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Legal Compliance Education and Awareness



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Independent Commissioner Against Corruption Act 2012

(South Australia)

Amendments to the ICAC Act came into effect in October 2021. This resource is currently under review and will be updated to reflect those changes.

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What does the ICAC Act do?

The Act establishes an integrity agency in South Australia to:

- Protect the public interest by exposing instances of corruption, misconduct and maladministration in public administration
- Prevent or minimise the occurrence of corruption, misconduct or maladministration
- Receive complaints from the public or reports from public officers
- Assess and refer potential issues of corruption, misconduct or maladministration to a relevant authority for investigation

The Act also imposes mandatory obligations on:

- **Public authorities** – the University is a public authority
- **Public officers** – includes University personnel

Compliance with the ICAC Act is an obligation that applies to all University personnel

Failure to comply with the ICAC Act may constitute misconduct in public administration and itself be the subject of an ICAC investigation

What is the ICAC?

The Act establishes the statutory office of the **Independent Commissioner Against Corruption** (the Commissioner)

- 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

The Honourable Ann Vanstone QC currently serves as South Australia's Independent Commissioner Against Corruption (ICAC).

What is the OPI?

The Act also establishes the **Office for Public Integrity (OPI)**

- OPI supports the Commissioner and is the first point of contact for receiving and assessing complaints, reports and disclosures about corruption, misconduct and maladministration in public administration

The Act creates reporting obligations for **public officers** who have a **reasonable suspicion** of corrupt conduct or misconduct or maladministration that is 'serious or systemic'

- Complaints, reports or disclosures can be made to OPI online:
<https://icac.sa.gov.au/opi>

What is corruption?

- **Corruption** refers to criminal behaviour by a public officer while acting in his or her capacity as a public officer and may include theft, bribery, assault or abuse of public office.

What is misconduct?

- **Misconduct** involves the conduct of a public officer which contravenes a code of conduct and constitutes a ground for disciplinary action, or other misconduct.

What is maladministration?

- **Maladministration** involves the conduct of a public officer - or the practice, policy and procedure of a public authority - that results in an irregular or unauthorised use of public money, the substantial mismanagement of public resources, or the substantial mismanagement of official functions.

How does the Act apply to the University?

- The University is involved in ‘public administration’
 - The University engages in administrative acts and decision-making in the ordinary course of its everyday activities
- The University is a **public authority** for the purposes of the Act
 - This means that the University must meet certain obligations and may be **investigated**, or required to co-operate with an investigation initiated by the Commissioner
- All University personnel, including members of the University Council, all employees, titleholders, contractors and volunteers are considered to be **public officers** under the Act

All public officers have an obligation to report acts or behaviour that they reasonably suspect constitutes corruption, maladministration or misconduct

Obligation to report

- **All members of University Council and all University personnel** (including titleholders, contractors, consultants & volunteers) have an [obligation to report to the OPI](#) via the [online complaint form](#)
- *Directions and Guidelines* outlining the specific reporting requirements and processes to be followed by public officers are available on the [Commissioner's website](#)
- Public officers must report conduct or activity that they have a “reasonable suspicion” is corruption or serious or systemic misconduct or maladministration in public administration. A report must be based on demonstrable facts in the circumstance in which the conduct has occurred.
- ***There are penalties of \$10,000 or 2 years' imprisonment for***
 - ***Preventing or hindering someone in making a complaint***
 - ***Making false or misleading statements or reports***

Reporting – Directions and Guidelines

- The Commissioner has prepared [Directions and Guidelines](#) for **public officers** making mandatory reports under the ICAC Act
- All reports to the OPI must be made via an [online complaint form](#) as soon as practicable
- Online reports must include:
 - Your identity and contact details
 - Detailed description of the conduct being reported and whether it constitutes corruption, misconduct or maladministration
 - Information about the persons involved in the conduct
 - Statement of how you became aware of the issues
 - Details of relevant information, including documents
 - List of persons who may be able to provide additional information

More information is available on the [ICAC resources for Public Officers](#) webpage

Whistleblower Protection & the ICAC Act

The [Public Interest Disclosure Act 2018](#) establishes a state-based whistleblower scheme to encourage and facilitate the disclosure of public interest information by:

- Providing whistleblower protections for public officers who make **appropriate disclosures** about public administration
- Establishing a reporting pathway for disclosures to be made by a **public officer** directly to the Office for Public Integrity or to a **relevant authority** - such as the University
- Requiring **relevant authorities** to notify the Office for Public Integrity of any **appropriate disclosures** it receives

The ICAC may decide to investigate an **appropriate disclosure** and will liaise with the relevant authority.

