

Investigation into the conduct of the Speaker of the Legislative Assembly

Investigation Report

June 2020

Office of the
Independent
Commissioner
Against
Corruption



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Office of the Independent Commissioner Against Corruption (NT)

GPO Box 3750

DARWIN NT 0801

For general enquiries, email icac.nt@icac.nt.gov.au

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Letter of Transmittal

The Honourable Chansey Paech MLA
Deputy Speaker
Legislative Assembly of the Northern Territory
Parliament House
Darwin NT 0800

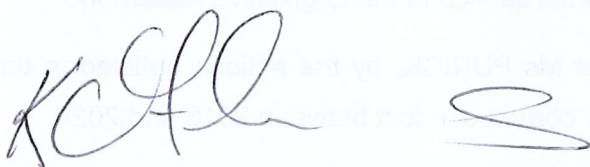
Dear Deputy Speaker

Re: Investigation Report into the Conduct of the Speaker of the Legislative Assembly

In accordance with section 50 of the *Independent Commissioner Against Corruption Act 2017* (NT) I present my report on the Investigation into the conduct of the Speaker of the Northern Territory Legislative Assembly.

My findings and recommendations are contained in the report.

Yours sincerely



Kenneth Fleming QC

Independent Commissioner Against Corruption

22.06.2020

Summary of the Report

- Politicians have the capacity to erode trust in government.
- That is why, before taking a seat as a Member of the Legislative Assembly (MLA), all MLAs take an oath or an affirmation to render true and faithful service as an MLA.
- It is also why the Legislative Assembly in 2008, passed the *Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act 2008* which imposed a Code of Conduct and Ethical Standards upon MLAs, establishing "principles of ethical conduct, and standards of behaviour, for members", including the principles of integrity, honesty, accountability, responsibility and public interest.
- The Code states:

"Public confidence in the integrity of parliamentary decision-making is essential to an effective democracy".
- In 2012, the Honourable Kezia PURICK MLA was elected as Speaker of the Legislative Assembly. She understood, and often talked about, her obligations as Speaker – by practice and convention – to provide trusted and impartial service to the Legislative Assembly.
- An investigation by the ICAC has found that Ms PURICK, by the actions outlined in this Investigation Report (the Report), engaged in corrupt conduct between 2018 and 2020.
- Extracted from this Report for this summary are short extracts from the Report. See the Report for full details.
- Ms PURICK said on 16 November 2018 in a Media Statement from the Office of the Speaker "regarding the business name North Australia Party... at no time did I give any direction to my staff member to make..."

"... contact..."

"... or any enquiry..."
- But, on 1 November 2018, while Ms PURICK was in the Speaker's chair, and presiding over a sitting of the Assembly, the following exchange of emails took place, and text message was sent.

- 11.06am Ms SMITH to Ms PURICK:

"I got to thinking, what if the North Australia Party is already a registered business or party and what would that mean... Another interesting fact is the business name has not even been registered here – if someone wanted to they could pip Mills and Lambley at the post and register the name today..."

- 11.07am Ms PURICK to Ms SMITH:

"Ooo you be the clever one, I could get some one to register..."

- 11.09am Ms PURICK to Ms SMITH:

"Ok can y U get me forms to register a business name please?"

- 11.11am text message Ms PURICK to AB (pseudonym):

"I have been doing some research and....North Australia Party registered as a business name already in QLD but not as a party. If the QLD do register as party, can't register here. Need to do bit more work."

(Note that Ms Purick is asserting ownership of the research.)

- 11.18am Ms PURICK to Ms SMITH:

"We have to find some one unrelated to us who is also devious?"

(This is a reference to finding somebody else to register the business name.)

- This investigation found:

- That Ms PURICK engaged in a series of acts each of which was corrupt conduct, because each was a serious breach of public trust by:
 1. The act of an MLA, and while occupying the position of Speaker, intervening in the attempted creation of a political party by other MLAs, contrary to the Speaker's obligations of impartiality, and equal service to all MLAs.
 2. The act of an MLA, and while occupying the Office of the Speaker, acting dishonestly by releasing an untrue statement about her involvement in the matter set out at 1 to other MLAs and to the public.

