



Mandatory Reporting Directions and Guidelines for Public Officers

Issued pursuant to section 22 of the *Independent
Commissioner Against Corruption Act 2017* (NT)

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Acronyms	Full form
ICAC	Independent Commissioner Against Corruption
ICAC Act	<i>Independent Commissioner Against Corruption Act 2017</i>
OICAC	Office of the Independent Commissioner Against Corruption

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1. Foreword

Section 22 of the *Independent Commissioner Against Corruption Act 2017* (ICAC Act) requires me to issue, and keep under review, directions and guidelines which govern reporting to me of improper conduct.

This document sets out those directions and guidelines.

The public rightly expects that those engaged in public administration discharge their duties in the public interest, without fear or favour. Resources entrusted to a public body should only be used to advance that body's public purpose.

Those who choose to abuse their positions, improperly exercise their powers, or otherwise engage in behaviour that is a breach of public trust, ought to be held to account.

There is no place for such individuals in public administration.

My office and I exist to improve integrity in public institutions. But to be effective we must know of alleged improper conduct. If we do not know, we cannot act.

While I appreciate that for some public officers making a report can be difficult, it is our duty to identify and call out improper conduct. Impropiety that goes unchallenged erodes confidence in public institutions and adversely impacts upon the many hardworking, dedicated public officers who go about their day to day duties with integrity.

I encourage every public officer to read this document carefully. It sets out the mandatory reporting obligations I have issued, together with an explanation of terms and phrases. Education resources on the ICAC website (www.icac.nt.gov.au), including a comprehensive video from me, will assist you to ensure compliance with these reporting obligations.



Michael Riches
Independent Commissioner Against Corruption

2. Do these directions apply to me?

These reporting directions apply to **public officers**. If you are a public officer you must comply with the reporting directions set out in this document.

Certain public officers, referred to as **prescribed public officers**, must comply with additional reporting obligations.

2.1 Am I a public officer?

Public officers are defined in section 16(2) of the ICAC Act.

You are a **public officer** if you are a:

- a) minister
- b) member of the Legislative Assembly
- c) judicial officer
- d) statutory office holder appointed by the Administrator or a minister
- e) member, officer or employee of a public body
- f) a person engaged by or on behalf of a person mentioned in (a) to (e) in relation to the performance of official functions (eg a consultant or contractor).

Most public officers will be members, officers or employees of a public body. Public bodies are defined in section 16(1) of the ICAC Act.

2.2 What is a public body?

A **public body** is:

- a) an Agency (eg a Department or unit of a Department, or as otherwise defined in section 18A of the *Interpretation Act 1978*)
- b) a local government council
- c) the NT Police
- d) the Supreme Court
- e) the Local Court
- f) a board, commission, tribunal or other body established under an Act that has judicial or quasi-judicial functions in the performance of its deliberative functions
- g) a body, whether incorporated or not, established under an Act
- h) a body whose members, or a majority of whose members, are appointed by the Administrator or a minister
- i) a government owned corporation
- j) a nursing home (see section 5 of the *Medical Services Act 1982*)
- k) a public hospital
- l) Charles Darwin University
- m) Batchelor Institute of Indigenous Tertiary Education
- n) any other body, whether incorporated or not:
 - i. that receives, directly or indirectly, public resources; or
 - ii. performing a public function on behalf of the Territory, a public body or a public officer (whether under contract or otherwise).

If you are a public officer, you must comply with the following reporting directions.

3. Mandatory reporting directions for public officers

A public officer **must** report to the ICAC suspected corrupt conduct or anti-democratic conduct, unless the public officer **knows** that the conduct has already been reported to the ICAC.

A public officer should make a report to the ICAC as soon as practicable after the public officer forms a suspicion about the conduct.

Important notes:

What constitutes corrupt conduct and anti-democratic conduct is explained later in this document.

Each public officer has an individual responsibility to comply with the reporting directions. The obligation cannot be discharged by reporting the matter through an internal process, or by leaving it for another person to decide whether or not a report will be made.

The only time suspected corrupt conduct or anti-democratic conduct does not need to be reported is when the public officer **knows** that the conduct has already been reported to the ICAC.

3.1 Additional mandatory reporting directions for prescribed public officers

You do not need to comply with these additional directions unless you are a prescribed public officer.

A prescribed public officer **must** comply with the mandatory reporting directions issued in respect of all public officers.

A prescribed public officer **must** also report to the ICAC suspected misconduct or unsatisfactory conduct, unless the prescribed public officer **knows** that the conduct has already been reported to the ICAC.

The prescribed public officer should report suspected misconduct or unsatisfactory conduct to the ICAC within four weeks of the conduct coming to that person's attention.

