

Independent Commissioner Against Corruption (ICAC)

Procedure No. 1110.010.E.R

1 Purpose

This procedure outlines the roles and responsibilities of City of Darwin's public officers, including elected members, staff, committee members and contractors, in relation to detecting and reporting improper conduct to the Independent Commissioner Against Corruption (ICAC) and/or City of Darwin.

2 Scope

This procedure applies to:

- reporting of improper conduct in line with the Independent Commissioner Against Corruption Act 2017 (NT) (ICAC Act)
- receiving and dealing with protected communications
- whistleblower protections and support.

3 Procedure

City of Darwin is committed to creating a culture of integrity, respect and excellence, and does not tolerate improper conduct in any form. Improper conduct in the public sector can cause serious damage including, but not limited to:

- undermining public trust in government
- wasting public resources and money
- unfair advantage/disadvantage
- inefficient operations
- reduced growth through lack of investor confidence
- reputational damage
- impact on City of Darwin's ability to recruit and retain quality staff
- failure to obtain best public value through procurement.

By encouraging and supporting the reporting of improper conduct, City of Darwin maintains accountability and ensures public value and quality service delivery to the community.

3.1 Improper conduct

Improper conduct includes any past or current conduct, engaged in by a public officer, that is defined under the ICAC Act as:

Version:	Decision Number:	Adoption Date:	Next Review Date:
2	ORD514/24	26 November 2024	26 November 2028

Responsible Officer: General Manager Corporate

Electronic version current. Uncontrolled copy valid only at time of printing.

- corrupt conduct (s10 of the ICAC Act)
- misconduct (s11 of the ICAC Act)
- unsatisfactory conduct (s12 of the ICAC Act)
- anti-democratic conduct (s15 of the ICAC Act)

Definitions for each of these types of conduct can be found at **Annexure A**.

3.2 Requirement to report to ICAC

Under the Independent Commissioner Against Corruption Act 2017 (NT) (ICAC Act) all public officers are required to make a **mandatory** report directly to ICAC if they suspect:

- corrupt and/or
- anti-democratic conduct.

City of Darwin public officers include:

- elected members
- workplace participants
- committee members
- external parties performing or overseeing any function on behalf of City of Darwin (e.g. contractors).

Public officers may make **voluntary** reports to ICAC about:

- other types of improper conduct (misconduct and unsatisfactory conduct)
- information that shows improper conduct has occurred, or there is a risk of improper conduct occurring
- other information that may assist ICAC.

The requirement to report exists when a person forms a suspicion that Improper Conduct has occurred, is occurring, or will occur. Reasonable suspicion is different to having actual knowledge that something has occurred, however there must be some basis upon which the public or prescribed public officer thinks it is possible, or even likely, that improper conduct has occurred or is occurring. For example, a reasonable suspicion might be formed from documents the public or prescribed public officer has read, conversations they have been privy to or information they have been provided by a person they consider to be reliable.

Reporting requirements apply regardless of whether the person who engaged in the conduct is still employed by, or affiliated with, City of Darwin. The only exception is if the public officer public or the prescribed public officer knows the matter has already been reported to ICAC.

Version:	Decision Number:	Adoption Date:	Next Review Date:
2	ORD514/24	26 November 2024	26 November 2028
Responsible Officer: General Manager Corporate			

Reporting a matter internally, or to other public bodies or public officers does not remove the requirement to report to ICAC.

Reports to ICAC can be made in several different ways:

- by completing a secure webform on the ICAC website, at <https://report.icac.nt.gov.au/>
- by sending a completed Mandatory Reporting Template to report.submission@icac.nt.gov.au
- by mailing a completed Mandatory Reporting Template to GPO Box 3750, Darwin NT 0801
- by calling ICAC on 1800 250 918
- in person, by making an appointment with ICAC using the free call number above.

3.2.1 Additional reporting requirements for prescribed public officers

The Chief Executive Officer (CEO) and nominated recipients are prescribed public officers under the ICAC Act, meaning they **must make a mandatory report** for all types of suspected improper conduct.