3. The act of an MLA, and while occupying the Office of the Speaker, using the position and resources of her office as Speaker, to give effect to the matter set out at 1 and 2.
 4. The act of an MLA, and while occupying the Office of the Speaker, failing to uphold the law, namely, by failing to report to me a suspected breach of section 147 of the ICAC Act of which she knew, pursuant to obligations under section 22 of the ICAC Act.
 5. That Ms Purick, on the balance of probabilities, engaged in corrupt conduct that may constitute an offence under the ICAC Act by misleading me while she was under oath and under examination pursuant to section 34 of the Act.
- The final finding above is not a finding that Ms PURICK has committed any offence. My determination under the ICAC Act is made on the balance of probabilities. The commission of an offence is determined by a court on a different standard of proof. Nor is it a comment as to the prospects of success of any such an action. The decision to take forward a prosecution belongs to the Director of Public Prosecutions. The determination of such prosecution is entirely a matter for the legal process in a court. I will refer a brief on the final point above to the Director of Public Prosecutions for his consideration.
 - Any matter directed by Ms PURICK to Parliament is a matter for Parliament. Accordingly, I will refer the facts in this Report, and other facts in my possession to Parliament for any action by Parliament under the *Legislative Assembly (Powers and Privileges) Act 1992*.
 - The Independent Commissioner Against Corruption was appointed to restore trust by addressing wrongdoing in, or connected with, public administration.
 - I have made a number of recommendations in response to the improper conduct risks identified in this report in order to prevent or minimise the occurrence of improper conduct and restore trust in government. However, the restoration of trust in government will only occur once political leaders respect and abide by their duty to the communities in which they serve.

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Glossary

Definitions

Authorised officer – the Independent Commissioner Against Corruption or a person appointed as an authorised officer under section 131 of the ICAC Act

Breach of public trust – pursuant to sections 10(3) and 13(1) of the ICAC Act

Clerk – Clerk of the Legislative Assembly

Corrupt conduct – pursuant to section 10 of the ICAC Act

ICAC Act – *Independent Commissioner Against Corruption Act 2017* (NT)

Improper conduct – pursuant to section 9 of the ICAC Act

Investigation Report – a report issued under section 50 of the ICAC Act

Independent Commissioner Against Corruption or ICAC – established by the ICAC Act

Legislative Assembly – body politic established by the *Northern Territory (Self-Government) Act 1978* (Cth)

Members' Code of Conduct – established by the *Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act 2008*

Member of the Legislative Assembly or MLA – Member of the body politic established by the *Northern Territory (Self-Government) Act 1978* (Cth)

Non-disclosure direction – a direction under section 147 of the ICAC Act

Public officer – pursuant to section 16(2) of the ICAC Act

Public resources – pursuant to section 14 of the ICAC Act

Speaker – the Speaker of the Legislative Assembly

Persons mentioned in this Report

The identity of some persons referred to in this Report have been protected using the pseudonyms AB, CD, EF, IJ and KL.

Martine SMITH – Executive Officer to the Speaker of the Legislative Assembly

Bruce YOUNG – Queensland businessman, former Member of the Queensland Legislative Assembly, and registerer of the North Australia Party business name

Jodi TRUMAN – Counsel Assisting the Independent Commissioner Against Corruption

Ken FLEMING QC – Independent Commissioner Against Corruption

Kezia PURICK – Independent Member of the Legislative Assembly (Goyder), Speaker of the Legislative Assembly

Robyn LAMBLEY – Independent Member of the Legislative Assembly (Araluen)

Terry MILLS – Independent Member of the Legislative Assembly (Blain)

Legislation

The Northern Territory (Self-Government) Act 1978 (Cth)

Contracts Act 1978

Independent Commissioner Against Corruption Act 2017

Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act 2008

Legislative Assembly (Powers and Privileges) Act 1992

Legislative Assembly (Security) Act 1998

Public Interest Disclosure Act 2008

Public Sector Employment and Management Act 1993

ICAC jurisdiction and investigation methodology

1. On 5 June 2019, the ICAC received a report from Robyn LAMBLEY and Terry MILLS, alleging misconduct and anti-democratic activities by the Speaker of the Legislative Assembly, Kezia PURICK.
2. An investigation into that report of suspected improper conduct was commenced by me on 16 August 2019.

Temporal jurisdiction

3. The *Independent Commissioner Against Corruption Act 2017* (ICAC Act) commenced on 30 November 2018. Prior to that the *Public Interest Disclosure Act 2008* (PID Act) was in force. The PID Act was repealed by the ICAC Act on 30 November 2018.
4. The events of which this report speaks spread across a period of time from about 2008 to the present. Of particular focus are events from 26 October 2018 to 6 December 2018, and then from 17 January 2020 to 6 May 2020.
5. The matters recorded in the period since 17 January 2020 are unarguably within the jurisdiction of the ICAC.
6. The matters recorded relating to the period before the commencement of the ICAC Act are considered here separately.
7. It is a fundamental principle that legislation will not be retrospective unless Parliament uses the clearest words to express that. Such an intention is expressed in section 8(1) of the ICAC Act as follows:

“8 *Meaning of conduct*

(1) *Without limiting the conduct to which this Act applies, this Act extends to the following:*

- (a) *conduct occurring before the commencement of this Act;*
- (b) *conduct occurring outside the Territory;*
- (c) *conduct engaged in:*
 - (i) *by a person who was a public officer at the time it was engaged in but who has since ceased to be a public officer; or*
 - (ii) *by an entity that was a public body at the time it was engaged in but that has since ceased to be a public body or has ceased to exist.”*

8. The intention of the Act is that it extends to, and applies to, conduct occurring before the commencement of the Act.
9. Further, that is made abundantly clear by section 8(1)(c). If that was read on 30 November 2018 it must necessarily apply to conduct before the commencement of the Act.
10. All matters the subject of this report are dealt with pursuant to the ICAC Act.

Subject matter jurisdiction

11. Ms PURICK says in her response annexed to this report (Annexure 1) that the matters contained within this report are matters that may be judged by the Assembly, through the Privileges Committee, including whether the matters are trivial. There are at least two aspects to that proposition.
12. First, when the Assembly had the first opportunity to refer the matter to the Privileges Committee for full investigation it did not do so. The Assembly now has a second opportunity in respect of the matters said by Ms PURICK in and to the Assembly.
13. Second, if it is suggesting that, as a matter of course, the Assembly had exclusive jurisdiction then the proposition, with the greatest respect, is wrong. That proposition was argued in *Obeid v R* [2015] NSW CCA309. While that matter related to criminal charges it was made clear by the Court of Criminal Appeal that such a right *inter alia*, “is subject to statute”. The Court specifically referred to the NSW ICAC Act as an example (see paragraphs 20 to 55, and especially paragraphs 22, 23, 24. and 35 to 41).
14. While special leave to appeal to the High Court was commenced by Mr Obeid (*Obeid v The Queen* [2016] HCA9), it does not appear to have been pursued.
15. On the other hand, Ms PURICK’s comments may refer to section 20 of the ICAC Act, and my obligation to act in the public interest. Matters that must be taken into account in determining that obligation are set out in Schedule 1 to the Act. I have had regard to the matters including in particular paragraph 1, paragraph 2(a) to (d), (f) to (j), and (l), and paragraph 4(a) to (g).
16. I consider that the conduct of a person holding the highest position in parliament in a parliamentary democracy is a matter which is in the public interest.

Summary of the Notices and Directions

17. To date the following Notices and Directions have been served:
 - Section 147 Non-Disclosure Directions – 23.

- Section 32 Notices to Produce Items or Provide Information – 12.
- Section 34 Notices of Attend for Examination – 7.

Procedural Obligations

Privilege

18. In the course of this investigation I have respected matters of confidentiality and privilege pursuant to Part 5 of the ICAC Act, including:

- Client legal privilege.
- Privilege against self-incrimination.
- Parliamentary privilege.

Rules of Evidence and Natural Justice

19. By section 60 of the ICAC Act I am not bound by the rules of evidence in the conduct of an investigation.

20. I am therefore concomitantly aware of the particular need to give due process and natural justice to a person the subject of an investigation and Report.

21. If I, in a Report, intend to make adverse findings about a person then, by section 50(2) of the ICAC Act, I “must give the person...a reasonable opportunity to respond to the adverse material and include a fair representation of the response in the report.”

22. That process commenced on 14 May 2020 when Ms PURICK was supplied a draft of this report containing the relevant facts, and references to the relevant exhibits. Ms PURICK’s response was received on 11 June 2020. The relevant parts of that response are annexed to this report as Annexure 1.

Standard of Proof

23. In all of my considerations of the available evidence in this investigation I have used the balance of probabilities as the standard of proof required to establish any relevant fact.

24. I have taken into account, in the use of that standard of proof, the gravity of the allegations against Ms PURICK, and the consequences for Ms PURICK that may flow from this investigation.

Assessment of Evidence

25. I have followed carefully all of the evidence in this investigation, and any response from Ms PURICK, including unsworn responses.

26. In assessing the weight of any evidence I have taken into account:

- My observation of the various witnesses examined in the course of the matter;
- Any inculpatory evidence;
- Any exculpatory evidence;
- Contemporary records such as emails and phone messages; and,
- Documentary evidence.

27. Where I have doubted the veracity of evidence I have sought assistance from contemporary records to resolve doubts.

28. I note that Ms PURICK in her response annexed to this report (Annexure 1) has not denied any of the facts in the messages or emails, or any other facts, which were set out in the draft report and the relevant exhibit references given to her on 14 May 2020.

