



**GUIDELINES FOR REPORTING CORRUPT CONDUCT TO THE  
INDEPENDENT COMMISSION AGAINST CORRUPTION (ICAC)**

JULY 2007  
Version 1.1

<b>Document Title:</b>	Cancer Institute NSW Guidelines for Reporting Corrupt Conduct to the ICAC
<b>Summary:</b>	This guideline details the Chief Cancer Officer's obligations under section 11 of the <i>Independent Commission Against Corruption Act 1988</i> to report suspected corrupt conduct to the ICAC. The guidelines also explain how to report to the ICAC and the process the ICAC follows once a report is received.
<b>TRIM Record No.:</b>	E07/17762
<b>Date of Issue:</b>	July 2007
<b>Version Control:</b>	Version 1.1
<b>Contact Officer:</b>	Chief Operating Officer.
<b>Relevant References:</b>	<ul style="list-style-type: none"> <li>• Reporting Corrupt Conduct to the ICAC: Guidelines for Principal Officers, ICAC, 1994</li> <li>• Reporting Possible Corrupt Conduct to the ICAC, NSW Department of Health - Circular 2000/41, issued May 2000.</li> </ul>
<b>Main Legislative Implications:</b>	<ul style="list-style-type: none"> <li>• <i>Independent Commission Against Corruption Act 1988</i> – with respect to the reporting of suspected corrupt conduct.</li> <li>• <i>Protected Disclosures Act 1994</i> – with respect to the making of a “protected disclosure”.</li> </ul>
<b>Applicable Delegations of Authority:</b>	None. Delegations are subject to review – refer Cancer Institute NSW Delegations of Authority Manual.
<b>Related Cancer Institute NSW Policy</b>	<ul style="list-style-type: none"> <li>• Employee Code of Conduct &amp; Ethics</li> <li>• Board Code of Conduct</li> <li>• Protected Disclosures Policy &amp; Guidelines</li> <li>• Conflicts of Interest Policy &amp; Guidelines</li> </ul>

*Cancer Institute NSW*

*Guidelines for the Reporting of Corrupt Conduct to the ICAC*

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## 1 ABOUT THESE GUIDELINES

These guidelines are intended to help the Chief Cancer Officer, as the Principal Officer of the Cancer Institute NSW to understand obligations placed on all Principal Officers under section 11 of the *Independent Commission Against Corruption Act 1988*, to report suspected corrupt conduct to the ICAC. The guidelines also explain how to report to the ICAC and the process the ICAC follows once a report is received.

## 2 ABOUT THE ICAC

The ICAC was established under the *Independent Commission Against Corruption Act*. The main purpose of the ICAC is to expose and minimise corruption in the NSW public sector, which includes all government departments, statutory authorities, local councils and public officials, including Members of Parliament and the judiciary. It does this by conducting investigations and hearings, providing corruption prevention advice, and informing and educating both the public sector and the community about the detrimental effects of corruption.

Most of the ICAC work arises from reports made by public sector agencies and information received from the public. Consequently, the quality of this information is a significant factor influencing the ICAC's effectiveness in fighting corruption.

The ICAC does not attempt to investigate every matter it receives and could not do so with the resources available to it. However, even if the resources were available the ICAC considers that such a strategy would be counter-productive because public sector managers and their organisations are primarily the ones responsible for preventing, detecting and responding to corruption. The ICAC role is to deal with those matters that the public sector cannot or should not deal with. The ICAC also works with public sector agencies to ensure they have the skills and commitment to undertake most of the day-to-day corruption prevention and investigation work.

This approach means that only a very small number of reports made by public sector agencies end up becoming full investigations or the subject of public hearings. Nevertheless, the reporting requirement benefits the Cancer Institute NSW and the broader public sector in a number of ways, which are outlined below.

## 3 PRINCIPAL OFFICERS OBLIGATIONS UNDER THE ICAC ACT

Section 11(2) of the Act imposes an obligation on the Chief Cancer Officer in the following terms:

*"An officer to whom this section applies is under a duty to report to the Commission any matter that the officer suspects on reasonable grounds concerns or may concern corrupt conduct."*

Key terms and issues related to section 11 reporting are explained in the following sub-sections.

### 3.1 Who is a principal officer?

A *Principal Officer* is the person who heads the authority, its most senior officer or the person who usually presides at its meetings. This is most commonly the Chief Executive Officer or Director-General of a state government authority, or the General Manager of a local council.

