

Independent Commissioner Against Corruption – Frequently Ask Questions

The Territory Government is creating an Independent Commissioner Against Corruption (ICAC) to investigate government corruption, and restore integrity and transparency to Government. Legislation has been drafted and will be introduced into the Legislative Assembly this year. The Government is currently seeking feedback on the draft Bill, which is available at www.justice.nt.gov.au.

This fact sheet is intended to assist you to provide an informed response.

1 What is the ICAC?

The ICAC is a specialist investigator with a focus on government corruption. The ICAC is the CEO of the ICAC's Office, which will be its own Agency for the purposes of government finance.

The ICAC investigates certain kinds of criminal offences that relate to government corruption, and also can investigate serious breaches of public trust that are not technically offences. In addition to the kinds of powers Police have, the ICAC has powers to enter government premises without warrants, and to compel any person to attend and give evidence. The ICAC will also administer a whistleblower protection scheme, which will allow it to protect important sources of information.

2 Who will the ICAC be?

The ICAC will be selected by an independent panel of experts in a procedure similar to that for making judicial appointments. The Bill requires that the ICAC must be a person with substantial legal expertise, such as a former Supreme Court judge or a lawyer of 10 years standing. The ICAC must not have a recent political affiliation, which means they must not be someone who has in the last 5 years been a politician (including at local government level), an office holder or elected representative of a political party, a ministerial staffer, or someone who has made a reportable donation to a political party. If the ICAC holds a role as a public officer at the time of appointment, they must resign from that role.

3 Will the ICAC operate in private similarly to South Australia, or publicly similar to NSW?

The NT ICAC will take a hybrid approach. The Recommendations of the Martin Report were that investigations should be conducted in private as a general rule, and this Recommendation has been adopted. Investigations conducted in private pose less risks and complications to subsequent prosecutions. They also avoid unduly damaging reputations, given that even an announcement that the ICAC is investigating allegations can potentially damage a person's reputation. However, the NT ICAC will be able to conduct a public investigation when it considers this is warranted. There are criteria the ICAC should consider when making the decision whether to go public, which are found in clause 5 of Schedule 1 of the Bill.

4 Does the ICAC replace any existing Territory organisations?

The ICAC replaces the Commissioner for Public Interest Disclosures, and the ICAC Bill repeals the Public Interest Disclosure Act. The ICAC has more substantial powers and a broader remit than the Commissioner for Public Interest Disclosures, as detailed below. The ICAC does not replace any other existing law enforcement or integrity body.

5 How does the ICAC compare to the Commissioner for Public Interest Disclosures?

Key Points	ICAC	Commissioner for Public Interest Disclosure
Same general subject matter.	<ul style="list-style-type: none"> Will investigate improper conduct with a focus on serious corruption. 	<ul style="list-style-type: none"> Investigates improper conduct with a focus on serious corruption.
Bigger budget.	<ul style="list-style-type: none"> Will have annual funding of \$3 million, with the ability to apply for a Treasurer’s advance if needed. 	<ul style="list-style-type: none"> Has annual funding of approx. \$0.7 million, with the ability to apply for a Treasurer’s advance if needed.
Guaranteed financial independence.	<ul style="list-style-type: none"> Independent statutory office, and a separate Agency by law for the purposes of the <i>Financial Management Act</i>. 	<ul style="list-style-type: none"> Independent statutory office, but currently placed within the Department of Attorney-General and Justice for the purposes of financial management.
Own motion powers.	<ul style="list-style-type: none"> Will be able to investigate matters on complaint or of its own motion. 	<ul style="list-style-type: none"> Can only investigate when a whistleblower made a complaint.
Can investigate a broader range of public officers.	<ul style="list-style-type: none"> Will be able to investigate employees, officers, and members of Departments, Local Councils, Police, and statutory authorities. Will be able to investigate MLAs, Ministerial advisors, judges, contract service providers, and recipients of government grants. 	<ul style="list-style-type: none"> Can investigate employees, officers, and members of Departments, Local Councils, Police, and statutory authorities. Cannot investigate judges, some Ministerial advisors, contract service providers, and recipients of government grants. Can only investigate MLAs upon receipt of a referral by the Speaker.
Can conduct public inquiries.	<ul style="list-style-type: none"> Will usually conduct investigations in private, but may conduct public inquiries when appropriate. 	<ul style="list-style-type: none"> Must conduct investigations in private.
Can investigate private individuals involved in government corruption.	<ul style="list-style-type: none"> Will be able to investigate persons who attempt to corrupt public officials (e.g. a private individual who offers a bribe to a public officer.) 	<ul style="list-style-type: none"> Cannot investigate persons who are not public officers, even if they have participated in corruption.
Can investigate anti-democratic conduct.	<ul style="list-style-type: none"> Will be able to investigate corruption in relation to elections. 	<ul style="list-style-type: none"> Cannot investigate corruption in relation to elections.
Stronger coercive powers to obtain evidence.	<ul style="list-style-type: none"> Will be able to require people to attend and give evidence. Persons must answer questions and give sworn evidence. Will have powers to access government premises and records. Will be able to apply for warrants to search private premises, use surveillance devices, intercept telecommunications, and conduct controlled operations. Will be able to apply for an order to seize a person’s passport. 	<ul style="list-style-type: none"> Can require people to attend and give evidence. Persons must answer questions and give sworn evidence. Can only search government premises (not private premises). Can require private individuals to produce evidence. Has no powers in relation to passports.