3.3 Protected communications

Information regarding suspected improper conduct or other information relevant to ICAC, that meets certain criteria and is reported via the channels above is a 'protected communication' (PC) under the ICAC Act.

A PC can be made verbally or in writing and may be made anonymously.

Mandatory PCs regarding corrupt or anti-democratic conduct **must be made directly to ICAC**.

Voluntary PCs regarding other types of improper conduct and information relevant to ICAC can be made directly to ICAC or via City of Darwin's prescribed public officers.

The person making the report must state that the information is being reported to the person as a PC, in the receiver's capacity as a nominated recipient under the ICAC Act.

PCs should include the following details:

- contact details, if the report is not made anonymously
- details of any reports about this conduct or information already made to ICAC, or any other person/organisation
- nature of the improper conduct or information
- location, time, suspected participants and impact
- how the issue came to light
- any other relevant information and/or evidence
- details of other people who could provide evidence to ICAC.

Version:	Decision Number:	Adoption Date:	Next Review Date:
2	ORD514/24	26 November 2024	26 November 2028

Responsible Officer: General Manager Corporate

Electronic version current. Uncontrolled copy valid only at time of printing.

Once a purported protected communication has been made, the person reporting is considered a 'purported protected person' and is protected from retaliation under the ICAC Act.

While the public prescribed officer as the recipient of the report may determine and notify that the report is a protected communication, the final determination is made by ICAC.

3.3.1 Reporting to City of Darwin

To make a voluntary PC via City of Darwin, or seek information regarding the process, public officers can contact the CEO, or a City of Darwin nominated recipient.

Nominated recipients can receive voluntary PCs and refer them to ICAC. They can also provide guidance to public officers about making PCs.

City of Darwin nominated recipients can only receive PCs relating to City of Darwin. Reports about public officers or issues in other organisations must be made directly to ICAC or to a nominated recipient from the relevant organisation.

City of Darwin's nominated recipients' details are listed in the following locations:

- the City of Darwin website (www.darwin.nt.gov.au/council/governance-strategy/governance/independent-commissioner-against-corruption)
- the City of Darwin intranet
- in staff induction documents.

Initial discussions with nominated recipients are confidential. Nominated recipients will assess and advise whether a mandatory report is required.

3.3.2 Reporting timeframes

The requirement and time frame for reporting improper conduct to ICAC varies depending on the type of information being reported and whether the person reporting is a public officer or prescribed public officer.

Version:	Decision Number:	Adoption Date:	Next Review Date:
2	ORD514/24	26 November 2024	26 November 2028

Responsible Officer: General Manager Corporate

Electronic version current. Uncontrolled copy valid only at time of printing.

Officer status	Information type	Report to	Reporting time frame
Public officer	<ul style="list-style-type: none"> Suspected corrupt conduct Suspected anti-democratic conduct 	ICAC (mandatory)	As soon as practicable after forming a suspicion
Public officer	<ul style="list-style-type: none"> Suspected misconduct Suspected unsatisfactory conduct 	ICAC (voluntary) City of Darwin (voluntary)	At any time after a suspicion has been formed
Public officer	Other information of value to ICAC	ICAC (voluntary) City of Darwin (voluntary)	At any time
Prescribed public officer (Nominated recipients/CEO)	<ul style="list-style-type: none"> Suspected corrupt conduct Suspected anti-democratic conduct 	ICAC (mandatory)	As soon as practicable after forming a suspicion
Prescribed public officer (Nominated recipients/CEO)	<ul style="list-style-type: none"> Suspected misconduct Suspected unsatisfactory conduct 	ICAC (mandatory)	Within 4 weeks of the conduct coming to their attention
Prescribed public officer (Nominated recipients/CEO)	Other information that may assist ICAC	ICAC (voluntary)	At any time

While there is no mandatory requirement for public officers to report misconduct and unsatisfactory conduct to ICAC, City of Darwin strongly encourages all public officers to make a report to ICAC for any suspected improper conduct matters to ensure that mandatory reporting requirements are reliably met.

