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WHAT CAN I SAY?



When the *Independent Commissioner Against Corruption Act 2012* (ICAC Act) came into effect in September 2013, the confidentiality provisions in the Act prevented you from telling anybody that you had made a report to the Office for Public Integrity (OPI).

It essentially put you inside of a cone of silence, one where you could not tell your manager, you could not tell the HR department, you could not even tell your Chief Executive about having made a report. This was not practical and unsurprisingly it caused confusion and inefficiencies.

The problem arose out of section 56 of the ICAC Act, which prevented the publishing of information about reports to the OPI. More specifically the problem was with the way the ICAC Act defined the term publish. Essentially publish was taken to mean any communication of any type to any person. Not only did this cause problems inside of agencies because nobody could tell anybody else that they had taken action, it meant that a single matter could be reported to the OPI by a number of people, simply because they were unaware that the matter had already been reported.

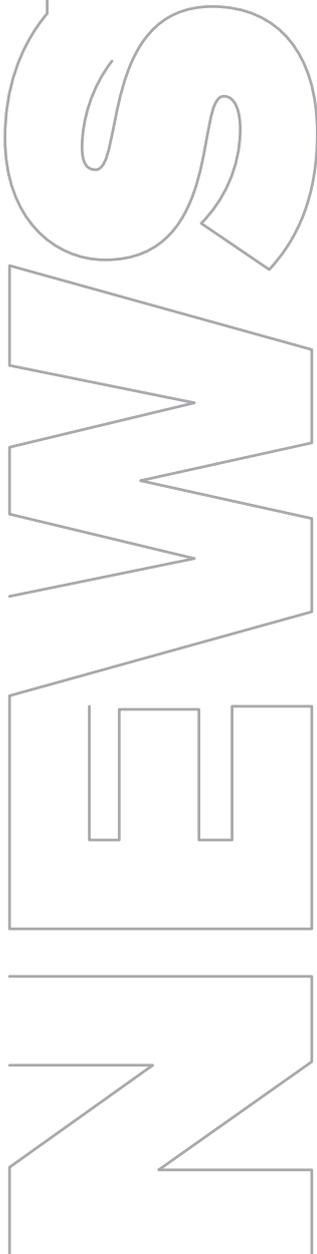
When the ICAC Act was amended in November 2014, this definition was

changed to bring it in line with a more intuitive understanding of the term 'publish'. The restrictions on publishing now refer to the publication of information in the public domain. This means you are prevented from publishing via traditional media sources including broadcast and print, and new media sources including online media outlets, social media, blogs and any other channel designed to disseminate information to the public.

You are no longer prevented from communicating that you have reported a matter to the OPI to people who need to know.

However, this doesn't mean that you can indiscriminately shout it from the rooftops. Section 54 of the ICAC Act requires you to exercise caution and restraint regarding matters that are before the OPI or ICAC. Confidentiality is required due to the sensitive nature of complaints and reports. To broadcast the information too widely could cause reputational damage, or hinder a possible investigation.

If you do decide to tell someone that you have made a report to the OPI, you might consider informing them that confidentiality provisions prevent the publishing of the information in the public domain.



PROSECUTIONS FROM ICAC INVESTIGATIONS

On 16 April 2015, the Commissioner announced that two unrelated matters referred to the Director of Public Prosecutions (DPP) by his office would appear before the Adelaide Magistrates Court.

The first matter concerned a 61 year old Henley Beach man who has been charged with six counts of abuse of public office, relating to the improper use of information for personal gain.

The man appeared in the Adelaide Magistrates Court on 20 April and has been

remanded on bail to appear again in May.

A 47 year old woman from Redwood Park will face court in May charged with abuse of public office, theft and dishonest dealing with documents over a 16 month period in 2012-2013.