The report should be accompanied by an explanation of action that has been, is being, or is to be, taken in respect of the matter.

The following are prescribed public officers:

- a nominated recipient
- the Chief Executive Officer of an Agency
- the Chief Executive Officer of a local council
- the Vice-Chancellor of the Charles Darwin University
- the Chief Executive Officer of the Batchelor Institute of Indigenous Tertiary Education
- the Commissioner of Police
- the public officer who is responsible for the control and management of a public body, however described; or
- any other public officer who has been assigned, appointed or delegated the responsibility to investigate, determine or otherwise address an allegation of misconduct or unsatisfactory conduct in a public body.

Important notes:

These reporting directions are in addition to those applicable to all public officers.

A nominated recipient is a person who has been nominated in accordance with section 97 of the ICAC Act.

4. Voluntary reports

A public officer, or a member of the public, can report improper conduct to the ICAC at any time, whether or not there is an obligation to do so.

5. Improper conduct

The ICAC Act defines four primary kinds of improper conduct:

1. Corrupt conduct
2. Anti-Democratic conduct
3. Misconduct
4. Unsatisfactory conduct

Collectively those four kinds of conduct are referred to in the ICAC Act as *improper conduct*.¹

All public officers have an obligation to report suspected corrupt conduct and anti-democratic conduct.

Prescribed public officers must also report suspected misconduct and unsatisfactory conduct.

The ICAC is required to focus on corrupt conduct and anti-democratic conduct, whilst ensuring that misconduct and unsatisfactory conduct are also dealt with. Section 3(4) of the ICAC Act specifies that the legislation primarily empowers the ICAC to investigate cases of corrupt conduct and anti-democratic conduct; and empowers the ICAC to refer cases of misconduct and unsatisfactory conduct to referral entities to investigate. The ICAC has discretion to determine in accordance with the limited circumstances specified in section 18A which allegation of misconduct and unsatisfactory to investigate or continue to investigate, these include:

- the alleged misconduct or unsatisfactory conduct arises from the same matter that is the subject or an investigation into corrupt conduct or anti-democratic conduct; or
- the gravity of the matter is such that it warrants the use of the powers and resources given to the ICAC because:
 - the person alleged to have engaged in the misconduct or unsatisfactory conduct is or was a Member of the Legislative Assembly or the Chief Executive Officer or head of a public body or a government owned corporation; or
 - in the opinion of the ICAC, the alleged misconduct or unsatisfactory conduct would have a significant effect on the Territory; or
 - the alleged misconduct or unsatisfactory conduct gives rise to a suspicion on the part of the ICAC of systemic misconduct or unsatisfactory conduct.

Matters that fall outside of the above limited circumstances can still be referred to a referral entity for investigation, including after the ICAC has commenced an investigation.

¹ Improper conduct also includes an offence against the ICAC Act and secondary offences as defined in section 9(1) of the ICAC Act.

5.1 Corrupt conduct

Corrupt conduct is defined in section 10 of the ICAC Act. Corrupt conduct can arise in one of five different ways.

- #1** Conduct is corrupt conduct if it is conduct engaged in by a public officer or a public body:
- a) that constitutes an offence with a maximum penalty of at least two years (with or without a fine); and
 - b) that is connected to public affairs.

- #2** Conduct is also corrupt conduct if it is engaged in by a public officer:
- a) that constitutes reasonable grounds for dismissing or terminating the services of the public officer; and
 - b) that is connected to public affairs; and
 - c) that involves or results in any of the following:
 - i. dishonesty;
 - ii. failure to manage adequately an actual or perceived conflict of interest;
 - iii. a breach of public trust;
 - iv. the illegal, unauthorised or otherwise inappropriate performance of official functions;
 - v. inappropriate conduct in relation to official information;
 - vi. an adverse effect on the honest, impartial or effective performance of official functions by any public officer or public body or group of public officers or public bodies.

#3 Conduct is also corrupt conduct if it is engaged in by a public body, a minister, a member of the Legislative Assembly or a local councillor:

- a) that is connected to public affairs; and
- b) that involves a serious breach of public trust by the public body, minister, member of the Legislative Assembly or councillor.

#4 Conduct is also corrupt conduct if it is engaged in by a person (whether or not a public officer or public body) that could impair public confidence in public administration and that involves any of the following:

- a) collusive tendering;
- b) intentionally or recklessly providing false or misleading information in relation to an application for a licence, permit or other authority under an Act;
- c) misappropriating or misusing public resources;
- d) assisting in, or dishonestly benefitting from, the misappropriation or misuse of public resources;
- e) dishonestly obtaining or retaining employment or appointment as a public officer.

