Legal Compliance
Education and Awareness

Independent Commissioner
Against Corruption Act 2012
(South Australia)
What does the ICAC do?

- The Act establishes the Independent Commissioner Against Corruption (the Commissioner) and the Office of Public Integrity (OPI).
- The role of the Commissioner is to:
  - identify, investigate, and refer for prosecution, corruption in public administration;
  - assist in identifying and dealing with misconduct and maladministration in public administration; and
  - facilitate educational programs to prevent corruption, misconduct and maladministration.

Hon Bruce Lander QC is the inaugural Commissioner.

- OPI supports the Commissioner and operates as the public face of ICAC by receiving and processing complaints and reports about corruption, misconduct and maladministration in public administration.
- The Act creates reporting obligations for public officers where corrupt conduct or misconduct or maladministration that is ‘serious or systemic’ is reasonably suspected.
What is corruption?

- **Corruption** in public administration is conduct that constitutes a criminal offence including:
  - bribery or corruption of public officers
  - threats against public officers
  - abuse of public office

What is misconduct?

- **Misconduct** occurs when a public officer, in performing duties, contravenes a code of conduct for which disciplinary action is warranted.

What is maladministration?

- **Maladministration** includes substantial mismanagement or unauthorised use of public monies or resources
How does the Act apply to the University?

- The University is engaged in ‘public administration’
  - It engages in ‘administrative acts’ in the ordinary course of its everyday activities

- The University is considered to be a **public authority** for the purposes of the Act
  - This means that the University may be investigated, or required to co-operate with an investigation initiated by the Commissioner

- Members of University Council, all employees and contractors are considered to be **public officers** under the Act
  - This means that **all persons associated with the University** have an **obligation to report** acts or behaviour that they reasonably suspect constitutes corruption, maladministration or misconduct
Obligation to report to ICAC

All members of University Council and all University employees (including contractors & volunteers) have an obligation to report

• Directions and Guidelines outlining the specific reporting requirements and processes to be followed by public officers are available on the Commissioner's website

• A ‘reasonable suspicion’ that certain reportable conduct has occurred must be based on demonstrable facts

• Public Officers are required to lodge a report with the Office of Public Integrity via the online complaint form

• There are penalties of $10,000 or 2 years imprisonment for preventing or hindering someone in making a complaint or for making false or misleading statements or reports
Powers and functions of the Commissioner and OPI

• The Commissioner has significant powers to investigate corruption in public administration in response to a report made by someone else or on his own initiative
  – Investigations and examinations are conducted in private and at the Commissioner’s discretion

• Any person can be summoned to give evidence, provide a written statement or produce documents as part of an investigation. Penalties apply for refusal

• The Commissioner may investigate allegations relating to the conduct of State and local governments, public authorities and public officers, including:
  – teachers and staff at universities, TAFE SA and government schools
  – private individuals contracted to perform work for a public authority; and
  – public servants, local government councillors and officers, MPs, judicial officers and police
Independent Commissioner Against Corruption Act 2012 (SA)

Reporting to ICAC – Directions and Guidelines

• The Commissioner has prepared Directions and Guidelines for reporting

• Under these Directions and Guidelines, reports to the Office of Public Integrity (OPI) must be made via the online form and as soon as practicable

• Online reports must include:
  – public officer’s identity and contact details
  – detailed description of the conduct being reported and whether it constitutes corruption, misconduct or maladministration
  – information about the persons suspected of being involved
  – statement of how the public officer became aware of the issues
  – details of relevant evidence, including documents
  – list of persons who may be able to provide additional evidence
Reporting to ICAC – Whistleblower Protection

- Anonymity under the [Whistleblowers Protection Act 1993](https://www.southaustralia.gov.au/government/legislation/acts/whistleblowers-protection-act-1993) may apply in some cases and anyone obliged to make a report is able to seek legal advice or contact the Office of Public Integrity

  - Céline McInerney, University of Adelaide Whistleblower Officer
  - [celine.mcinerney@adelaide.edu.au](mailto:celine.mcinerney@adelaide.edu.au)
  - 8313 6080

  - Office of Public Integrity
  - [admin@opi.sa.gov.au](mailto:admin@opi.sa.gov.au)
  - 8207 1777
  - Level 1, 55 Currie Street, Adelaide
What happens to complaints and reports?

