

Guidelines for ICAC Staff

issued in accordance with section 129 of the Independent Commissioner Against Corruption Act 2017

October 2021

Document details

Document title	Guidelines for ICAC Staff
Document owner	Commissioner
Approved by	Commissioner
Date approved	25 October 2021
Document review	Annually

Change history

Version	Date	Author	Changes made
1.0	25 October 2021	Commissoner	Initial version

Acronyms

The following acronyms are used in this document:

Acronyms	Full form
ICAC	Independent Commissioner Against Corruption
ICAC Act	Independent Commissioner Against Corruption Act 2017
OICAC	Office of the Independent Commissioner Against Corruption

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1 Foreword

Section 129 of the *Independent Commissioner Against Corruption Act 2017* (ICAC Act) requires me to ‘issue, and keep under review, guidelines for, or practice directions to, members of ICAC staff as to the manner in which functions under this Act are to be performed’.

I have issued these guidelines to explain the overarching principles that should govern all of our activities and my expectations of ICAC staff.

Over coming months I will issue practice directions relevant to the discharge of discrete statutory functions. They will complement these guidelines.

Each ICAC staff member must familiarise themselves with these guidelines. Adherence to the principles and expectations in this document is required. Of course these guidelines must be read together with the ICAC Act.

This office has an important role to play in integrity in public administration. It follows that the way in which we operate must represent the very highest standards.

Individually, and collectively, we must lead by example.

A handwritten signature in blue ink, appearing to read "M. Riches".

Michael Riches

Independent Commissioner Against Corruption

2 Applicability

These guidelines apply to ICAC staff.

Section 123 of the ICAC Act provides that the ICAC's staff consists of:

- a) public sector employees employed for the ICAC; and
- b) persons employed in an Agency made available by the Chief Executive Officer of the agency under an arrangement with the ICAC; and
- c) police officers made available by the Commissioner of Police under an arrangement with the ICAC; and
- d) persons engaged by the ICAC as consultants; and
- e) authorised officers appointed under section 131 who are not persons mentioned in paragraphs a) to d).

Those who are captured by that definition are to understand and abide by these guidelines.

These guidelines replace any previous guidelines issued in accordance with section 149 of the ICAC Act.

3 Statutory Framework and Functions

To be an effective agency it is necessary for every staff member to understand the statutory framework within which we operate.

The starting point must be the ICAC Act.

The ICAC Act has a number of statutory objects. Statutory objects are useful in understanding the underlying purpose behind legislation. The objects of the ICAC Act are set out below (my underlining added).

3.1 ICAC Act – Objects

The object of [the ICAC Act] is to address wrongdoing in, or connected with, public administration by:

- a) preventing or minimising the occurrence of improper conduct; and
- b) improving public confidence that improper conduct will be detected and dealt with appropriately; and
- c) providing incentives and reducing disincentives to persons to assist in the detection, reporting, investigation, prosecution and prevention of improper conduct; and
- d) protecting persons who put themselves at risk of harm by exposing or reporting improper conduct; and
- e) augmenting the Territory's existing framework for responding to improper conduct by establishing an Independent Commissioner Against Corruption intended to:
 - (1) investigate the most serious, systemic and sensitive improper conduct; and
 - (2) ensure that other improper conduct is dealt with; either by an appropriate existing entity or, if the ICAC considers it appropriate, by the ICAC; and
 - (3) coordinate a response to improper conduct when multiple entities have jurisdiction in relation to the matter; and
 - (4) facilitate the prosecution of offences involving improper conduct.

Section 3

Those objects are important because they set out what Parliament intends to achieve through this legislation.

As is clear, the purpose of the ICAC Act is to support and improve integrity in public administration through statutory mechanisms to identify, investigate and deal with improper conduct, and to protect whistleblowers who come forward. One of the express objects is to establish an ICAC intended to deal with allegations of improper conduct and to act as a coordinator and facilitator.

In order to realise those statutory objects I have been invested with a number of statutory functions.

3.2 Commissioner's Statutory Functions

While the objects define the purpose of the ICAC Act, the statutory functions prescribe my role. My statutory functions are listed below (my underlining added).

The [Commissioner] has the following functions:

- a) *to identify and investigate improper conduct;*
- b) *to protect persons who have assisted or may assist in detecting, preventing, investigating or otherwise responding to improper conduct;*
- c) *to prevent, detect and respond to improper conduct by:*
 - i. *developing and delivering education and training; and*
 - ii. *auditing and reviewing practices, policies and procedures of public bodies and public officers; and*
 - iii. *referring matters to a referral entity for investigation or further investigation, disciplinary action or prosecution; and*
 - iv. *making public comment;*
- d) *to oversee and direct, as required, how referral entities deal with matters referred to them by the ICAC;*
- e) *to perform other functions conferred on the ICAC under the ICAC Act or another Act.*

Section 18

While this office might be best known for its investigation activities, that does not mean that prevention, education and protection functions are somehow less important, or that investigation activities will always take precedence over other statutory functions.