#5 Conduct is also corrupt conduct if it is engaged in by a person (whether or not a public officer or public body) that constitutes:

- a) an offence against Part IV, Division 1 to 5 of the Criminal Code (offences against the administration of law and justice and against public authority); or
- b) an offence relating to the making of a false declaration or statement (sections 118 and 119 of the Criminal Code); or
- c) an offence against section 10(5)(c) of the ICAC Act.

5.2 Anti-democratic conduct

Anti-democratic conduct is defined in section 15 of the ICAC Act.

Anti-democratic conduct is conduct engaged in by a person or body (whether or not a public officer or public body) that:

- a) constitutes an offence against the *Electoral Act 2004*, Chapter 8 of the *Local Government Act 2019* or Chapter 8 of the *Local Government Act 2008* (before its repeal); and
- b) affects, or is part of a course of conduct aimed at affecting:
 - i. the behaviour of the community or multiple members of the community in relation to voting in elections; or
 - ii. the reputation, power or influence, or resources of a political party or a candidate for election; or
 - iii. the ability of the public to ascertain the resources and associated entities of a political party or the resources of a candidate for an election; or
 - iv. the Electoral Commissioner's ability to detect and investigate contraventions of the *Electoral Act 2004* or Chapter 8 of the *Local Government Act 2019* and generally to ensure compliance with those Acts.

5.3 Misconduct

Misconduct is defined in section 11 of the ICAC Act.

Misconduct can arise in one of three different ways.

- #1** Conduct is misconduct if it is engaged in by a public officer or public body:
- a) that constitutes an offence for which the maximum penalty is a fine and/or imprisonment for less than 2 years; and
 - b) that is connected to public affairs.
- #2** Conduct is also misconduct if it is conduct engaged in by a public officer (other than a judicial officer):
- a) that constitutes reasonable grounds for taking disciplinary action against the officer (short of dismissal or termination of appointment) or varying the terms of the officer's appointment; and
 - b) that is connected to public affairs; and
 - c) that involves or results in any of the following:
 - i. dishonesty;
 - ii. failure to manage adequately an actual or perceived conflict of interest;
 - iii. a breach of public trust;
 - iv. the illegal, unauthorised or otherwise inappropriate performance of official functions;
 - v. inappropriate conduct in relation to official information;
 - vi. an adverse effect on the honest, impartial or effective performance of official functions by any public officer or public body or group of public officers or public bodies.
- #3** Conduct is also misconduct if it is conduct engaged in by a judicial officer, the Director of Public Prosecutions, a public body, a minister, a member of the Legislative Assembly or a local councillor:
- a) that is connected to public affairs; and
 - b) that involves:
 - i. for a judicial officer or the Director of Public Prosecutions – a breach of public trust; or
 - ii. for a public body, minister, member of the Legislative Assembly or councillor – a breach of public trust not amounting to a serious breach of public trust.

5.4 Unsatisfactory conduct

Unsatisfactory conduct is defined in section 12 of the ICAC Act.

Conduct is unsatisfactory conduct if it is conduct engaged in by a public officer or public body:

- a) that involves illegality, impropriety, negligence or incompetence; and
- b) is connected to public affairs; and
- c) results in:
 - i. substantial mismanagement of public resources; or
 - ii. the inappropriate or significantly inefficient use of public resources; or
 - iii. substantial mismanagement in relation to the performance of official functions; or
 - iv. substantial detriment to the public interest.

For the purpose of the definition of unsatisfactory conduct, the word ***incompetence*** is defined in the ICAC Act as follows:

- a) conduct that would not be engaged in by a reasonable public officer or public body:
 - i. having the skills and knowledge reasonably expected of a person or body with the role of the public officer or public body; and
 - ii. having taken appropriate steps to obtain adequate resources, information and advice; but
- b) does not include conduct:
 - i. that is less than best practice; or
 - ii. that is a matter of policy about which reasonable public officers or public bodies may disagree.

Unsatisfactory conduct does not include any conduct engaged in by a judicial officer in the performance of judicial functions.

If you are unsure whether to make a report, contact the office on 1800 250 918.

5.5 Other important definitions

5.5.1 What is connected to public affairs?

Many of the threshold tests within the definitions of corrupt conduct, misconduct and unsatisfactory conduct require conduct to be *connected to public affairs*.

That means:

- a) conduct in the course of, or closely related to, the performance of official functions, including conduct engaged in otherwise than in the performance of official functions that adversely affects or could adversely affect, directly or indirectly, the honest, impartial or effective performance of those functions; or
- b) conduct that affects the use, allocation or receipt of public resources to which a public officer has access in connection with being a public officer; or
- c) conduct involving the use of authority or perceived authority that a person has as a result of being a public officer or representing themselves as a public officer.

