

Title	<b>ICAC Reporting</b>		
Responsible Director	Corporate and Community Services		
Adoption Date	26/08/2019	Review Date	2022

## 1 Purpose

To ensure that Alice Springs Town Council fulfils its responsibilities under the *Independent Commissioner Against Corruption Act 2017 (the Act)* and provides adequate support and protection to those who make disclosures in accordance with the Act.

## 2 Definitions

**Public officers and Public bodies:** Under the Act, local government councils are considered a Public body. Public officers include the members, officers or employees of a public body.

A **protected communication** is a report to the Office of the ICAC that the person reporting it believes on reasonable grounds would tend to show that improper conduct has occurred, is occurring, or is at risk of occurring or would assist the ICAC and his Office to perform their functions.

A **protected person** is a person reporting a ‘protected communication’.

**Improper conduct** (s9) – includes corrupt conduct, misconduct, unsatisfactory conduct and anti-democratic conduct. Further detailed definitions are provided on the ICAC website.

## 3 Policy background

The NT Independent Commissioner Against Corruption (ICAC) deals with complaints about improper conduct in public administration in the Northern Territory - (*Independent Commissioner Against Corruption Act 2017*).

ICAC have provided the following direction on process:

- a) Mandatory Reporting Directions and Guidelines for public officers, public bodies and the community pursuant to Section 22 of the Act; and
- b) Whistleblower Protection Guidelines and Directions pursuant to s96 of the Act.

A report of improper conduct can be made via the ICAC website, or through pre-determined reporting channels made in agreement between the ICAC and public bodies (nominated recipient).

A public body must appoint a ‘nominated recipient’ and advise ICAC of such in writing.

A public body must support and protect a ‘protected person’. Maintaining confidentiality is the most effective way of doing this.



## ELECTED MEMBER POLICY

It is an offence to engage in retaliation against a person who has taken a protected action where the maximum penalty is imprisonment for two years.

If an employee of a public body engages in retaliation, both the public body and the employee are vicariously liable unless the public body can prove that it had taken all reasonable steps in preventing or decreasing retaliation.

### **4 Statement of policy**

Alice Springs Town Council (Council) is committed to promoting honesty and integrity, upholding the principles of transparency and accountability within its administration and management practices.

Council will follow the directions and guidelines provided by ICAC when implementing processes to support this policy, refer to:

- a) **Mandatory Reporting Directions and Guidelines** for public officers, public bodies and the community pursuant to Section 22 of the Act; and
- b) **Whistleblower Protection Guidelines and Directions** pursuant to s96 of the Act.

**Mandatory Reporting  
Directions and Guidelines**  
*for public officers, public  
bodies and the community*  
pursuant to section 22 of the Independent Commissioner Against Corruption Act

# Mandatory Reporting Directions and Guidelines for public officers, public bodies and the community pursuant to section 22 of the *Independent Commissioner Against Corruption Act*

## Introduction

1. The object of the *Independent Commissioner Against Corruption Act 2017 (NT)* (ICAC Act) is to address wrongdoing in, or connected with, public administration.<sup>1</sup>
2. The ICAC Act states that the Independent Commissioner Against Corruption (ICAC) must issue, and keep under review, directions and guidelines governing the reporting to the ICAC of improper conduct.<sup>2</sup>
3. The directions and guidelines contained herein:
  - a) set out the requirements for a public body, public officer or the community to report suspected improper conduct, including the threshold for what 'suspected' encompasses<sup>3</sup>
  - b) set out how suspected improper conduct must still be reported to the ICAC, even if they have already been reported to another public body or public officer (for example, the Ombudsman or Northern Territory Police Force).<sup>4</sup>
4. All references refer to the Northern Territory (NT) unless otherwise stated.

## Reporting Rights

5. Any member of the community or a community organisation not captured within the definition of public body or public officer **may** report suspected improper conduct at any time while

## Mandatory Reporting Obligations

6. This section of the *Mandatory Reporting: Direction and Guidelines* **must** be read in conjunction with the directions below – Whistleblower Protection Guidelines and Directions.
7. Public officers and public bodies have mandatory reporting obligations. That is, they must report suspected improper conduct.
8. The Public Officers are separately defined in the ICAC Act.<sup>5</sup> They are:
  - a) a minister;
  - b) an Member of the Legislative Assembly;
  - c) a judicial officer;
  - d) the holder of an office established under an Act who is appointed by the Administrator or a minister;
  - e) a member, officer or employee of a public body;

---

<sup>1</sup> s3.