A Report in respect of the Speaker

29. At the end of an investigation I am entitled to produce a report.

30. Reports under the Act are dealt with by Part 3 Division 7, sections 48 to 59.

31. By section 50(1) I may make a Report to the authority who is responsible for the public officer whose conduct is the subject of the investigation. By section 50(7)(c) the **responsible authority** is defined, in respect of the Speaker, to be the Deputy Speaker.

32. Such a Report made to the Deputy Speaker, by section 50(6), must be tabled “in the Legislative Assembly on the next sitting day after the ... Deputy Speaker receives the report.”

33. By section 50(3)(a) the Report may contain as much information as I consider appropriate in relation to the subject matter. That includes, by section 50(3)(b), “a finding as to whether a person has engaged in, is engaging in or is about to engage in, improper conduct.”

34. Additionally, by section 50(3)(c) I may also include information as to whether an allegation of improper conduct has been referred to a referral entity, or, in my view whether or not it warrants referral to such a referral entity.

35. Section 25 deals with referrals to referral entities, and by section 25(2)(a)(ii) the referral entity for an MLA who is the Speaker, is the Deputy Speaker.

36. A Report must not contain a finding that a person has committed, is committing or is about to commit, an offence or breach of discipline. Nor must there be a finding as to the prospects

of success of a future prosecution or disciplinary action. See section 50(4). That is to protect any such subsequent processes.

37. Section 50(5) makes it clear that a finding that a person has engaged in improper conduct “is not a finding that the person is guilty of or has committed, is committing or is about to commit an offence or a breach of discipline.”
38. Section 59(1)(b) specifically refers to an **Investigation Report** made to the Speaker or Deputy Speaker.
39. By section 59(2) an **Investigation Report** to the Deputy Speaker “must not contain any material that would not be admissible in civil, criminal or disciplinary proceedings because of section 82, unless the material is already in the public domain.”
40. However, section 59(3) says that subsection (2) does not prevent the ICAC “from commenting on, or drawing inferences from, the absence of any exculpatory evidence if the ICAC could do so but for subsection (2).”
41. By section 82(1), because of the effect of section 81, a representation made by a witness in evidence to the ICAC, or to an authorised officer, is not admissible in evidence against that witness in a civil, criminal or disciplinary proceeding, except for a proceeding for an offence against the ICAC Act.
42. Section 82(3) says that that limitation does not apply to items, or to derivative evidence.
43. I have not included in the Report any evidence against Ms PURICK which has been obtained during an examination of Ms PURICK pursuant to section 34, except evidence going to a proceeding demonstrating improper conduct in respect of a potential breach of the ICAC Act.

Factual Findings

44. The following narrative consists of facts found by me in this investigation.

Background

45. This section deals with the role and authority of the public officers and public bodies named in this report.
46. In the 2008 election, Ms PURICK won the seat of Goyder for the Country Liberal Party (CLP) and was made Deputy Leader of the Opposition under Mr MILLS (Member for Blain), holding this position until the 2012 election.
47. The 2012 election was won by the CLP with Mr MILLS as Leader. In an ABC News report Mr MILLS stated, only days before the election, that Ms PURICK was his Deputy, and if successful at the election she would become the Deputy Chief Minister. Mrs Robyn LAMBLEY, the Member for Araluen, was ultimately elected as the Deputy Chief Minister.
48. On 23 October 2012, Ms PURICK was elected unopposed as Speaker of the Legislative Assembly.
49. On 13 March 2013, Mr MILLS was replaced by Adam GILES as Chief Minister. On 20 February 2014, Mr MILLS resigned from the Legislative Assembly and was appointed the Territory Commissioner to Indonesia. Mr MILLS returned to stand in the 2016 election where he won the seat of Blain as an Independent.
50. On 5 March 2013, Mrs LAMBLEY resigned as the Deputy Chief Minister, remaining as Treasurer and Minister for Health. On 17 June 2015, Mrs LAMBLEY resigned from the CLP and won the seat of Araluen at the 2016 election as an Independent.
51. In April 2014, the NT News reported that Ms PURICK had fed 'embarrassing information' about cost increases to power prices and car registrations directly to Labor in the months prior to Mr MILLS being replaced as Chief Minister.
52. On 20 July 2015, Ms PURICK announced she was leaving the CLP but would remain as an Independent. Both parties supported Ms PURICK to continue on as Speaker.

Relationships

53. Since not being appointed as Deputy Chief Minister in 2012, Ms PURICK has said publicly that Mr MILLS and Mrs LAMBLEY colluded against her in relation to the Deputy Chief Minister position.