Refer to the [Public Interest Disclosure Act summary](#) for more information about the operation of this legislation or refer to the Whistleblower [webpage](#)

What happens to complaints and reports?

- All complaints and reports made to the OPI are confidential
- Reports are assessed and may be referred to the Commissioner for investigation or referred to another agency
 - **Corruption** reports may be investigated by the Commissioner or referred to SAPOL or another law enforcement agency
 - 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)
 - Reports of **misconduct or maladministration** may be referred to an inquiry agency, such as the Ombudsman, or a public authority for further action.
 - The Commissioner may require the University to investigate and report back on the outcome of a referred report of misconduct or maladministration

Powers and functions of the Commissioner

- 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, including public officers, can be **summonsed** to give evidence, provide a written statement or produce documents. **Penalties** apply for refusal
- The Commissioner may **investigate** allegations relating to the conduct of State and local governments, public authorities and public officers, including:
 - 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
- The Commissioner has the authority to conduct a formal **evaluation** of the practices, policies and procedures of any public authority and prepare a report with recommendations

Confidentiality obligations

Treat reports confidentially

- Internal investigations of wrongdoing can proceed in confidence unless or until the Commissioner or OPI advise otherwise
- Any personnel receiving internal reports of wrongdoing must also consider their obligation as a **public officer** and make a confidential report to OPI as required
- - unless it is clear that a report has already been lodged

Note: Depending on the report, a person receiving a report may also have an obligation to keep the identity of an informant confidential under section 8 of the *Public Interest Disclosure Act 2018*

- A \$20,000 fine or goal for 2 years applies

Section 54 – Confidentiality

- All matters reported to the Office for Public Integrity (OPI) must remain confidential
 - *this is so that a proper assessment and investigation can be conducted*
- A person making or receiving a report must not directly or indirectly disclose information without authorisation
- Limited disclosure is authorised under the Act
 - *for example, in order to investigate a matter referred to the University by the ICAC or when information is disclosed for the purpose of seeking legal advice*
- In most other circumstances, the written authorisation of the Commissioner is required.

Information relating to a person subject to investigation can be disclosed by that person to a close family member

Penalties of up to \$2,500 or imprisonment for 6 months for an individual who directly or indirectly discloses certain information without formal authorisation from the Commissioner.

Restriction on publication

Any information related to activities conducted under the ICAC Act **must not be disclosed without authorisation**

This includes information related to

- Reports, investigations, inquiries or reviews.
- Anything that may identify someone who
 - *Intends or has made a complaint*
 - *Has, is or was the subject of a complaint*
 - *Has or will provide information as a part of an investigation, inquiry or review*

Information that is **published** without the authorisation of the Commissioner is an offence

Section 56 – Publication of information & evidence

- 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

This offence is intended to protect the identity and reputation of individuals

If you facilitate the publication of information without authorisation, penalties up to \$30,000 for an individual or \$150,000 for an organisation may apply

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 authorisation
- Fines of up to \$10,000 or 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
- Fines of up to \$10,000 for committing an act of victimisation under this Act
- 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 to make a report?

Any individual actively involved with the University is a **public officer** and has a duty to report any conduct or activity they reasonably suspect to be corruption or serious or systemic misconduct or maladministration in public administration.

Public Officers must report using the [online complaint form](#)

- When making a report, provide as much information as possible (see the [ICAC website](#) for more details)

Members of the public, including students, can also make a complaint or report by contacting the OPI at <https://icac.sa.gov.au/>

Additional Resources

- [Céline McInerney](#), General Counsel and Executive Director, Legal and Risk
 - 8313 5033
- [Sandra Lilburn](#), Manager Compliance
 - 8313 0482
- [Office for Public Integrity \(OPI\)](#)
- [Reporting to the Office for Public Integrity FAQs](#) (Legal and Risk website)
- [ICAC Resources for Public Officers](#) (Legal and Risk website)
- [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 *Céline McInerney, General Counsel and Executive Director, Legal and Risk* or Legal & Risk if you are unsure of your compliance obligations under the Act.