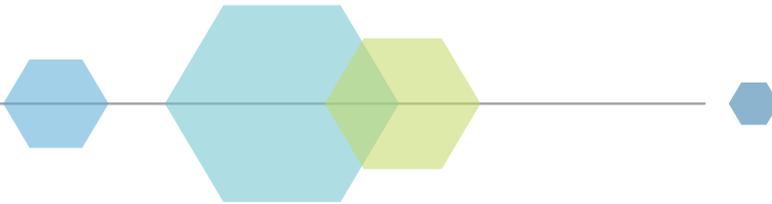
These are two of a number of matters referred for prosecution by the Commissioner.

When charges are laid or first court appearances scheduled, the Commissioner will

release information on these matters if it is appropriate to do so.

The Commissioner's office also refers matters to SAPOL for investigation, a number of which have already resulted in prosecution. These prosecutions will be reported on in the Annual Report.

The 2013-2014 Annual Report is available to download on the [ICAC website](#).



GILLMAN

On 22 January 2015, Commissioner Lander announced via a public statement that the sale of government land at Gillman is under investigation by his office. The Commissioner said "I am investigating the matter to determine if there is any evidence of maladministration. This is not a corruption investigation. However, should I find any evidence to suggest that there has been conduct that falls within the ICAC Act's definition of corruption, then I will pursue it".

The Commissioner's investigation is ongoing. Once concluded he will make a statement on his findings.



OFFICE FOR PUBLIC INTEGRITY

The Office for Public Integrity (OPI) receives complaints and reports about public administration in South Australia.

Upon receiving a complaint or report, the OPI carries out an assessment and then provides a recommendation to the Commissioner as to whether, and by whom, the matter should be investigated. Since opening in September 2013 the OPI has assessed 1487 complaints and reports.

285 of those complaints and reports raised a potential matter of corruption, whilst 273 were assessed as raising a potential matter of misconduct or maladministration.

Over half of the complaints and reports received by the OPI have been assessed as requiring 'no further action'. There is a raft of reasons as to why a complaint or report may not require any further action. It can be because the matter is outside of the jurisdiction of the ICAC Act, or because the matter has been previously assessed and addressed. The Commissioner may also determine that a complaint or report requires no further action if he is satisfied that the matter does not raise a serious issue of potential misconduct or maladministration.

FACT OR FICTION?

PUBLIC OFFICERS ARE NOT ALLOWED TO HAVE CONFLICTS OF INTEREST

FICTION

To forbid a public officer to have a conflict of interest is akin to saying that they are not allowed to have a life outside of their work.

It is almost impossible to completely avoid the prospect of a conflict of interest, or a perceived conflict of interest, from ever arising. Conflicts of interest in themselves are not inherently bad. They become problematic if they are not dealt with correctly.

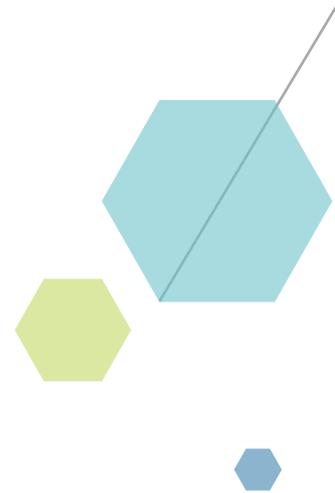
A conflict of interest arises when a person's professional duties, responsibilities and interests are different, opposed to, or compromised by that person's personal interests. There are many different



ways that you can deal with a conflict of interest and the correct procedure will depend on your agency's policy. However, as a general yard stick, conflicts of interest should always be dealt with in an open and transparent fashion.

To not appropriately acknowledge and declare a conflict of interest could result in a report to the OPI.

Where a person has a conflict of interest, ordinarily that person must not exercise a power which is compromised by that conflict.



PUBLIC INQUIRIES

In October 2014 the Commissioner announced that at the request of the Attorney-General, he would conduct a review into the legislative schemes designed to manage complaints about public administration and the Police. He also announced that he would undertake an evaluation of the practices, policies and procedures of the Police Ombudsman.