### 3.2 Duty to report suspected corrupt conduct

The duty to report resides with the Principal Officer and **cannot be delegated**. Where another person is acting as Principal Officer during periods of leave or other absence, the duty applies to that person.

### 3.3 Reasonable grounds for suspicion

The words “*suspects on reasonable*” grounds mean there is a real possibility that corrupt conduct is or may be involved. Certainly, proof is not necessary. In some cases you may hold the suspicion even though no individual has been identified. Such matters should be reported.

Agencies often ask whether there is a cut off point whereby matters of a minor nature need not be reported. There is no easy answer to what constitutes a minor matter. In the ICAC experience the real question is whether the conduct gives rise to a suspicion that it may involve corruption. For example, the fact that a staff member's cash register is short by a small sum of money on one occasion is unlikely to give rise to a reasonable suspicion that they have stolen the money. Repeated occurrences may give rise to a suspicion that the person is either stealing money or is incompetent.

The Chief Cancer Officer should contact the ICAC to discuss particular matters that he/she may be unsure about or to seek clarification on any issue of reporting corrupt conduct. However, as a general rule, if unsure about a matter the Chief Cancer Officer should err on the side of caution and report it to the ICAC.

### 3.4 When must a report be made?

The brief answer to this question is as soon as there is a reasonable suspicion that corrupt conduct may have occurred or may be occurring. The Act contains no provision permitting delay in reporting. The ICAC prefers matters to be reported prior to disciplinary or other action being taken.

Matters must be reported to the ICAC regardless of any duty of secrecy or other restriction on disclosure.

### 3.5 Internal reporting systems

Agencies need to have internal reporting systems in place to enable corrupt conduct to be reported. **The Cancer Institute has satisfied this requirement through the development of a Protected Disclosure Policy that incorporates an Internal Reporting system.** (refer Cancer Institute NSW – Protected Disclosure Guidelines).

### 3.6 Maintaining confidentiality

It is important that reports to the ICAC be made without advising the person(s) to whom the report relates and without publicity. Failure to handle reports to the ICAC confidentially may prejudice any subsequent investigation and may cause unnecessary hurt or embarrassment to individuals.

### 3.7 Protection to the principal officer

Section 11 reporting is a statutory duty. Provided reports are made in good faith you as the Principal Officer are protected from any criminal or civil liability. This is the case even if the suspicion on which the report is based turns out to be groundless. (See s109(5) of the ICAC Act and also s17K of the *Defamation Act 1974*.)

## 4 WHAT IS CORRUPT CONDUCT?

Corrupt conduct is defined under the Act (section 8). It can generally be understood as the dishonest or partial exercise of public official functions. It may also involve the conduct of non-public officials that adversely affects the honest and impartial exercise of a public official's functions.

Public officials include people working in government departments, statutory authorities and local councils in NSW, as well as judges and magistrates and elected officials such as Parliamentarians and local government councillors.

For conduct to be considered corrupt under the ICAC Act definition it has to be serious enough to involve a criminal or disciplinary offence, be grounds for dismissal, or, in the case of Members of Parliament, involve a substantial breach of their code of conduct. However, at the point a report is made to the ICAC the Principal Officer need not know with any certainty that this seriousness test can be satisfied as this will often only be known after a full investigation.

Some examples of corrupt conduct by public officials that fall within this definition include:

- A company wants to do business with the government and pays a public official to choose that company for the job;
- A local council official accepts money or a gift to promote a development application;
- A public official bypasses recruitment procedures to employ friends or family members;
- A public official accesses confidential drivers license information as a favour to a friend;
- A public official takes office petty cash to pay for personal items;
- A public official extorts money from a disabled client in their care; or
- A public official uses a work computer and e-mail address to run a private internet business.

## 5 MAKING A SECTION 11 REPORT TO THE ICAC

Generally a report should be made in writing. However, with serious matters it may be advisable to report initially by telephone if the Principal Officer considers that some urgent investigative action may be required.

All section 11 reports are to be addressed to the Commissioner of the ICAC and marked to the attention of the Assessment Section.

Reports should describe what has happened. The nature and the seriousness of the allegation should be made clear within the report. Descriptions such as "theft", "fraud", "improper conduct", "assault" or "failure to declare conflict of interest" are insufficient because they do not sufficiently describe the nature of what has occurred.