I view each of my statutory functions as having equal importance.

In my opinion the most effective anti-corruption bodies are those that find the appropriate balance between engagement with agencies to support prevention and education efforts, and investigation activities. One is less effective without the other.

3.3 The OICAC

The Office of the Independent Commissioner Against Corruption (OICAC) has been established in the following way.

Section 18A of the *Interpretation Act 1978* provides that an **agency** is:

a department or unit of a department, or other authority or body:

- a) nominated as an Agency in an Administrative Arrangements Order; or
- b) declared by an Act to be an Agency for the Public Sector Employment and Management Act 1993 or the Financial Management Act 1995.

By Administrative Order signed by the Administrator, the *Office of the Independent Commissioner Against Corruption* is an Agency for the purposes (and only for the purposes) of both the *Public Sector Employment and Management Act 1993* (PSEMA) and the *Financial Management Act 1995* (FMA).

In other words, my staff and I are an Agency for the purposes of the PSEMA and the FMA. I am both the Commissioner under the ICAC Act and the Chief Executive Officer of the OICAC under the PSEMA.

As public sector employees employed in the OICAC, each staff member is bound by the performance obligations enshrined in the PSEMA, together with the Code of Conduct established in accordance with that Act. I will talk more about performance obligations later.

3.4 OICAC vs ICAC

It is important to distinguish between the OICAC and the ICAC.

The OICAC is an agency only for the purposes of the PSEMA and the FMA. The OICAC is not established or referred to in the ICAC Act. The OICAC has functions given under the ICAC Act.

Rather, the ICAC Act confers functions to me as Commissioner, to authorised officers and to the Inspector.

Care must be taken when explaining who is exercising functions under the ICAC Act.

3.5 Delegations

While the OICAC does not have any functions under the ICAC Act, I have delegated certain functions given to me under that Act to named staff members. Such delegations are in accordance with section 125 of the ICAC Act. I have delegated those functions to ensure efficiency.

Where my delegate exercises or performs a function delegated by me, that function is taken to have been exercised or performed by me.¹

¹ *Interpretation Act 1978*, section 46A(3).

4 Guiding Principles

It is my expectation that every ICAC staff member will act consistently with the following guiding principles (in no particular order):

- Integrity
- Independence
- Fairness
- Courage
- Accountability
- Public Interest

4.1 Integrity

Every staff member must, at all times, conduct themselves with the highest standards of integrity.

In my public statement on 3 August 2021, I said:

[t]hose who work in my office must act with the utmost integrity. I demand nothing less of myself and my staff. Anyone who cannot or will not meet that expectation has no place on my team.

I remain of that view. I am sure all staff share the same sentiment.

Each of us are public sector officers under the *PSEMA*.

Section 5F of the *PSEMA* sets out the performance and conduct principle:

(1) *The performance and conduct principle is that a public sector officer must do the following:*

- a. *carry out the officer's duties as follows:*
 - i. *objectively, impartially, professionally and with integrity;*
 - ii. *to the best of the officer's ability;*
 - iii. *in accordance with the Act and any code of conduct applicable to the officer under section 16(2)(c);*
- b. *treat other public sector officers, other persons in the workplace and members of the public fairly, equitably and with proper courtesy and consideration;*
- c. *ensure effective, efficient and appropriate use of public resources;*
- d. *avoid actual or apparent conflicts of interest between personal and other interests and duties as a public sector officer;*
- e. *ensure the officer's personal conduct does not:*
 - i. *adversely affect the performance of the officer's duties as a public sector officer; or*
 - ii. *bring the Public Sector into disrepute.*

We must all ensure we act consistently with the performance and conduct principle.

The Code of Conduct, issued by the Commissioner for Public Employment, also applies to us and must be understood and observed.

I will not tolerate any departures from those standards. It is an immense privilege to work in this office. I have been entrusted with important and significant functions. In turn I entrust each of you to support the discharge of those functions. In some cases you will exercise powers autonomously as my delegate or as an authorised officer. That is a significant responsibility.

The Parliament, public officers and the public rightly expect that those who work in this office will conduct themselves in a way that is beyond reproach.

4.2 Independence

Being, and being seen to be, independent is fundamental to the level of faith and confidence public officers and the public have in this office.