<sup>2</sup> s22(1).

<sup>3</sup> s22(2)(a)-(b).

<sup>4</sup> s22(2)(c).

<sup>5</sup> s16(2)(a)-(f).

- f) any other person engaged, whether under the *Contracts Act* or otherwise, by or on behalf of a person mentioned in paragraphs (a) to (e) in relation to the performance of official functions.

Note the broad descriptions of 'public officer' under (e) and (f). If you are such a person associated with a 'public body' as set out below, you are a public officer for the purposes of these directions. If you are associated with a non-government organisation (NGO), for example, as a member, an officer, or an employee, then you have an obligation under these directions if you receive NT funds.

Public officers have obligations separate from, and in addition to, any obligations that a public body has to report corrupt conduct.

9. All public bodies **must** report suspected improper conduct to the ICAC.<sup>6</sup>
10. A 'public body' is each of the following:<sup>7</sup>
- a) an Agency;
  - b) a local government council;
  - c) the Police Force;
  - d) a court;
  - e) 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;
  - f) a body, whether incorporated or not, established under an Act;
  - g) a body whose members, or a majority of whose members, are appointed by the Administrator or a minister;
  - h) a government owned corporation;
  - i) a nursing home;
  - j) a public hospital;
  - k) a university;
  - l) 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).
11. Note the broad definition of a 'public body'. It includes any body (whether incorporated or not) which receives public resources.
12. 'Public resources' are defined as:<sup>8</sup>
- a) money, assets and infrastructure of the Territory or a public body; or
  - b) intellectual property of, and licences held by, the Territory or a 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.
13. If you receive any of these resources as a result of a contract with a public body, then the resources that you receive become public resources.<sup>9</sup>

---

<sup>6</sup> s22(2)(a) and s22(5)(a).

<sup>7</sup> s16(1) (a)-(l).

<sup>8</sup> s14(1)(a)-(d).

<sup>9</sup> s14(2).

14. If you receive public resources as a result of a contract with a public body or public officer, then you become a public body for the purposes of the mandatory reporting.<sup>10</sup> You may be, for example, an NGO, a contractor, a consultant, or a sporting club. Your obligation to report improper conduct applies if you receive public assistance.
15. If you are an employee of such a public body, you must report suspected improper conduct.
16. A public officer or public body **must** report improper conduct to the ICAC, even in the event that it has already been referred to another public body or public officer, including but not limited to, the Ombudsman, the Auditor-General or the Northern Territory Police Force.<sup>11</sup>
17. A public officer of a public body **must** report improper conduct to the ICAC, unless the public officer or public body knows, for a fact, that the conduct has already been report to the ICAC. This does not prevent the making of potentially second reports of the same conduct if the public officer or public body is not convinced, as a matter of fact, that the conduct has indeed already been reported to the ICAC.
18. A public officer or public body **must** report improper conduct as soon as practicable after the public body or public officer forms a reasonable suspicion as to the conduct. With respect to what constitutes a reasonable suspicion, refer to 'Improper conduct and the threshold for reasonable suspicion' below.
19. A report of improper conduct by a public officer or public body **must** include:
  - a) the details of the matter that the public officer or public body suspects is improper conduct;
  - b) the identity of all persons and entities (whether public officers, public bodies or otherwise) suspected of having been involved in the suspected improper conduct;
  - c) how the suspected improper conduct became known to the public officer or public body;
  - d) any evidence that may be relevant to the suspected improper conduct, such as documentation; and
  - e) the names of any persons that who can give evidence relevant to the suspected improper conduct.
20. A report of improper conduct should be made via the ICAC website, or through pre-determined reporting channels made in agreement between the ICAC and public bodies (see below – nominated recipient).

### What should I be reporting?

21. Section 22 requires mandatory reporting of 'suspected improper conduct'
22. You may have a concern that you have seen something happen which is suspicious and may be improper conduct. That may raise two questions in your mind:
  - I. Should I act only on a suspicion?
  - II. What level of certainty must I have about it being improper conduct?

---

<sup>10</sup> s14.

<sup>11</sup> s22(2)(c).

