

## ICAC Bill 2012

# Executive Summary – Gettin’ the knack for our ICAC!

On 2 May 2012, the *Independent Commissioner Against Corruption Bill 2012* was tabled before Parliament.

This Bill proposes to appoint the Independent Commissioner Against Corruption (“ICAC”) and create the Office of Public Integrity (“OPI”).

The Bill, if passed, will have **retrospective application** and will apply to the conduct of an elected member who no longer holds office, or a staff member who is no longer employed by the Council. Surprisingly, the Bill also includes conduct of a person who was not an elected member or staff member at the time of the occurrence (i.e. the occurrence the subject of a complaint) but then who subsequently become an elected member or staff member.

ICAC and OPI will address complaints relating to corruption, misconduct and maladministration. This includes offences relating to public officers under the *Criminal Law Consolidation act 1935*, contravention of the elected member and staff codes of conduct and irregular and unauthorised use of public money, mismanagement in relation to the performance of official functions, but also includes conduct resulting from impropriety, incompetence or negligence.

Proceedings for an offence will be a public hearing unless it may prejudice an investigation or unduly prejudice the reputation of a person who is not the defendant. Information obtained by ICAC or OPI must be kept confidential, and provisions are included to protect witnesses and complainants from victimisation.

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Additionally, numerous amendments to the *Local Government Act 1999* and other legislation that affects councils’ operations are proposed.

## Independent Commissioner Against Corruption

ICAC not only has an investigative function but also an educative role with respect to corruption prevention.

It will be responsible for the investigation of all complaints relating to serious or systemic corruption in public administration, and for referring complaints regarding serious misconduct and maladministration in public administration and other relevant complaints to the relevant body.

ICAC has broad and significant investigatory powers, which include the ability to search private places and vehicles and to search persons. Further, the Bill proposes amendments to the *Freedom of Information Act* and the *Listening and Surveillance Devices Act* to ensure that documents provided to ICAC during an investigation are kept confidential, and to allow investigators to secretly record private conversations in the course of an investigation.

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An “examination” may occur during the investigation of a complaint by ICAC and will operate in a manner similar to Court proceedings in that (amongst other things):

- Subpoenas can be issued for the production of evidence, or attendance of witnesses;
- All witnesses may be cross-examined;
- Significant penalty provisions apply for providing false or misleading evidence;
- Contempt provisions will apply.

## The Office for Public Integrity

The OPI will assist ICAC and will act as the recipient and assessor of all complaints. The OPI’s role will involve assessing complaints and making recommendations to ICAC.

It is also armed with the function of balancing the public interest in exposing corruption, misconduct and maladministration and avoiding any undue prejudice to a person’s reputation.

Where the OPI assesses a complaint:

- as raising a potential issue of corruption, ICAC **must investigate** the complaint or refer it to SAPOL;

- as raising a potential issue of misconduct or maladministration in public administration, ICAC **must** either:
  - refer the matter to an inquiry agency (i.e. the Ombudsman) and, if the ICAC deems appropriate, ICAC may provide directions or guidance to the agency in respect of the matter; or
  - refer the matter to the relevant council, and ICAC may give the council direction and guidance in respect of the matter;
- as raising some other issue that should be referred to an inquiry agency (e.g. the Ombudsman) or a council, the OPI will make recommendations to ICAC on what (if any) action should be taken;
- as being trivial, vexatious or frivolous, then no further action will be taken by ICAC.

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## The Amendments to the Local Government Act

- **Code of Conduct** – the Governor may prescribe a code of conduct (by regulation) for elected members and staff. It is expected that the prescribed codes will be developed in consultation with the LGA and will be in operation within 12 months of the ICAC Act commencing operation. In this regard we anticipate that the feedback received to the LGA *Improving Governance Discussion Paper* will assist in the development of such codes. We anticipate the prescribed Codes will include penalties.
- **Obtaining Legal Advice** – the establishment of a scheme that enables members to obtain legal advice is the first statutory provision of its kind which confers express powers upon elected members, acting in their own right, to expend council funds. The limitations upon such expenditure will be addressed by either the scheme or any policy required to be adopted by the Council in relation to the implementation of the scheme.
- **Complaints and Consequences** – a breach by an elected member of the requirements imposed by Chapter 5, Part 4 of the Act (relating to general duties, elected member code of conduct, register of interest and conflict of interest) will give rise to grounds for complaint to the Ombudsman by a member of the public or the Minister. The Ombudsman can also investigate such a complaint on his own initiative.

If an elected member fails to comply with a requirement of the council (as recommended by the Ombudsman), the council **must** take action against the elected member in the

District Court. This will have serious implications for councils.

- **The Ombudsman Can Investigate Elected Members** – a new provision is proposed that provides the Ombudsman with powers to investigate an individual elected member in relation to a complaint that arises under Chapter 5, Part 4 of the Act.
- **Minister’s Powers to Investigate a Council** – the Minister’s powers to take action on a report and make recommendations to a council is expanded to include any report provided by ICAC.
- **Independence of Auditor** – the requirement for an auditor of a council, council subsidiary or regional subsidiary to provide a certificate of independence in relation to the conduct of an audit is removed.

## Increased Scrutiny of Bodies Affiliated with Councils

The Bill proposes changes to the *Freedom of Information Act 1991* and the *Ombudsman Act 1972*, such that all incorporated or unincorporated bodies which are established for a public purpose (other than those established by the *Associations Incorporation Act 1985* and other similar legislation) will be captured by these Acts. For instance, the Local Government Association is subject to these changes.

**“...a breach by an elected member of the requirements imposed by Chapter 5, Part 4 of the Act...will give rise to grounds for complaint...”**

## Where to From Here?

Premier Weatherill has indicated that the Government intends for the Bill to be passed into law by 1 July 2012, and for ICAC and the OPI to be operating by the end of July. In light of this intention, there is unlikely to be any opportunity for consultation on the Bill.

Given the relevant timeframes for the commencement of ICAC and the OPI (1 July) and the introduction of codes of conduct (being 12 months), there is potential for the Bill, once passed, to be proclaimed in stages.

*Further to this introductory overview, we will provide a series of Information Papers over the next few weeks that will address particular topics in detail relating to the impact of the ICAC Bill 2012 on councils, elected members and staff (and other persons/organisations).*

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