My independence is enshrined in the ICAC Act. Section 21 of the ICAC Act states:

[t]he ICAC is not subject to direction by any person about:

- (a) *the way the ICAC performs the ICAC's functions under this Act; or*
- (b) *the priority given to any particular matters.*

Moreover, in performing functions under the ICAC Act, 'a member of ICAC staff is subject only to the direction of the ICAC or another member of ICAC staff'.²

Adhering to the principles outlined in this document, exercising resilience against external influences and remaining steadfast in our resolve to act only in the public interest, are critical to maintaining independence.

4.3 Fairness

Fairness must be a fundamental element in all of our activities.

Fairness means acting appropriately, honestly and without bias.

It means keeping a genuinely open mind until avenues of inquiry are exhausted and persons have been afforded an opportunity to be heard.

It means focussing on facts and evidence, putting aside external influences, and pursuing only legitimate lines of inquiry.

Above all, fairness means acting in a way that is just.

² [ICAC Act, section 124].

4.4 Courage

Courage means remaining steadfast in our resolve to combat improper conduct, even in the face of hostility, opposition and criticism.

Courage is about doing what is right, not what is popular.

Most relevantly, it is about following the facts and the evidence, wherever, and to whomever, they lead.

We must be courageous in our approach to our duties and we must act without fear and without favour.

4.5 Accountability

Each of us are accountable for our actions. I am ultimately accountable for the activities of this office. A culture of accountability is essential, as is a genuine commitment from every staff member to hold themselves, and each other, to account.

Our role is to ensure accountability and integrity in public administration. To be a trusted and respected agency we must scrutinise ourselves as vigorously as we scrutinise others.

4.6 Public Interest

The obligation to act in the public interest is a central feature of government. The term *public interest* is found in a multitude of legislation, regulation and policy, often without any explanation as to its meaning.

To my knowledge, there is no universally accepted definition of public interest. That is so because there is no singular public interest. There can be many different interests, and on occasion those interests may conflict.

So when making a decision, how do we discern where the public interest lies?

Fortunately the ICAC Act offers guidance as to the term.

Section 20 says '[i]f the ICAC has a discretion in performing a function under this Act, the ICAC is to act in the public interest, taking into account the matters set out in Schedule 1 that the ICAC considers relevant and appropriate in any particular case.'

Section 20 makes it clear that in the exercise of discretion, I must act in the public interest. To assist me in that exercise I must take into account the matters set out in Schedule 1 that I consider relevant and appropriate in any particular case. That same approach must be taken by my delegates.

It follows that attention needs to be paid to the matters set out in Schedule 1.

It is important that Schedule 1 be replicated in full:

Schedule 1 Matters ICAC to take into account in performing functions

- 1 *The object of this Act.*
- 2 *The public interest in the following:*
 - (a) *acting and being seen to act fairly and impartially;*
 - (b) *not interfering with an individual's rights, privileges or privacy, beyond what is reasonably necessary to carry out ICAC's functions effectively;*
 - (c) *upholding the rule of law;*
 - (d) *the separation of powers, including the independence of the judiciary and the Legislative Assembly's right to control its own affairs;*
 - (e) *cultural sensitivity and the reasonable accommodation of persons with special needs;*
 - (f) *persons in positions of seniority or power in the public sector exhibiting appropriate behaviour commensurate with those positions;*
 - (g) *public officers and public bodies taking responsibility for ensuring improper conduct is detected and dealt with appropriately;*
 - (h) *ensuring offences involving improper conduct are investigated and prosecuted;*
 - (i) *the general deterrence of improper conduct;*
 - (j) *the ICAC obtaining, and continuing to be able to obtain, information about improper conduct;*
 - (k) *minimising the risk of retaliation;*
 - (l) *the proper functioning of democratic processes;*
 - (m) *avoiding prejudice to current and possible future prosecutions.*
- 3 *The impact of the ICAC's activities on the following:*
 - (a) *the ability and capacity of public officers and public bodies to perform their functions, especially if those functions involve critical or front-line services;*
 - (b) *investigations by law enforcement agencies;*
 - (c) *current and possible future legal proceedings.*