23. The explanation is as follows:

- a) The ICAC directions may set out the circumstances that constitutes reasonable suspicion.<sup>12</sup> A reasonable suspicion is not raised just by someone's appearance or behaviours. A suspicion arises when there is something out of place, or inappropriate about someone's appearance or behaviour. The reasonable suspicion arises from the facts surrounding the appearance or behaviour.
- b) Therefore, a reasonable suspicion that you should report is one where there is one fact or more upon which your suspicion is based.
- c) You need not be convinced about the behaviour. At the other end of the scale, your belief must be more than speculation on your part.
- d) The better course of action for you is that, if you have a doubt, nevertheless report it. The Office of the ICAC can then deal with it.

You are the eyes and the ears of the ICAC.

### Misleading Reports

24. There are three important things you must consider:

- I. If you provide information that you know to be misleading, or believe it to be misleading, you are not protected by the whistleblower protection, as it is not a 'protected action'.<sup>13</sup>
- II. If you provide information, for it to be a 'protected communication', it:
  - i. must comply with these directions made under section 22. If you report something where you do not have a proper suspicion, then it is not a report under section 22; and
  - ii. must be something you believe on reasonable grounds to be true.<sup>14</sup>
- III. If you intentionally give misleading information to a person acting in an official capacity (including but not limited to, the ICAC, an authorised person, or a person in your department designated to receive report) and you know it to be misleading, then you commit an offence under the ICAC Act, where the maximum penalty is imprisonment for 2 years, or 400 penalty units.

25. Something may be misleading because you report information that you know is not true.

26. It may also be misleading because you choose to omit something which is important to the facts.<sup>15</sup>

27. If you have something in a document that is untrue, then you have an obligation to point that part out.<sup>16</sup> If you point out the part or parts of a document that are misleading, then no offence is committed.

---

<sup>12</sup>s22(2)(b).

<sup>13</sup>s92.

<sup>14</sup>s93(1).

<sup>15</sup>s154(1).

<sup>16</sup>s 154(2).





# **Whistleblower Protection Guidelines and Directions**

*pursuant to section 96 of the Independent Commissioner Against Corruption Act*

## Whistleblower Protection Guidelines and Directions pursuant to section 96 of the *Independent Commissioner Against Corruption Act*

1. A person has a right to make a voluntary protected communication about improper conduct. The communication may be oral or written. That communication becomes a protected communication and their action in telling you is a protected action under Part 6 Division 1 of the Act.
2. The ICAC must give directions and guidelines to the person who will receive the communication on how to deal with it.
3. If you are the person responsible for the management or control of a public body, then you should appoint a nominated recipient for the public body.
4. Such a person should be a public officer and have the skills and training to deal with the role given the requirements for confidentiality and protection for the whistleblower.
5. When such a responsible person is nominated, the nomination:
  - a) must be in writing;
  - b) must specify the duration of the appointment;
  - c) may be for a person nominated for more than one public body, and not necessarily from your public body;
  - d) must be notified to the ICAC, including the expiry date of the appointment;
  - e) if it has been revoked or if it expires, that fact must be reported to the ICAC.
6. The nominations should be known to every public officer within your public body, including the contact details of that person.
7. If there is no such person nominated to receive a voluntary protected communication, then every person who may receive such a communication must apply the following:
  - a) the public body has the primary responsibility for providing protection and support to whistleblowers;<sup>1</sup>
  - b) the ICAC has the responsibility to provide guidance to a public body on how to protect the whistleblower. But if that protection is not forthcoming then the ICAC's role is to take action;<sup>2</sup>
  - c) the identity of a protected person must be kept confidential;
  - d) you are to know and understand the Model Litigant Policy prepared by the Solicitor for the Northern Territory, and apply those principles to the receipt of a protected communication;
  - e) you must receive the communication, whether or not it is anonymous, and whether or not it is oral or in writing;
  - f) you must immediately take steps to minimise the risk of retaliation against the person who made the communication;

---

<sup>1</sup> S91(1)(a)

<sup>2</sup> S91(1)(b)

- g) you must give to the person who made the communication, and as soon as practicable after receiving the communication, a notice setting out the following:
  - i. a statement saying you have received the report;
  - ii. the date you received the report;
  - iii. your understanding of the content of the report;
  - iv. a statement saying it is a protected communication; and
  - v. information about the role of the ICAC and the ICAC's contact details.
- 8. The notice should also attach Schedule 2 of the Act.
- 9. You are excused from this seventh direction if you cannot find the person who made the communication after reasonable efforts to do so.
- 10. You must report the communication to the ICAC as soon as reasonably practicable.