The checklist in the box below is a guide to what the report should include:

### SECTION 11 REPORT CHECKLIST

- a complete description of the allegations;
- the name and position of any public official/s alleged to be involved;
- the name and role of any other person/s relevant to the matter;
- the dates and/or time frames in which the alleged conduct occurred;
- an indication as to whether the conduct appears to be a one-off event or part of a wider pattern or scheme;

- ❑ the date the allegation was made or the date you became aware of the conduct;
- ❑ what the agency has done about the suspected conduct, including notification to any other agency (for example, the Police or the Ombudsman);
- ❑ what further action is proposed by the agency;
- ❑ approximate amount of money (if any) involved;
- ❑ any other indicators of seriousness; and
- ❑ any other information deemed relevant to the matter.

Once a report has been made to the ICAC, the Principal Officer is to continue to oversee normal internal action (including investigations and disciplinary action). The ICAC will advise if further information is required or if the ICAC proposes to take any action.

Reporting to the ICAC does not affect obligations to report or refer matters to other bodies such as the Police, the Auditor-General or the Ombudsman or to carry out disciplinary procedures as required. For example, if a criminal matter has been reported to the ICAC it should also be report to the Police Service.

## **6 HOW REPORTS ARE ASSESSED BY THE ICAC**

The ICAC carefully reviews all section 11 reports. All such reports are assessed by a panel of senior officers to determine what, if any, action the ICAC will take. Most often the panel will decide that section 11 matters should be left with the reporting agency to deal with. However, the possible range of options, depending on the seriousness of the reported information, includes:

- further assessment to consider the significance of the information to the ICAC's prevention work and whether advice should be provided to the reporting agency;
- referral to the reporting agency with a requirement that it investigate and report back to the ICAC. (The power to make such a referral is contained in s53 of the Act and should such a referral be proposed the Principal Officer will be consulted about the terms of the referral and be provided with information about how to meet the requirements of the referral);
- referral to another agency considered by the ICAC to be appropriately placed to deal with the information;
- initial inquiries to be conducted by the ICAC; or
- immediate allocation to an ICAC investigative team with a view to formal investigation.

## **7 FEEDBACK FROM THE ICAC**

The ICAC acknowledges all reports received. After a report is assessed, a letter will be sent to the Principal Officer outlining the ICAC's decision and/or any further action to be taken in relation to a report.

## **8 THE BENEFITS OF SECTION 11 REPORTING**

Developing and maintaining an effective capacity to satisfy this statutory obligation enables Principal Officers to be better informed. This is because it requires organisations to have in place effective internal reporting systems for staff to report concerns or suspicions about corruption and an effective mechanism for receiving and responding to information from customers or contractors which may concern corruption.

The ICAC uses the information in section 11 reports it receives to improve its understanding of the nature and scope of corruption in the NSW public sector. Whether or not a report is significant in its own right, its aggregation with other matters may assist to identify systemic corruption issues. This assists the ICAC to better target its work and better inform the public sector and the people of NSW about corruption related issues. In particular, greater knowledge of trends in corruption supports the ICAC's work with the public sector to bring about long-term changes to attitudes and practices.

## **9 THE ICAC ACT: SECTION 11 – (DUTY TO REPORT)**

(1) This section applies to the following officers:

- a. the Ombudsman
- b. the Commissioner of Police
- c. the Principal Officer of a public authority
- d. an officer who constitutes a public authority

(2) An officer to whom this section applies is under a duty to report to the Commission any matter that the officer suspects on reasonable grounds concerns or may concern corrupt conduct.

(3) The Commission may issue guidelines as to what matters need or need not be reported.

(4) This section has effect despite any duty of secrecy or other restriction on disclosure.

(5) The regulations may prescribe who is the Principal Officer of a public authority, but in the absence of regulations applying in relation to a particular public authority, the Principal Officer is the person who is the head of the authority, its most senior officer or the person normally entitled to preside at its meetings.

## **10 CONTACTING THE ICAC**

For further information and assistance on reporting corrupt conduct in general, and other issues raised in these guidelines, please contact the Duty Officer in the Assessment Section.

For corruption prevention advice on internal reporting mechanisms for corrupt conduct or improvement to procedures and work systems, please contact the Corruption Prevention Section.

For information about or assistance with seminars, training and ethics awareness, publications and resource material, please contact the Education Section.

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