

ICAC Bill 2012

What is the OPI and what can it do?

This Paper is the third paper prepared by the Local Government Team (now KelliedyJones Lawyers) which provides a detailed summary of the *Independent Commissioner Against Corruption Bill 2012* and how it will affect you and your council.

What is OPI?

“OPI” stands for the **Office for Public Integrity**.

The role of the OPI will be as a “gate-keeper” in managing complaints made about public administration (e.g. complaints about councils, council staff and elected members) with a view to:

- identifying corruption, misconduct or maladministration in public administration; and
- ensuring that complaints about public administration are dealt with by the most appropriate person or body.

In practical terms, complaints from members of the public, councils, the Ombudsman, etc. alleging corruption, misconduct or maladministration will be made to the OPI in the first instance. The OPI then reviews and assesses complaints before they are referred to ICAC.

The OPI is responsible to ICAC in respect of the exercise of its powers and functions.

“Where the OPI assesses a complaint, it will make recommendations to ICAC.”

How will OPI be constituted?

The OPI will be comprised of public sector employees and employees of ICAC who are assigned to the OPI by ICAC.

There are no prescribed qualifications for, or limitations upon numbers of, OPI staff.

What are OPI’s functions?

The Bill provides that the OPI’s functions are to:

- receive and assess complaints about public administration from members of the public;
- receive and assess reports about corruption, misconduct and maladministration from inquiry agencies (e.g. the Ombudsman), public authorities (e.g. councils) and public officers (e.g. council staff and elected members);
- make recommendations as to whether and by whom complaints and reports should be investigated; and
- perform other functions assigned by ICAC.

The Bill creates a process whereby complaints are assessed by OPI and referred to ICAC or to an inquiry agency or public authority in a prescribed manner.

ICAC will, once appointed, establish a system governing when and how members of the public **may** make a complaint about corruption, misconduct or maladministration to the OPI.

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Further, ICAC will also establish directions and guidelines prescribing when and how an inquiry agency, public authority and public officer **must** make a report to the OPI about corruption, misconduct or maladministration.

These guidelines, when prepared, will be published on ICAC’s website. A failure to comply with the directions and guidelines will constitute a breach of the Act. Whilst there are no criminal offence provisions attaching to a breach of this nature, it is reasonable to expect that if an inquiry agency, public authority or public officer breaches the directions and guidelines, this will amount to “misconduct” and a complaint may then be made to the OPI in this regard.

Where the OPI assess a complaint, it will make recommendations to ICAC. Additionally, the Bill prescribes a number of instances where complaints assessed by the OPI **must** be dealt with in a particular manner by ICAC. For instance, where the OPI identifies a complaint:

- as raising a potential issue of corruption, the ICAC **must investigate** the complaint or refer it to SAPOL;
- as raising a potential issue of misconduct or maladministration in public administration, the 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 public authority (i.e. the council), and ICAC may give the public authority direction and guidance in respect of the matter;
- as raising some other issue that should be referred to an inquiry agency or a public authority, the OPI will make recommendations to ICAC on what (if any) action should be taken. Such recommendations are not binding on ICAC, meaning that the ultimate decision on a complaint in this regard is at the discretion of ICAC;
- as being trivial, vexatious or frivolous, then no further action will be taken by ICAC.

We will continue to 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).

If you have any questions please contact Michael Kelliedy or Natasha Jones on 0417 653 417, 0419 864 531 or mkelliedy@kelliedyjones.com.au, njones@kelliedyjones.com.au