

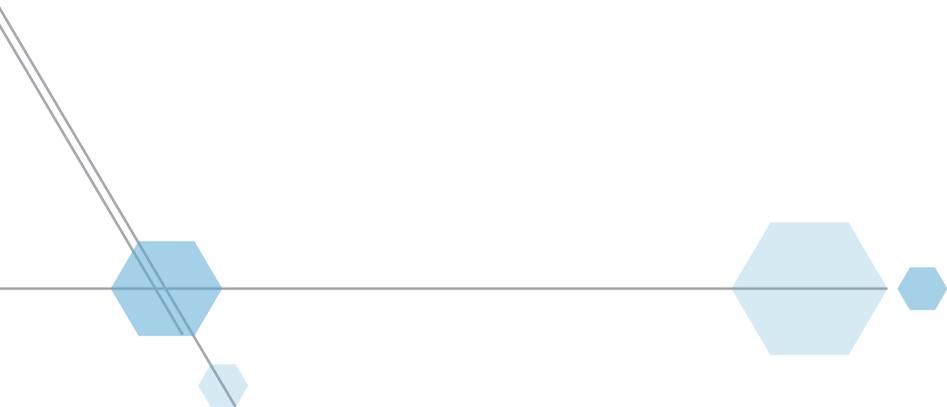


ICAC

Independent Commissioner
Against Corruption
SOUTH AUSTRALIA

DIRECTIONS AND GUIDELINES

FOR SAPOL PUBLIC OFFICERS



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Please refer to the ICAC website for the most
up to date version of the Directions and Guidelines.
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 South Australia Police (SAPOL) public officers, including the Commissioner of Police, who is also a public authority. They should be understood as a minimum obligation for the reporting of matters to the OPI. A SAPOL 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 public officers who are not 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. Ann Vanstone 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:

- » 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.

*See statutory definition of serious or systemic misconduct or maladministration on page 8.

DIRECTIONS AND GUIDELINES FOR SAPOL PUBLIC OFFICERS*

For the purpose of these Directions and Guidelines, a SAPOL public officer is:

- » the Commissioner of Police
- » a police officer
- » a community constable
- » a special constable appointed under the *Police Act 1998*
- » a police cadet
- » a police medical officer
- » a public sector employee employed in SAPOL
- » a protective security officer

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 conduct 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 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 to the OPI.

(From 4 September 2017 section 12 of the *Police Complaints and Discipline Act 2017* (PCD Act) additionally requires that a designated officer who reasonably suspects that another designated officer has engaged in conduct that constitutes corruption, misconduct or maladministration in public administration must report that suspicion in accordance with subsection 12(2).

Subsection 12(2) of the PCD Act sets out the requirements of such a report.

The PCD Act defines a designated officer as a member of SA Police (as defined in the *Police Act 1998*), or a police cadet, or a special constable.)

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

Notwithstanding that a 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.

A SAPOL public officer's report to the OPI should:

- » include the SAPOL public officer's identity
- » provide the SAPOL public officer's contact details

The SAPOL public officer's report to the OPI must:

- » provide details of the matter that the SAPOL public officer suspects is corruption, misconduct or maladministration in public administration
- » identify any public officer or other person suspected of having been involved
- » identify all persons and entities suspected of having been involved

- » provide a statement as to how the matter became known to the SAPOL 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 SAPOL public officer should make a report to the OPI via the online report form on the ICAC website.

On occasion, a SAPOL public officer will make a report to the OPI based on information received from another person. Where a SAPOL public officer is making a report to the OPI based on information provided by another person, the SAPOL public officer should consider whether section 8 of the *Public Interest Disclosure Act 2018* (PID Act) applies to protect the identity of that other person. Section 8 of the PID Act creates an obligation to keep the identity of a person who makes an appropriate disclosure of public interest information confidential (subject to some exceptions).

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.

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 ICAC ACT – INTERPRETATION

(1) **Inquiry agency** means –

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

Serious or systemic

(2) For the purpose of the ICAC 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).



- (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 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
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 chief executive under the <i>Education and Children's Services Act 2019</i>	the chief executive under the <i>Education and Children's Services Act 2019</i>	the Minister responsible for the administration of the <i>Education and Children's Services Act 2019</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
an accredited professional within the meaning of the <i>Planning, Development and Infrastructure Act 2016</i> (other than an accredited professional who only performs the functions of a relevant authority under that Act as a member of an assessment panel or as an assessment manager for an assessment panel)	the Minister responsible for the administration of the <i>Planning, Development and Infrastructure Act 2016</i>	Premier
a member of a joint planning board or a subsidiary of a joint planning board established under the <i>Planning, Development and Infrastructure Act 2016</i>	the joint planning board	the Minister responsible for the administration of the <i>Planning, Development and Infrastructure Act 2016</i>
an employee of a joint planning board or a subsidiary of a joint planning board		
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 the <i>Motor Vehicles Act 1959</i> (other than a police officer)	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



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OR 1300 782 489
Cost of a local call for country callers



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