In addition to mandatory requirements for reporting to ICAC under the ICAC Act, Elected Members and City of Darwin staff may also have reporting requirements under the applicable City of Darwin Code of Conduct. A report to ICAC does not meet these requirements and public officers are required to consider

where a report should also be made to City of Darwin in line with complaint and grievance processes or via a prescribed public officer.

3.3.3 After reporting

After ICAC or the nominated recipient confirms the matter will be treated as a protected communication, the person who made the report is considered a protected person and continues to receive protections under the ICAC Act.

Written confirmation of receipt and information regarding the process will be provided to the public officer by the recipient where possible.

ICAC will assess reports received via City of Darwin and may require the public officer to:

- answer questions or provide further information
- provide documents or items as evidence
- provide a statutory declaration to verify information, documents and/or items.

Depending on the nature of the report, ICAC may:

- investigate the matter
- refer the matter to another entity for investigation
- refer the matter back to the originating organisation for investigation under ICAC's supervision.

3.3.4 Confidentiality for protected persons

Protected persons should keep their report and its contents confidential. It is not an offence to disclose that a report has been made, except where directed by ICAC. However, public officers are responsible for taking reasonable steps to ensure their own safety and must consider how disclosing the information, and to whom, may affect them, others, and/or the outcome of any investigation.

If the person reporting the suspected misconduct chooses to voluntarily disclose the circumstances of the protected communications to other people or parties, City of Darwin may no longer be able to protect the whistleblower in line with section 3.8 of this procedure.

Any confidential information received from ICAC in the course of an investigation must be kept confidential.

Nominated recipients and ICAC cannot disclose the details of the person making the report, except in certain situations, in accordance with section 146A of the ICAC Act.

Version:	Decision Number:	Adoption Date:	Next Review Date:
2	ORD514/24	26 November 2024	26 November 2028
Responsible Officer: General Manager Corporate			

3.4 Applying for a declaration of protected communication from ICAC

A person who has taken some action involving an allegation of misconduct may apply to ICAC for the action to be declared a protected communication.

3.5 False or misleading reports

ICAC will not action reports that are found to be false or misleading. Knowingly reporting false or misleading information to ICAC is a criminal offence and may result in action being taken against the person who made the report.

False or misleading information can include:

- information that is untrue or incorrect
- opinions or unconfirmed details that are reported as facts
- partial information, where important details have been left out to give a false impression.

If, at any point, a protected person becomes aware that any information they have reported is untrue or incorrect, they must clarify or correct the information as soon as practicable.

3.6 Receiving a protected communication (prescribed public officer)

When a purported protected communication is received, the recipient must document the communication and conduct a written assessment of the information to decide:

- if the report relates to a reasonable suspicion of any form of improper conduct
- if the report relates to another issue of public administration that requires further action
- if the information indicates that the protected person may be at risk of retaliation
- if the information suggests an imminent risk of physical harm to any person.

The recipient must include their opinions on the points above in the written assessment.

All reports of suspected improper conduct or information of value to ICAC received by prescribed public officers should be treated as PCs unless the recipient forms a belief, supported by reliable evidence, that:

- the report is false or misleading
- the information contained in the report does not relate to suspected improper conduct or other information of value to ICAC.

If the report is to be treated as a PC, the recipient must issue a Protected Communication Notice to the protected person as soon as practicable.

Version:	Decision Number:	Adoption Date:	Next Review Date:
2	ORD514/24	26 November 2024	26 November 2028

Responsible Officer: General Manager Corporate

Electronic version current. Uncontrolled copy valid only at time of printing.

Where the recipient believes that the report is false or misleading, or does not relate to suspected improper conduct or information of value to ICAC, they must report this belief to ICAC or the CEO.

