparing your s 54 report, conducting your internal investigation or any other issues raised in these guidelines, please contact either the ICAC officer nominated in the referral or the manager of the Assessments Section on 02 8281 5999.

You may also refer to the ICAC's publication, *Fact Finder – A guide to conducting internal investigations*, which is available from the ICAC's website at [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au).

The full provisions concerning the responsibility of public authorities to investigate and report to the ICAC can be found in Part 5 of the ICAC Act, which is available from the ICAC's website.

For corruption prevention advice on internal reporting mechanisms for corrupt conduct or improvement to procedures and work systems, please contact the ICAC's Corruption Prevention Division.

## Contacting the ICAC

For further information and assistance on reporting corrupt conduct in general, and other issues raised in these guidelines, please contact the manager of the Assessments Section on 02 8281 5999.

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

# ICAC

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