

2.5.6 Auditor's obligations regarding corrupt conduct, serious and substantial waste, serious wrongdoing, misconduct and serious maladministration

Introduction

The Auditor-General (A-G):

1. as a principal officer under section 11 of the *Independent Commission Against Corruption Act 1988* (ICAC Act), has a duty to report any matter that they suspect, on reasonable grounds, concerns or may concern, corrupt conduct
2. (or an Audit Office staff member) may receive a disclosure of information from a public official¹ while performing an audit regarding any type of serious wrongdoing as defined by *section 13* of *Public Interest Disclosures Act 2022* (PID Act)
3. is the integrity agency with the statutory responsibility for dealing with allegations of serious and substantial waste made by a public official under section 52D of the *Government Sector Audit Act 1983* (GSA Act)
4. as a principal officer under section 33 of the *Law Enforcement Conduct Commission Act 2016* (LECC Act), has a duty to report to the Law Enforcement Conduct Commission any matters suspected on reasonable grounds that concern or may concern misconduct or serious maladministration by officers or administrative staff in the NSW Police Force or NSW Crime Commission.

The above requirements imposed by the respective legislation, including requirements to report, are further detailed below.

Policies and guidance

Section 11 of the ICAC Act

5. Auditors must immediately advise their Engagement Controller (EC) if, during a financial or performance audit, matters come to their attention that concerns or may concern corrupt conduct.
6. *Part 3* of the ICAC Act defines corrupt conduct and provides examples of corrupt conduct, including but not limited to official misconduct, bribery, blackmail, fraud, theft, tax and revenue evasion, forgery and so on. *Part 3, section 8* provides a full list of the types of corrupt conduct covered by the ICAC Act.
7. Where the audit team becomes aware of matters that concerns or may concern corrupt conduct, the EC must:
 - complete 'Form A – Notification to ICAC – Possible Corrupt Conduct (Auditee does Self-Report)' form where the auditee has self-reported the matter to ICAC
 - advise the A-G as soon as possible and draft 'Letter B – Notification to ICAC – Possible Corrupt Conduct (Auditee does not Self-Report)' for the A-G to sign where the auditee has not self-reported the matter to ICAC.

¹ Public officials includes our audit service providers.

The 'ICAC reporting flowchart' included in the documents above outlines this process.

8. The notification to ICAC is considered a mandatory public interest disclosure as it is a legal requirement to make the report. This offers staff various protections under Part 3 of the PID Act including protection from detrimental action, immunity from civil or criminal liability and protection from liability for own past conduct.
9. The audit team (financial audit only) must also complete the 'Investigate situations where evidence indicates a fraud may have occurred' template available in TeamStore and retain this in the audit file. This form contains additional considerations regarding the impact of the corrupt conduct on the audit and whether the audit team should consult with the Engagement Quality Reviewer (where one has been appointed), an Assistant Auditor-General (where no EQR has been appointed), Quality and Technical (Q&T) and/or Governance (as required).

Section 13 of the PID Act

10. Any staff member (as a public official – defined below) who receives a disclosure of information concerning an allegation of serious wrongdoing, comprising:
 - corrupt conduct
 - serious maladministration
 - a serious and substantial waste of public money
 - a privacy contravention
 - a government information contravention, or
 - a local government pecuniary interest contravention
 - must report it to a nominated disclosure officer, or to their manager who must refer it to a nominated disclosure officer. The Disclosures Coordinator (the Director, Governance (Legal)) will review and if necessary, coordinate the Office's response to the report.
11. The 'Public Interest Disclosures' page on Alfie provides staff with instruction on what procedures need to be taken for external wrongdoing of a NSW Government entity, university or local council – refer External Public Interest Disclosures Policy².

Section 52D of the GSA Act

12. The Auditor-General may deal with a complaint made by a public official³ within the meaning of the PID Act) regarding serious and substantial waste of government money by NSW Government entities, universities and local councils or members of their staff:

² For internal wrongdoing within the Office, refer to the Internal Public Interest Disclosures policy.

³ Defined in the PID Act as 1 or more of the following—

- (a) a person employed in or by an agency or otherwise in the service of an agency,
- (b) a person having public official functions or acting in a public official capacity whose conduct or activities an integrity agency is authorised by another Act or law to investigate,
- (c) an individual in the service of the Crown,
- (d) a statutory officer,
- (e) a person providing services or exercising functions on behalf of an agency, including a contractor, subcontractor or volunteer,
- (f) if an entity, under a contract, subcontract or other arrangement, is to provide services on behalf of an agency or exercise functions of an agency in whole or in part—an employee, partner or officer of the entity who is to be involved in providing the services in whole or in part, or who is to exercise the functions,
- (g) a judicial officer,
- (h) a member of Parliament, including a Minister,
- (i) a person employed under the Members of Parliament Staff Act 2013.

- by conducting an inspection, examination or audit under the GSA Act into the matter, or
 - in such other manner as the Auditor-General considers appropriate.
13. Such a complaint made by a public official would likely constitute a public interest disclosure as outlined above.

LECC Act

14. When an EC has reasonable grounds to suspect misconduct (which includes corrupt conduct) or serious maladministration of officers and administrative staff in the NSW Police Force or NSW Crime Commission, the EC must inform the A-G immediately and draft the 'Notification to LECC – Possible Officer Misconduct / Serious Maladministration' letter for the A-G to sign.

Effective date

Issued November 2023 and effective November 2023.