- 4 *The need for the ICAC to target public resources most effectively, including by the following:*
- (a) *considering alternatives to carrying out an investigation in order to prevent or minimise improper conduct;*
 - (b) *prioritising the most serious, systemic and sensitive matters;*
 - (c) *prioritising matters with present relevance;*
 - (d) *considering relevant statutory timeframes for related prosecution or disciplinary action;*
 - (e) *considering the extent to which a matter has already been investigated;*
 - (f) *considering the extent to which relevant and reliable evidence of improper conduct is available;*
 - (g) *referring matters to a referral entity;*
 - (h) *giving directions and guidance to a referral entity;*
 - (i) *taking back a matter from a referral entity;*
 - (j) *declining to investigate matters as appropriate;*
 - (k) *generally altering a course of action according to information received in order to meet changing circumstances.*
- 5 *Matters should be dealt with by the ICAC in private, unless it is in the public interest to do otherwise, taking into account the following:*
- (a) *the desirability of the public sector being open and accountable to the public;*
 - (b) *the benefit of exposing improper conduct to public scrutiny;*
 - (c) *the extent to which allegations of improper conduct are already in the public domain;*
 - (d) *the extent to which allegations of improper conduct raise issues of continuing public interest;*
 - (e) *the risk that a person may suffer undue hardship, including undue prejudice to the person's reputation;*
 - (f) *the needs of persons who have assisted in identifying or investigating improper conduct and particularly the need to protect information that may identify those persons;*
 - (g) *any views expressed by persons who would be affected by a decision whether to handle a matter in private or public;*
 - (h) *the educational value and benefit to research and policy development of sharing details of matters about which the ICAC has particular knowledge.*
- 6 *Any other circumstances the ICAC considers relevant.*

As can be seen, the breadth of matters requiring consideration is significant, and often public interest considerations will conflict.

In *Hogan v Hinch*³ French CJ said (at para 32):

The application of a public interest criterion may require a balancing of competing interests and 'be very much a question of fact or degree.'

Ultimately when balancing considerations it is a matter of judgement where that balance should lie. Care must be taken in exercising that judgement, always bearing in mind the overarching object of the ICAC Act.

The public interest must be at the forefront of our minds when discharging the many and varied functions given under the ICAC Act.

³ [2011] HCA 4.

5 Expectations

The following are what you can expect from me and what I expect from my staff.

5.1 Workplace behaviour

I take seriously behaviours that are, or may be perceived to be, offensive or discriminatory. I will not tolerate:

- racism in any form
- sexual harassment
- bullying
- belittling, threatening or aggressive behaviour
- any other form of offensive or discriminatory workplace behaviour.

Any such behaviour should immediately be brought to the attention of the Deputy Chief Executive Officer or me.

5.2 Mistakes

While we must take all reasonable care to avoid mistakes, they are inevitable. All of us, including me, will make a mistake at some point in time.

It is my expectation that when a mistake is made, that mistake will be identified, action taken to remedy the mistake, and that lessons learned are documented and disseminated to staff.

I will not tolerate behaviour directed towards hiding a mistake, or attempting to pass blame on to another person.

5.3 Timeliness

We must aim to carry out our work in the most efficient way possible, but without compromising integrity and accuracy.

Assessments must be conducted expeditiously to ensure that appropriate and timely action can be taken in respect of alleged improper conduct.

Investigations must be conducted in as timely a manner as possible. The stress imposed on a variety of individuals because of an investigation must not be underestimated. It is incumbent on us to bring investigations to a conclusion efficiently. However, that does not mean that investigations will be rushed, nor will shortcuts be taken. We will be thorough and considered.

It is inevitable that some investigations will take a long time to resolve. That may be because of the complexity of the matter or the nature of the conduct being investigated.

While investigations can take time, we must always strive to avoid undue delay.

The same applies in respect of our prevention and education activities. Audits and reviews, reports and education activities are to be addressed as efficiently as circumstances will allow.

5.4 Focus

Our limited resources mean that we must be focussed. A lack of focus will delay outcomes and reduce quality.

The ICAC Act makes it clear that my investigative resources should be dedicated to ‘the most serious, systemic and sensitive improper conduct’.⁴

That is what I will do.

I have already stated publicly that my investigative focus will be on corrupt conduct and serious anti-democratic conduct. I will only investigate misconduct and unsatisfactory conduct in exceptional circumstances.

By exceptional circumstances I mean:

1. the alleged misconduct or unsatisfactory conduct arises from the same matter that is the subject of a corrupt conduct or anti-democratic conduct investigation; or
2. the matter is such that it warrants the use of the resources and powers given to me. That might arise by reason of the seniority of a person or persons suspected to have engaged in wrongdoing, the harm to the Northern Territory arising from the alleged conduct, or whether the matter suggests systemic conduct that ought to be investigated by me.

Similarly, education, training, reviews, reports and public comments will be driven by the information we receive, and how the public interest can be best served with the limited resources we have at our disposal.

⁴ Section 3(e)(i).