

Special Issue

New Reporting Requirements for Public Bodies

What has changed?

Mandatory notifications of public sector corruption took effect on 1 December 2016.

The changes were made to strengthen accountability and integrity in the Victorian public sector.

What is a public sector body?

A public sector body includes government departments and administrative offices, certain statutory authorities and corporations, and 'special bodies' as defined in section 6 of the *Public Administration Act 2004*.

Broadly, this means state government departments, government agencies as well as local councils.

What must be reported?

Principal officers are required to notify the Independent Broad-based Anti-corruption Commission (IBAC) if, *on reasonable grounds*, they suspect corrupt conduct occurred on or after 1 December, including conduct that was under investigation at the time. There are no specific sanctions against organisations for non-compliance.

To be considered corrupt conduct, the conduct must also constitute an indictable offence against any Act, or the common law offence of attempt to pervert the course of justice, bribery of a public official, perverting the course of justice and misconduct in public office.

Corrupt conduct is generally deliberate or intentional and not a result of a mistake or negligence.

What are some examples of 'corrupt conduct'?

There are different types of corruption including misconduct in public office. Examples include:

A public officer who uses a corporate credit card to make personal transactions.

A public officer who is involved in enabling a contract that the officer has an undeclared financial interest in.

A public officer who accepts bribes.

Using public office to deceive a member of the public to gain a financial advantage.

Lying to a public officer resulting in a grant being awarded.

Entering into a secret commission or profit sharing arrangement with another person while acting in an official capacity.

Providing false information to a public body to avoid tax.

Submitting a fabricated quote so that a family member is awarded a contract.

Including false information on a resume to



obtain employment.

What does 'suspect on reasonable grounds' mean?

Principal officers must have reasonable grounds to suspect the corrupt conduct is occurring or has occurred before notifying IBAC. This means there is a real possibility that corrupt conduct is involved. It must be based on facts and not idle speculation. However, proof is not necessary nor is it required that the person be identified.

For example, if during an audit into credit card use, a financial transaction for an unknown purpose was uncovered, this is not considered to satisfy reasonable grounds. If other transactions on the same credit card were identified, then that may give rise to suspicion on reasonable grounds.

Who is the 'relevant principal officer'?

The obligation to report suspected corrupt conduct rests with the relevant principal officer or another person acting as the relevant principal officer. This is generally the heads of departments or Chief Executive Officer of a public sector body. This obligation cannot be delegated.

There is no legislative obligation for relevant principal officers to search out corrupt conduct, only to report it when suspected. Notifications made in good faith protect the relevant principal officer from any criminal or civil liability. This is the case even if the suspicion on which the report is based on turns out to be untrue or unsubstantiated.

What happens after the notification is submitted to IBAC?

IBAC will assess the notification and will either dismiss, investigate or refer the notification.

IBAC may **dismiss** if there is insufficient information or because it has already been investigated or dealt with by another agency.

IBAC may **refer** to another person or body or may refer back to the principal officer to investigate and report back to IBAC on the action taken.

IBAC may also **investigate** the matter.

In considering a notification, IBAC may choose to make preliminary inquiries prior to a decision to either refer, investigate or dismiss. Notifications are finalised within 45 days of receipt.

What should be done if an organisation becomes aware of a potential issue but is unsure if it needs to be notified to IBAC?

Some level of preliminary inquiry can be conducted to establish reasonable grounds for suspicion. Inquiries must involve sensitivity and discretion. Once the relevant principal officer is satisfied, the investigative action should cease immediately. It is important that any preliminary inquiries do not compromise any future assessment or investigation that IBAC may undertake.

How do I submit a notification to IBAC?

Relevant principal officers will need to download the mandatory notification form from the IBAC website <http://www.ibac.vic.gov.au/notifications>.

If you require advice on the new reporting requirements or assistance to conduct a preliminary investigation to establish whether there are reasonable grounds, contact Workforce Legal Solutions on (03) 9505 6221.

From information obtained from www.ibac.vic.gov.au

2