5.5.2 What is a breach of public trust?

A breach of public trust is defined in section 13 of the ICAC Act as follows:

1. Conduct by a public body or public officer that is intentionally or recklessly inconsistent with the functions of the body or officer, including the duty of the body or officer to act in the public interest.
2. If a public body is an incorporated or unincorporated body:
 - a. that receives, directly or indirectly, public resources; or
 - b. that performs a public function on behalf of the Territory, a public body or public officer (whether under contract or otherwise);

a breach of public trust can only occur if the conduct affects the use of public resources or the carrying out of functions on behalf of the Territory, another public body or public officer.
3. A public officer of a public body of the kind mentioned in (2) above will breach public trust in the same circumstances as set out in (2) above.

5.5.3 What are public resources?

Public resources are:

- a) money, assets and infrastructure of the Territory or a public body; or
- b) intellectual property of, and licences held by, the Territory or public body; or
- c) human resources of the Territory or a public body or public officer; or
- d) any other resources of, or available to, the Territory or a public body or public officer, including resources held under trust.

If a public body is an incorporated or unincorporated body:

- a. that receives, directly or indirectly, public resources; or
- b. that performs a public function on behalf of the Territory, a public body or public officer (whether under contract or otherwise);

the resources of that body or of any member, officer or employee of that body are only public resources to the extent that they are resources obtained from another public body or a public officer under an agreement.

5.5.4 What is a suspicion?

A suspicion is a state of mind. To suspect that improper conduct has occurred, or is occurring, does not mean that you have to know that is the case. But there must be some basis upon which you think it is possible, or even likely, that improper conduct has occurred or is occurring.

That basis ought to have some identifiable and rational source. For example, a suspicion might be formed from documents you have read, conversations you have been privy to or information you have been provided by a person you consider to be reliable.

5.5.5 Whistleblower protections

A public officer who makes a mandatory report in accordance with these directions and guidelines has the protections set out in Part 6 of the ICAC Act.

Information in a mandatory report to the ICAC is a protected communication (see section 93(1)).

The making of a protected communication is a protected action, unless the person taking the action provides or communicates information that the person knows or believes is misleading (see section 92(1) and (2)).

Once a protected communication has been made, it will retain this status irrespective of whether the matter is dealt with by the ICAC or referred to another entity (see section 93(3)).

A person who takes a protected action is a protected person (see section 4).

Information is not a protected communication unless the person providing the information indicates that the information is being provided as a protected communication, the information is being provided in the person's capacity as a nominated recipient, or the recipient otherwise determines that the information is a protected communication (see section 93(4A)).

A protected person incurs no civil or criminal liability by taking a protected action and is not liable to disciplinary or other administrative action for doing so (see section 99). That protection applies even if the protected action is taken in breach of an obligation of confidentiality.

If a person retaliates against a public officer who made a report to the ICAC, that person may have committed a criminal offence. Retaliation is defined in section 95 as follows:

A person engages in retaliation against another person (the victim) if the person causes, or threatens to cause, harm to the victim:

- a) with the intention of discouraging the victim or a third person from taking protected action; or
- b) with the intention of discouraging the victim or a third person from supporting a protected person; or
- c) because of protected action taken, or suspected by the person to have been taken, by the victim; or
- d) because of action taken, or suspected by the person to have been taken, by the victim to support a protected person.

Harm includes:

- i. injury, loss or damage;
- ii. intimidation or harassment;
- iii. discrimination, disadvantage or adverse treatment (including disciplinary action) in relation to employment, career, profession, trade or business.

5.5.6 Confidentiality

While it is not an offence for a person to disclose to another person that a report has been made to the ICAC, care should be taken as to who, and in what circumstances, such disclosures are made. The unnecessary disclosure of the making of a report could prejudice any investigation to be conducted and might give rise to greater risks of retaliation.

Where a person obtains information from the ICAC (other than in the performance of functions under the ICAC Act), knowing that that information is confidential information, it is an offence to disclose that information other than in accordance with the exceptions in section 146(3) of the ICAC Act. The prohibition does not apply to information that is already in the public domain.

It is also an offence to disclose the identity of a protected person in contravention of section 146A (from 2 January 2024), or breach a specific written direction not to disclose certain information in contravention of section 147.

5.6 How to make a report

A report can be made to the ICAC via the Office of the Independent Commissioner Against Corruption (OICAC):

Online: icac.nt.gov.au

Phone: 1800 250 918

Post: GPO Box 3750, Darwin NT 0801

Email: report.submission@icac.nt.gov.au

5.7 Further information

For further information visit the OICAC website: icac.nt.gov.au or call 1800 250 918.



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