

# **State Conference 2018**



## **How to Protect Yourself; Defamation, Conflict of Interest and Misconduct**

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### **Defamation**

- Can be verbal or written, must be heard, seen and understood.
- It is treated as a civil law matter. It used to be referred to as slander; is now called defamation no matter if the material is verbal or written.
- Evidence is needed to form a standard of proof on the balance of probabilities. Ensure you take a screen shot of any social media material you may deem defamatory.
- Most defamation occurs on social media. Victims are mostly concerned about the post being removed promptly and not pursuing damages.
- If you are defamed you have 12 months to act – to engage in civil court action.
- Social media sites, like Facebook, come under a foreign law jurisdiction. They can be contacted for information; usually if the defamer cannot be identified.
- The material must identify the name of the person or imply the person, such as the Principal of ABC School. Vilifying a school and not a person is not defamation.
- For material to be defamatory in nature the words must be understood - what are the imputations? People may infer the meaning differently. Just because you are offended does not mean you have been defamed.
- If a SASSLA member is defamed, a concerns notice is issued by TGB lawyers to take the offending material down and/or apologise. In the case of serious defamation, civil court again can be undertaken for damages to reputation. However, the majority of matters are settled with conciliation.
- The defence of justification and truth is required eg: saying someone is a paedophile when they have been found guilty of the offence is not defamation.
- Malice applies if you receive information that was privileged between a pair or group of people and you publish/talk about the matter knowing it is untrue.

### **Conflict of Interest**

See our last newsletter [here](#) in respect to conflict of interest information.

### **Misconduct and ICAC**

The majority of misconduct investigations stem from conflict of interest matters (see above article how to protect yourself - ensure you always complete a Conflict of Interest Form). Other misconduct matters can now be referred to ICAC (Independent Commissioner Against

Corruption). ICAC aims to strengthen the integrity of the South Australian Public Sector and enhance Public Sector accountability.

In recent times each Australian state has implemented an Anti-Corruption Commission. This comes after New South Wales and Queensland experienced endemic problems with public sector and police corruption. Each State has a slightly different name for their commission and operates under different State laws. In Victoria the Commission is named IBAC – Independent Broad-Based Anti-Corruption Commission. Since its establishment in 2012, up to 70 Principal Class Officers have been called to testify at an IBAC inquiry. It is only a matter of time until our public sector school leaders will inevitably be called upon to appear at an ICAC hearing.

The Office of Public Integrity (OPI) was also created to work in conjunction with ICAC. Their function is to triage complaints and direct them to the appropriate body or review complaints that have not been actioned properly. Other anti-corruption bodies are still in place within the State, since before ICAC's inception, and complaints can still be referred to these bodies, such as the Police Anti-Corruption Unit, and not ICAC itself in the first instance.

What is the jurisdiction of ICAC?

- Corruption (eg: bribery of a Public Officer, threats to a Public Officer, abuse of public office or criminal matters)
- Misconduct (contravention of the Public Service Code of Conduct)
- Maladministration arising from public service administration (irregular use of public money or resources or substantial mismanagement of public function)

What do I do if I receive a summons from ICAC?

- You will receive a summons at your work or home address.
- You need to read the notation on the summons which will give you information of what you can do.
- It is an offence under the Act, in certain circumstances, to tell anyone about the summons.
- You can tell a lawyer about the summons, but you may not be able to tell SASSLA. This information will be in the notation on the summons.
- This makes it difficult to consult with SASSLA for legal assistance. However, in most cases, SASSLA can be contacted and can ask the Commissioner for access to communicate with the member to engage in legal representation. SASSLA cannot be advised of the contents of the matter, but can be advised that a summons has been served and legal representation is needed. Usually, the Commissioner can accommodate this.
- Never appear at an ICAC hearing without a lawyer!

What can I expect at an ICAC hearing?

ICAC operates differently from criminal or civil matters in that all hearings of the Commissioner are private. The Commissioner does have the power to make matters public at his discretion, however, most matters are conducted privately.

You will not be told any information about what the matter involves until you are sworn in and asked to give evidence. This applies if you are appearing as a witness at a hearing about someone else or if in fact the hearing is about you being the subject of a complaint. You will not be told if you are appearing as a witness or the subject. Generally, people are summoned to be witnesses.

The Commissioner can act as the examiner or appoint another examiner to act on his behalf. It is important to note that all common law rights are waived in an ICAC hearing. You have no rights against self-incrimination also known as the right to “not say anything”. You will be forced to answer questions, however, answers are inadmissible should the matter go to a criminal trial. The hearings are carried out in a high security environment. You can only have your lawyer present and no mobile technology.

SASSLA and TGB can assist with all misconduct matters that are not of a criminal nature. More information can be found at ICAC's [website](#).