



Factsheet

Summary of Legislative Changes

The *Independent Commission Against Corruption Act 2012* significantly changed in October 2021. The following table outlines some of the key changes to the legislation and to our operations.

	Old Scheme	New Scheme
<u>Reporting obligations</u>	The Commissioner prepared directions and guidelines for public officers which governed the reporting of matters involving alleged corruption, misconduct and maladministration in public administration.	Public officers are still obliged to report corruption in public administration and are strongly encouraged to report matters involving misconduct and maladministration. The Director OPI is now responsible for the directions and guidelines governing the reporting of corruption. The Ombudsman is responsible for the directions and guidelines governing the reporting of misconduct and maladministration in public administration.
Corruption in public administration	Corruption in public administration extended to any criminal offence committed by a public officer while acting in their capacity as a public officer. This included theft and other dishonesty offences, and offences against the person, such as assault. The Commissioner could also investigate offences incidental to alleged corrupt conduct but which did not of themselves constitute corruption.	The definition of corruption in public administration is now limited to specific offences under the <i>Criminal Law Consolidation Act 1935</i> which relate to public officers, together with offences against the <i>Public Sector (Honesty and Accountability) Act 1995</i> and the <i>Public Corporations Act 1993</i> . The Commission cannot investigate offences incidental to alleged corruption.

	Old Scheme	New Scheme
Misconduct in public administration	<p>Defined by the ICAC Act, misconduct extended to any breach of code of conduct by a public officer while acting in their capacity as a public officer and which could be the subject of disciplinary action, or 'other misconduct'.</p> <p>The Commissioner could investigate misconduct in narrow circumstances.</p>	<p>Misconduct is now defined in the <i>Ombudsman Act 1972</i> and involves a serious and intentional breach of a code of conduct by a public officer, while acting in their capacity as a public officer.</p> <p>Public officers who are not bound by a code of conduct cannot engage in misconduct and the Commission cannot investigate misconduct.</p>
Maladministration in public administration	<p>Defined by the ICAC Act, maladministration involved the conduct of public officers and the practices, policies and procedures of public authorities, which resulted in irregular and unauthorised use of public money, the substantial mismanagement of public resources, or the mismanagement of official functions. It included incompetent or negligent conduct.</p> <p>The Commissioner could investigate serious or systemic maladministration.</p>	<p>The definition is unchanged, but is now found in the <i>Ombudsman Act 1972</i>.</p> <p>The Commission cannot investigate maladministration.</p>
ICAC structure	<p>The ICAC comprised a Commissioner and staff employed by the Commissioner.</p>	<p>The ICAC is now a Commission. The Commission may engage staff and the Commissioner serves as its principal officer.</p>
Office for Public Integrity	<p>The OPI was responsible to the Commissioner for the performance of its functions and comprised staff employed by the Commissioner.</p>	<p>The OPI is independent of the Commission.</p> <p>The Director OPI is a statutory office holder and OPI staff are employed by the Attorney-General's Department.</p>
Commencing a corruption investigation	<p>The Commissioner could commence a corruption investigation following the OPI's assessment of a complaint or report. The Commissioner could also commence a corruption investigation on her own initiative and in the absence of a complaint or report.</p> <p>The making of an assessment was at the Commissioner's absolute discretion.</p>	<p>The Commission may only commence a corruption investigation following a referral from the OPI. The OPI must first receive a complaint or report and must assess that complaint or report as raising a potential issue of corruption in public administration.</p> <p>The making of an assessment is at the absolute discretion of the Director OPI.</p>
Action following a corruption investigation	<p>Where an investigation undertaken by the Commission uncovered evidence of corruption, the Commissioner could refer the matter to the Director of Public Prosecutions. Any ensuing prosecution was at the Director's discretion.</p>	<p>Where an investigation undertaken by the Commission uncovers evidence of corruption, the Commission may refer the matter to the South Australia Police for further investigation and potential prosecution.</p> <p>The Commission cannot refer a matter directly to the Director of Public Prosecutions.</p>

	Old Scheme	New Scheme
Confidentiality	Sections 54 and 56 of the ICAC Act governed the disclosure and publication of information relating to the Commissioner's operations.	The confidentiality provisions now fall wholly within section 54 of the ICAC Act. A person can now disclose information relevant to an ICAC matter to their employer, to their business partners or in the management of a workers compensation claim.
Public statements	The Commissioner could make a public statement in relation to a particular matter if she was satisfied it was appropriate to do so, and having regard to a number of considerations.	The circumstances in which the Commission may make a public statement are limited. In many cases, the Commission cannot make a public statement in relation to an investigation.
Evaluations	The Commissioner could evaluate an agency's practices, policies or procedures with a view to preventing or minimising corruption, misconduct and maladministration in public administration.	The Commission may evaluate an agency's practices, policies and procedures in relation to corruption. The Ombudsman may evaluate an agency's practices, policies and procedures with a view to preventing or minimising misconduct and maladministration in public administration.

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