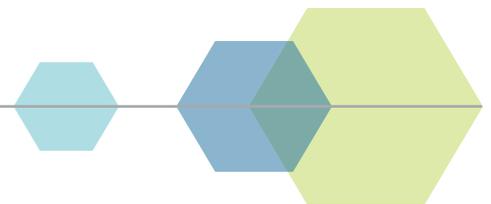
Both the legislative review and evaluation are being carried out by way of a public inquiry.

In February 2015 the Commissioner released a discussion paper outlining

the relevant issues and calling for written submissions. Submissions closed on 27 March 2015. 21 submissions have been received.

Public hearings began on 23 April, with presentations being by invitation only.

At the conclusion of the hearings, submissions and transcripts will be made available on the ICAC website. The Commissioner's report will be made available in due course.



THE IMPORTANCE OF REPORTING EARLY

If you come across a matter that you think should be reported to the OPI, exactly when should you make that report?

AS SOON AS POSSIBLE.

Under the Directions and Guidelines published by the Commissioner, public officers and public authorities are required to report matters to the OPI as soon as practicable after forming a reasonable suspicion that the conduct might be corruption or serious or systemic misconduct or maladministration.

Why the rush? Because the sooner a matter is brought to the attention of the OPI and ultimately the Commissioner, the more chance there is of gathering evidence if the Commissioner determines to investigate the matter.

Delays in reporting to the OPI could result in potential evidence such as CCTV footage being destroyed, potential witnesses becoming unavailable, or opportunities for offenders to cover their tracks.



EDUCATION PROGRAM

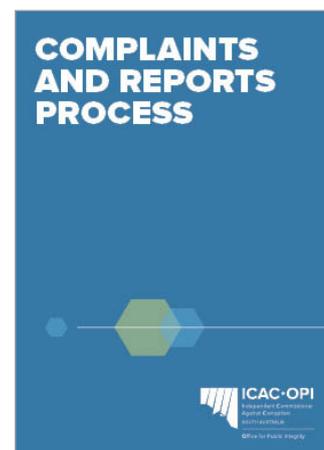
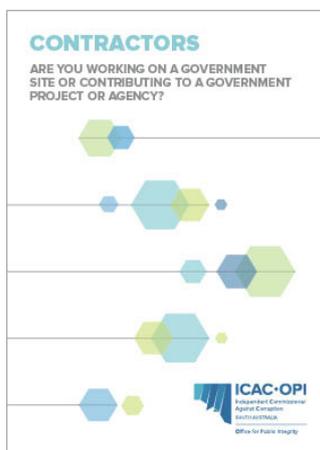
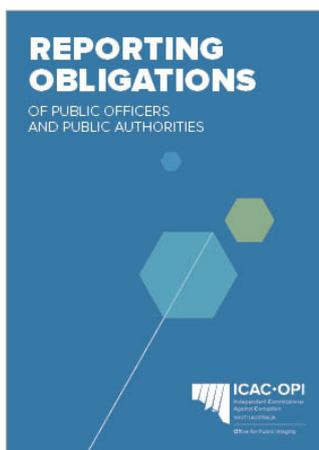
The Commissioner's office is developing an online learning space to assist public officers to understand their rights and responsibilities under the ICAC Act. By the end of June 2015, public officers will be able to test their understanding of ICAC reporting obligations via our online learning portal.

ICAC's education program is supported by a range of resources designed to assist public officers and members of the public to understand the purpose and functions of the Commissioner's office. We have

recently added a new suite of brochures and posters that we encourage you to utilise.

The new 'reporting obligations' brochure and poster provide public officers an explanation of the types of matters that they must report to the OPI. Other brochures include one that explains the complaints and reports process and another that outlines how a contractor might come to be a public officer.

You can download any of our brochures and posters from the [ICAC website](http://www.icac.sa.gov.au), or you can request hard copies by emailing education@icac.sa.gov.au.



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