3.7 Dealing with a protected communication (prescribed public officer)

Depending on the outcome of their assessment, the recipient may decide:

- that a mandatory report must be made to ICAC directly by the public officer, where the PC relates to corrupt or anti-democratic conduct
- to address voluntary PCs through an informal resolution process, if authorised and where appropriate
- to refer the matter to another person or entity
- that no further action is required.

Once a decision is reached, the recipient must:

- document the decision and reason/s for choosing the specific course of action
- complete any required referral, stating that that the information was provided as a protected communication
- advise the person making the report of the chosen course of action and reasons for the course of action in writing as soon as practicable.

Where information from a report has been referred to another person or entity, the written advice to the protected person must include the following details:

- that the matter has been referred
- to whom it was referred
- contact details for the person or entity to which the referral was made
- whether the protected person's identity was disclosed with the referral.

Once completed, the prescribed public officers makes written record of the following details:

- the referral date
- to whom the referral was made
- the information provided in the referral
- whether the protected person's identity was disclosed
- when and how the protected person was advised of the referral
- what information was provided by the entity or person to whom the referral was made.

3.7.1 Confidentiality for nominated recipients

The identity of a protected person should be kept confidential, and inquiries should be made without disclosing the person's identity.

Version:	Decision Number:	Adoption Date:	Next Review Date:
2	ORD514/24	26 November 2024	26 November 2028

Responsible Officer: General Manager Corporate

Electronic version current. Uncontrolled copy valid only at time of printing.

If the nominated recipient must disclose information about the identity of a protected person as part of an investigation, they must:

- inform the receiver that the information relates to the identity of a protected person
- advise the protected person that information about their identity has been disclosed, and to whom
- keep a written record of the identifying information disclosed, when, to whom and for what purpose.

3.8 Whistleblower protections

There are a number of protections provided for protected persons under Part 6 of the ICAC Act, including protection from retaliation.

Retaliation is the act of harming, or threatening to harm a victim:

- to discourage the victim or third person from taking protected action under the ICAC Act
- to discourage the victim or third person from supporting a protected person under the ICAC Act
- as revenge for protected action taken, or perceived to have been taken by the victim
- as revenge for the victim supporting, or a perception that they have supported a protected person.

Harm includes:

- injury, loss or damage
- intimidation or harassment
- discrimination, disadvantage, mistreatment and/or arbitrary disciplinary action in the workplace.

Retaliation is an offence under the ICAC Act and is a form of improper conduct. City of Darwin is required to report alleged or suspected retaliation to ICAC.

3.8.1 Risk assessment and monitoring by prescribed public officers

Prescribed public officers (CEO and nominated recipients) are required to undertake and document a risk assessment for each PC they receive, to assess the likelihood of retaliation against the protected person and impacts to any other people.

The factors that are considered, include but are not limited to:

- the work environment and type of work being undertaken
- the seriousness of the protected communication
- workplace culture and any previous conduct
- risks unique to the circumstances.

The risk of retaliation may be higher where:

- the report is about a senior officer

Version:	Decision Number:	Adoption Date:	Next Review Date:
2	ORD514/24	26 November 2024	26 November 2028

Responsible Officer: General Manager Corporate

Electronic version current. Uncontrolled copy valid only at time of printing.

- the matter is not widely known
- the report involves multiple alleged perpetrators
- the conduct is serious, systemic, or sensitive.

The prescribed public officer will develop a plan to manage risks identified in each assessment. Where a risk of retaliation is identified, the protected person will be notified as soon as possible.

3.8.2 Reporting retaliation

If a protected person experiences or fears retaliation, they should report this to a nominated recipient, the CEO or to ICAC directly. Steps will be taken to reduce the risk of further retaliation.

3.8.3 Dealing with allegations of retaliation

The recipient of a report about retaliation must keep a record of:

- the date the report was received
- details of alleged perpetrator(s)
- the nature of the alleged conduct.