- All complaints and reports to the Office of Public Integrity (OPI) are confidential.

- Reports will be assessed and may be investigated by the Commissioner or referred to another investigation agency:
  - **Corruption** reports may be investigated by the Commissioner or referred to the SAPOL or other law enforcement agency.
  - Reports of **misconduct or maladministration** may be referred to an inquiry agency, such as the Ombudsman, or a public authority for further action. The University could be required by the Commissioner to investigate and report on a matter.

- The Commissioner has extensive investigative powers but cannot prosecute a matter and will refer a finding of corruption or criminal activity to a prosecution authority (e.g. Director of Public Prosecutions).
## Confidentiality of information versus publication of information

### Confidentiality of information
- All matters reported to the Office of Public Integrity must remain confidential.
- A Public Officer **may inform** their supervisor or manager if they have made a report to OPI.
- A public authority’s internal investigations can proceed unless the Commissioner or OPI advises otherwise.

### Publication of information
- Information about reports or investigations cannot be “published” without the **authorisation** of the Commissioner.
  - This is intended to protect the reputation of individuals.
- It is an offence to ‘publish’ or to ‘cause to be published’ information to the public via:
  - Newspaper, radio or TV
  - Internet or other electronic means of sharing content
  - Social media
  - Any similar means of communicating.
- Information that requires an authorisation is anything that may identify someone who:
  - Intends or has made complaint
  - Has, is or was the subject of a complaint; or
  - Has or will provide information as a part of an investigation.

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*There are penalties of up to $30,000 (for an individual) or $150,000 (for an organisation) for publishing or causing to be published, certain information without an authorisation.*
**What can happen if I don’t comply**

**Individual Consequences:**
- Fines of up to $30,000 for disclosing or causing certain information to be made public without an authorisation
- Up to 2 years imprisonment for preventing or hindering someone in making a complaint or for making false or misleading statements or reports
- Fines of up to $10,000 or 2 years imprisonment for failing to provide a written statement or answer specified questions
- Failure to comply with the Act may in itself constitute misconduct in public administration and become the subject of an ICAC investigation
- A breach of the Act may be considered misconduct, actionable under the University’s Enterprise Agreement
- Damage to reputation

**University Consequences:**
- Fines of up to $150,000 for disclosing or causing certain information to be made public without an authorisation
- Damage to reputation
How do I make a report?

**Public Officers** (that is, all University employees, contractors and members of University Council) are required to report via the [online complaint form](#).

**Members of the public** can make a complaint or report to the OPI in the following ways:

- by telephone: 8207 1777 / 1300 782 489
- in writing: GPO Box 11066, Adelaide, SA 5001
- by email: admin@opi.sa.gov.au
- online: complete the [online complaint form](#)
- in person: at the Office of Public Integrity, Level 1, 55 Currie Street, Adelaide.
- When making the complaint or report, provide as much information as possible (see the [ICAC website](#) for more details)
Additional Resources

- **Céline McInerney**, General Counsel
  - 8313 5033

- **Sandra Lilburn**, Manager Compliance
  - 8313 0482

- **Office of Public Integrity (OPI)**

- **Independent Commissioner Against Corruption South Australia**

- **Independent Commissioner Against Corruption Act 2012 (SA)**
Disclaimer

The content of this material is intended only to provide a summary & general overview of the ICAC Act as it applies to the University of Adelaide.

It is not intended to be comprehensive nor does it constitute legal advice.

Please contact Celine McInerney, General Counsel or Legal & Risk if you are unsure of your compliance obligations under the Act.