



THE UNIVERSITY
of ADELAIDE

Legal Compliance Education and Awareness



CRICOS PROVIDER 00123M

Independent Commission Against Corruption Act 2012 (SA)

This resource has been updated to include significant amendments to the ICAC Act made in October 2021.

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What does the ICAC Act do?

The Act establishes 2 integrity agencies in South Australia:

- ❑ Independent Commission Against Corruption (ICAC)
 - to identify and investigate corruption in public administration
 - to prevent or minimise corruption in public administration through education and evaluation
- ❑ Office for Public Integrity (OPI)
 - to identify corruption, misconduct and maladministration in public administration
 - to ensure complaints about public administration are dealt with by an appropriate body or person, including the ICAC or the Ombudsman

The Act also defines and imposes obligations on:

- **Public authorities** – the University is a public authority
- **Public officers** – all University personnel are public officers, including employees, members of governance committees, titleholders and contractors

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

What is the ICAC?

The Act establishes the **Independent Commission Against Corruption** (the Commission)

The role of the Commission is to:

- Identify **corruption in public administration**
- Investigate reports of corruption and refer to
 - a law enforcement agency for further investigation and potential prosecution
 - a public authority for further investigation and potential disciplinary action
- Conduct evaluations of practices and policies to manage corruption risk in public administration
- Facilitate educational programs to prevent corruption, misconduct and maladministration in public administration

The Honourable Ann Vanstone QC holds the statutory office of the **Independent Commissioner Against Corruption**.

The Commissioner is the principal officer of the Commission.

What is the OPI?

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

The role of the OPI is to:

- Receive and assess complaints or reports about corruption, misconduct or maladministration from
 - Public authorities and public officers
 - Inquiry agencies
 - Members of the public
- Determine a course of action or to take no further action
- Refer complaints and reports to an inquiry agency, such as the Commission or the Ombudsman, or to a public authority for further investigation and response

Complaints, reports or [public interest disclosures](https://www.publicintegrity.sa.gov.au/make-a-complaint-or-report) can be made to OPI online:
<https://www.publicintegrity.sa.gov.au/make-a-complaint-or-report>

Members of the public, including students, can also make a complaint or report to the OPI

What is corruption in public administration?

Corruption in public administration refers to behaviour by any public officer or public authority which:

- Is an offence under the *[Criminal Law Consolidation Act 1935](#) (SA) - namely:
 - Bribery or corruption of public officers
 - Threats or reprisals against public officers
 - Abuse of public office
 - Demanding or requiring benefits on the basis of public office
 - Offences relating to appointments to public office

* Refer to *Part 7 Division 4 - Offences relating to Public Officers*
- Has the effect of contributing to such an offence, including by
 - Aiding, abetting, counselling or procuring
 - Inducing by threats or promises or otherwise
 - Conspiring with others or being directly or indirectly involved in any way

Note: For public service employees corruption would also include offences under the *Public Sector (Honesty and Accountability) Act 1995 (SA)* or the *Public Corporations Act 1993 (SA)* and the *Lobbyists Act 2015 (SA)*. These Acts do not apply to public officers associated with the University.

How does the Act apply to the University?

The University is involved in 'public administration'

- The University and its officers, employees and contractors engage in administrative acts and decision-making in the ordinary course of activities and in the delivery of everyday functions

The University is a **public authority** for the purposes of the Act

- The University must observe the requirements of the Act and may be investigated, or required to co-operate with an investigation or a referral initiated by the Commission or the OPI

All University personnel, including members of the University Council, all employees, titleholders, contractors and volunteers are considered to be **public officers** under the ICAC Act and the *Ombudsman Act 1972 (SA)**

(*public officers are expected to report misconduct or maladministration to the [Ombudsman](#))

All public officers have a statutory obligation to report conduct or behaviour that they reasonably suspect to be corruption

Obligation to report corruption

The ICAC Act applies:

- A **positive obligation to report corruption in public administration** on all public officers at the University, including members of Council, employees, titleholders, contractors, consultants & volunteers

This obligation means that:

- As a public officer you **must** report conduct or activity that you **reasonably suspect** to be corruption unless you know that the conduct or activity has already been reported

A public authority must support a public officer to comply with any requirements or directions as a formal work duty

The University has developed [Guidelines](#) to assist Public Officers meet their statutory reporting obligations and procedures to follow when the University is required to report as a public authority

Penalties of \$10,000 or 2 years' imprisonment for:

- » **Preventing or hindering someone in making a complaint**
- » **Making false or misleading statements or reports**

Directions and Guidelines

- Public officers who suspect corruption in public administration should consult the [Directions and Guidelines](#) published by OPI
- All reports to the OPI must be made as soon as practicable via an [online complaint form](#)
- Online reports must include:
 - Your identity and contact details
 - Detailed description of the conduct being reported
 - Information about the people and entities 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 from the University's [ICAC resources for Public Officers](#) webpage and [Guidelines](#)

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 Commission or another agency for investigation
 - Reports that could be **Corruption** must be referred to the Commission
 - The Commission has extensive investigative powers and a matter has been examined, can refer the matter to either:
 - a law enforcement agency (e.g. SAPOL or AFP) for further investigation and potential prosecution
 - a public authority and give directions for further investigation and potential disciplinary action
- The Commission can not directly refer a matter for prosecution
- If OPI determines that a report to be **misconduct or maladministration** it may be referred to the Ombudsman, or to a public authority for further action.

The University may be required to investigate and report back on the outcome of a referred report.

Refer to the University's [Guidelines](#) if you are contacted by a SA integrity agency or contact the Office of General Counsel

Protected disclosures & the OPI

The [*Public Interest Disclosure Act 2018*](#) (SA) 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 OPI may decide to refer a an **appropriate disclosure** for investigation and will liaise with the relevant authority.

Note: A public officer who receives a report of wrongdoing from another person should consider whether there is an obligation to protect the identify of that person under the *Public Interest Disclosure Act 2018* (SA) (PID Act) or the University's Policy for managing [protected disclosures](#).

Powers and functions of the Commission

- The Commission and its appointed examiners are authorised to **investigate** reports of corruption in public administration referred by OPI
- Investigations are conducted **in confidence** according to standard operating procedures and with legal authority to:
 - Compel public officers or public authorities to provide written statements or responses to questions or to produce certain documents, including financial records
 - Seek a warrant to enter and search premises
 - Instruct a public authority to suspend an internal action into a matter
 - Request an examination of accounts by the Auditor-General
- The Commission may **investigate** allegations relating to the conduct of State and local governments, public authorities and public officers
- The Commission has the authority to conduct a formal **evaluation** of the practices, policies and procedures of any public authority and prepare a report with recommendations

Penalties of \$10k or 2 years' imprisonment may apply for failing to comply with an ICAC requirement

Confidentiality obligations

Treat reports confidentially

- All information must be treated confidentially to ensure the identities of subjects of reports are protected
- Confidential internal investigations of reported wrongdoing can proceed unless or until the Commissioner or OPI advise otherwise
- Anyone 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 circumstances, a person receiving a report may also have an obligation to keep the identity of an informant confidential under section 8 of the PID Act

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

Section 54 – Confidentiality

- Information must not be directly or indirectly disclosed unless authorised by the ICAC Act or in writing by the Commissioner or the Director of OPI
- The Act authorises disclosures for:
 - Dealing properly with referred matters
 - Disciplinary action or criminal proceedings
 - Obtaining professional legal advice or medical/psychological assistance
 - Advising an employer or as a fiduciary duty
 - Management of workers compensation claims

A person subject to investigation can disclose information to a close family member (refer section 54(4))

In most other circumstances, authorisation would be required and will only be granted where it is unlikely to prejudice any further action

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

Restriction on publication

Confidential information includes

- 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*
- Any information about reports, investigations, inquiries or reviews

It is an offence to **publish** information without the authorisation of the Commissioner, the OPI or by court order

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 to the public

The restriction on publication 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 \$2,500 or 6 months' imprisonment for breaching confidentiality requirements
- Fines up to \$30,000 for 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
- Fines up to \$5,000 for obstructing an investigation or interfering with materials relevant to an investigation.
- Failure to comply with the Act may in itself constitute misconduct in public administration and become the subject of an Ombudsman's investigation or be actionable under the University's Enterprise Agreement
- Damage to reputation for you and colleagues

University Consequences:

- Fines of up to \$150,000 for disclosing or causing certain information to be made public without an authorisation
- Damage to reputation

Resources

- Office of General Counsel
 - 8313 5033
- Legal Counsel (Employment & Industrial Relations) – [Chris Morey](#)
- [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)
- [Guidelines](#) for University Personnel reporting to or being contacted by a public integrity agency (Legal and Risk website)
- [Independent Commission 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 the University's *General Counsel* if you are unsure of your compliance obligations under the Act.