A person who can bring a fair, independent and objective mind to the task will be identified and tasked to assess the report, in context, noting that not all adverse action is retaliation. Reasonable management of a staff member, for example, would not be retaliation.

The initial assessment should include enough detail to decide:

- if further investigation is needed
- what action, if any, should be taken
- whether strategies are needed to support the alleged victim and prevent further retaliation.

Where it has been established that retaliation has occurred, and if a public officer has engaged in retaliation then:

- a report must be made to ICAC by the prescribed public officer dealing with the matter
- City of Darwin must take all reasonable steps, in consultation with the victim to provide a work safe work environment and prevent further retaliation.
- support will be provided to the victim, including access to specialised support and counselling
- regular communications will be scheduled with the victim to monitor their wellbeing and reduce the risk of further retaliation
- the prescribed officer will keep detailed records of all action taken by City of Darwin.

The type of action taken by City of Darwin will depend on the outcome of the investigation and may include:

Version:	Decision Number:	Adoption Date:	Next Review Date:
2	ORD514/24	26 November 2024	26 November 2028

- a request or instruction to the person to stop the conduct
- informal counselling to raise awareness of the impact of the conduct on others
- formal counselling or training
- a written warning
- an intervention to change the workplace culture.

If a person experiences or fears retaliation, City of Darwin provides support including, but not limited to:

- referral to professional support services, such as City of Darwin's Employee Assistance Program
- customising employment arrangements for the protected person
- facilitation of conciliation of interpersonal problems in the workplace.

3.9 Record keeping and document security

City of Darwin must maintain records including:

- all communication with the protected person
- the retaliation risk assessment
- the retaliation minimisation action plan
- reports or allegations of retaliation
- the written assessment of reports or allegations of retaliation
- actions taken to address incidents of retaliation.

Nominated recipients must keep all records associated with protected communications as follows:

- hard copy records must be kept in locked cabinets accessible only by the nominated recipient/s and CEO
- access controls for must be maintained for electronic documents to only allow access to the nominated recipient/s and the CEO.

3.10 General Powers of ICAC

An authorised officer of the ICAC may enter and remain on premises (which includes a vehicle) occupied or used by City of Darwin staff or elected members for official duties at any time for the purposes of performing functions under the ICAC Act. This does not include residential premises unless the residence is considered a workplace (e.g. due to approved working from home arrangements).

An authorised officer of the ICAC may enter and remain on any other premises if the officer believes on reasonable grounds that there is anything that may be evidence of improper conduct on the premises. This power may only be exercised with the consent of the owner or occupier of the premises or with the authority of a search warrant.

An authorised officer who lawfully enters premises may exercise one or more of the following powers:

- search the premises and examine anything on the premises (opening a thing by force if necessary)

Version:	Decision Number:	Adoption Date:	Next Review Date:
2	ORD514/24	26 November 2024	26 November 2028
Responsible Officer: General Manager Corporate			

- take photographs and make audio and video recordings of anything on the premises
- operate equipment or facilities on the premises
- seize anything found on the premises that the authorised officer believes on reasonable grounds may be evidence of improper conduct and retain it for as long as may be necessary
- issue a retention notice requiring that a thing which has been seized not to be moved or interfered with without the approval of an authorised officer; or the authorised officer may secure that thing against interference.

If the authorised officer issues a retention notice, it must be complied with as it is an offence to intentionally breach this notice.

Additionally, while on the premises the authorised officer may require a person to do any of the following:

- state their full name, date of birth and provide contact details
- produce evidence of identity
- answer (orally or in writing) questions asked by the authorised officer
- produce a thing the authorised officer believes on reasonable grounds is connected with improper conduct
- operate equipment or facilities on the premises
- give the authorised officer any translation, code, password or other information necessary to gain access to, or interpret and understand, anything located or obtained by the officer in the course of exercising the authorised officer's functions
- give other assistance the authorised officer reasonably requires.

Finally, an authorised officer may give directions to the person in charge of a vehicle or vessel in relation to the stopping or movement of the vehicle or vessel.