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Can effectively prepare a brief for prosecution.	<ul style="list-style-type: none"> Will be able to prepare a brief of evidence for prosecution. Evidence obtained from coercive interviews is not admissible, but further evidence located as a result is admissible. 	<ul style="list-style-type: none"> Technical restrictions on the admissibility of evidence in subsequent prosecutions, and lack of clarity around the use of derivative evidence.
Able to be involved in prosecutions as witnesses.	<ul style="list-style-type: none"> Will not be a prosecutor, but will provide briefs of evidence to the DPP, and ICAC investigators will be able to give evidence of their investigation in court. 	<ul style="list-style-type: none"> Is not a prosecutor, and typically refers criminal matters to Police at an early stage so as to avoid compromising a potential criminal prosecution due to difficulties using PID evidence. PID investigators prohibited from giving evidence of their investigation in court.
Unfettered discretion.	<ul style="list-style-type: none"> Will have complete discretion as to which matters it prioritises, and whether it pursues and investigation, allowing more complete control of available resources. A wide range of referral bodies are available. 	<ul style="list-style-type: none"> Required to investigate every allegation unless certain technical criteria are met or a referral can be arranged. Limited referral bodies are available.
Can direct some referred investigations, and can investigate if not satisfied with the referral body's investigation.	<ul style="list-style-type: none"> When referring a matter to another body to investigate, the ICAC will be able to oversee the investigation, including controlling or directing the investigation. This does not apply to investigations referred to independent entities such as the Ombudsman. However, the ICAC can initiate an investigation into an allegation even if that allegation was previously referred. 	<ul style="list-style-type: none"> When referring a matter to another body to investigate, PID has no further control of the investigation, no matter how it is handled.
No requirement to give a 'heads up' notice.	<ul style="list-style-type: none"> Investigations will be able to commence covertly. 	<ul style="list-style-type: none"> Investigations cannot commence until the responsible authority for the public body in question is notified of the investigation.
Public reports about systemic issues can be made.	<ul style="list-style-type: none"> Where one or more investigations reveal systemic issues in relation to improper conduct, the ICAC will be able to make a report to the Speaker, who must table the Report. 	<ul style="list-style-type: none"> Improper conduct can only be reported publicly where a public body fails to implement the PID Commissioner's recommendations.

6 Which are the two recommendations of the Martin Report that have not been adopted?

The Martin Report made 52 Recommendations, and the Government committed to implementing 50 of the 52, in principle and subject to advice.

The two recommendations which are not being followed are Recommendations 4 and 5, which involved directly appointing the South Australian ICAC the Hon Bruce Lander QC as the first NT ICAC on a part-time basis for the first two years. The Government would prefer a full-time Commissioner based in the Territory chosen by an independent panel in a similar process to that used for Supreme Court judges.

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A more detailed table setting out how the ICAC Bill advances the implementation of the remaining 50 Recommendations is available at [ICAC-Fact-Sheet-FAQs](#). Some Recommendations have been implemented in principle rather than to the letter. For example, given that the Government intends to appoint a full-time ICAC, the Bill does not provide for a separate CEO role in addition to the ICAC, rather provides that the ICAC will be the CEO. Following from that, while the ICAC will be supported by an Office as per Recommendation 1, it will not be a separate statutory entity with its own CEO, as it is envisioned the ICAC will be the hands-on full time CEO of the Office.

Another change that was made is that the ICAC will be able to investigate corruption in local government elections as well as Territory elections, whereas Recommendation 12 of the Martin Report refers only to offences against the Electoral Act.

Recommendation 29 was that if there were to be time limitations on accepting historic complaints, the ICAC be given a discretion to investigate despite the time limits. As the ICAC's jurisdiction is fully retrospective, there are no time limits on historic investigations, and Recommendation 29 is therefore essentially redundant.

Recommendations 3, 9, 42, 48, and 52 require non-legislative action to implement.