If an authorised officer requires any of these things, a person must comply with that requirement to the extent they are able to do so and, if asked a question, to answer it to the best of their knowledge, information and belief. Failing to comply with such a requirement is an offence.

For the performance of the ICAC's functions under the ICAC Act, an authorised officer may, at any time, require City of Darwin staff or Elected Members to:

- answer specified questions or provide specified information
- produce specified items, or items of a specified kind, in City of Darwin's or an individual's possession or control.

In doing so, the authorised officer must inform City of Darwin or the individual person whether they are under investigation by the ICAC.

The authorised officer may require City of Darwin or the individual person to verify any information or items provided in accordance with such requests by statutory declaration.

Version:	Decision Number:	Adoption Date:	Next Review Date:
2	ORD514/24	26 November 2024	26 November 2028
Responsible Officer: General Manager Corporate			

4 Definitions

CEO means the Chief Executive Officer of the City of Darwin.

ICAC means the Independent Commissioner Against Corruption.

ICAC Act means the Independent Commissioner Against Corruption Act 2017.

Improper conduct means improper conduct as defined in section 9 of the ICAC Act.

Nominated recipient means the person(s) appointed by the CEO and notified to ICAC from time to time to receive voluntary reports of suspected Improper Conduct within City of Darwin.

Protected action means any action that is taken in the course of, or for the purpose of, complying with the ICAC Act or cooperating with a person or body performing functions under the ICAC Act.

Protected communication means information in a report of suspected Improper Conduct made by an individual to ICAC or another entity set out in s 93(1)(b) of the ICAC Act that is made in accordance with the requirements in s 93 of the ICAC Act, or that has been declared by ICAC to be a protected communication.

Protected Communication Notice means the notice at Annexure B as updated from time to time.

Protected Person means a person making a protected communication.

Voluntary protected communication means a protected communication made otherwise than in compliance with the mandatory requirement to report suspected Improper Conduct (for example, where an individual decides to refer suspected Improper Conduct to the CEO or a nominated recipient of the City of Darwin rather than directly to the ICAC).

5 Legislative references

Independent Commissioner Against Corruption Act 2017 (NT)

Mandatory Reporting Directions and Guidelines for Public Officers

Guidelines for the minimisation of retaliation against protected persons

6 Procedures / related documents

n/a

Version:	Decision Number:	Adoption Date:	Next Review Date:
2	ORD514/24	26 November 2024	26 November 2028

Responsible Officer: General Manager Corporate

Electronic version current. Uncontrolled copy valid only at time of printing.

7 Responsibility/application

The General Manager Corporate is responsible for the implementation and review of this procedure.

All City of Darwin workplace participants are responsible for adhering to this procedure.

This document will be reviewed every four years or as required.

Version:	Decision Number:	Adoption Date:	Next Review Date:
2	ORD514/24	26 November 2024	26 November 2028

Responsible Officer: General Manager Corporate

Electronic version current. Uncontrolled copy valid only at time of printing.

Annexure A Definitions of types of improper conduct

1. Corrupt conduct

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

- 1.1 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.
- 1.2 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.
- 1.3 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

Version:	Decision Number:	Adoption Date:	Next Review Date:
2	ORD514/24	26 November 2024	26 November 2028
Responsible Officer: General Manager Corporate			

- (b) that involves a serious breach of public trust by the public body, minister, member of the Legislative Assembly or councillor.

1.4 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.

1.5 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.

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

Version:	Decision Number:	Adoption Date:	Next Review Date:
2	ORD514/24	26 November 2024	26 November 2028

Responsible Officer: General Manager Corporate

Electronic version current. Uncontrolled copy valid only at time of printing.

- (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.

3. Misconduct

Misconduct is defined in section 11 of the ICAC Act.

Misconduct can arise in one of three different ways.

3.1 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.

3.2 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.

3.3 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

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:

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

does not include conduct:

- (iii) i. that is less than best practice; or
- (iv) 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.