54. As recently as 21 February 2020, while speaking on the Mix 104.9 morning show, Ms PURICK said:

"Okay well I will tell you the story. So Robyn Lambley and Terry Mills colluded to ditch me as the deputy opposition leader..."

And then Mills, and then he gained government and you know said, wasn't going to allow me to be a minister and said "Oh you can just be the Speaker" quote."

55. Ms PURICK has made the following comments about Mr MILLS in a phone message obtained by this investigation:

"Mills is not a nice man, a religious zealot, homophobic, doesn't like women."

Mills is about revenge pure and simple. He came back into politics to get even with Giles, Tollner etc and when he got elected, they didn't, so he sat there for three years doing nothing."

56. AB, an MLA, stated on 1 May 2020:

"I remember having a discussion with my wife one day and saying you'd never want to stand between Kezia and Terry Mills, even if you're Kezia's mother. She would walk all over the top of you to get to him and that's the perception I've got. Yeah."

57. Mr MILLS stated on 13 May 2020, about his relationship with Ms PURICK when she was his Deputy in Opposition:

"On a number of occasions I spoke to Kezia and asked her to be supportive and protective of me as the leader and the team as a majority. She acknowledged what I had said and did not reject my request. However, I did feel that I never had her actual support."

58. In a text message sent to another MLA as late as 1 May 2020 at 9.30 am, Ms PURICK said:

"Mills is a dick, whack him!!"

North Australia Party

59. On 15 October 2018, the NT News reported that Mr MILLS wanted to create a new political party, a new North Australia Party. Mrs LAMBLEY confirmed she and Mr MILLS had had discussions about this.

60. On 26 October 2018, Mr MILLS appeared on the 104.9 morning radio show and made the following comments:

"We fear insider trading because the two existing parties and the Speaker appear to have a vested interest in keeping things the way they are..."

If we leave it to insider considerations and advice from a Speaker you are going to have, I think, things stay exactly the same way because they are motivated to keep them the same way."

61. The comments angered Ms PURICK.

62. At 9.15am on 26 October 2018, Ms PURICK sent a WhatsApp message to KL:

"Mills has just accused me of bias as the speaker and in collusion with Govt and Clp. I will get the text because I want legal advice as he has tainted my reputation."

63. KL responded:

"Ok. Let's see what it says. Depends on how he said it."

64. At 10:00am on 26 October 2018 Ms PURICK sent a text message to AB:

"You go for mills I will seek legal advice he has just accused me of bias and collusion."

65. At 9.46pm on 26 October 2018, in a continuation of a trail of text messages between Ms PURICK and AB, Ms PURICK sent the following text:

"By next Tuesday we will have some advice for internal use plus you me and others work on a strategy to shut out and down mills. For starter no talking to Matt Cunningham. Hang in there, we been through deeper bogs X."

66. On 30 October 2018, as reported in Hansard, Ms PURICK made a statement about Mr MILLS' comments on the radio:

“As members are well aware, criticism of the Speaker’s actions and conduct by members of this Assembly should only be by way of a substantive motion in the Assembly.

Reflecting on the Chair is highly disorderly and inappropriate.

I draw these comments to the attention of the Assembly and reject them absolutely and outright.”

67. This statement by Ms PURICK is about maintaining the dignity and integrity of the Chair.

68. Ms PURICK then called on Mr MILLS to withdraw the comments and apologise. He did so.

69. Sometime during mid to late October 2018, Ms Martine SMITH, Executive Officer to the Speaker, went onto the Australian Securities and Investments Commission (ASIC), website. She conducted a business name search for the name ‘North Australia Party’ and obtained a copy of the publicly available information. This showed the business name was registered to Mr Bruce Cameron YOUNG until 2019.

70. Ms SMITH also conducted a Google search which identified Mr YOUNG as a former Member of the Liberal National Party (LNP) in Queensland and, by way of the LNP website, requested contact details for Mr YOUNG.

71. On 1 November 2018, Ms PURICK took the Speaker’s Chair in Parliament at the commencement of Sittings at 10:00am, and conducted the following chain of communications from the chair.

72. At 11.06am Ms SMITH sent the following email to Ms PURICK headed “Yes, I know my mind really does work in strange ways”.

“I got to thinking, what if the North Australia Party is already a registered business or party and what would that mean.

Annnnnnddd it is already a registered business name in QLD.

The registration is current till Nov 2019 and it is registered by the former LNP Member for Keppel QLD (2012-2015) Mr Bruce Cameron Young.

It is not however registered as a QLD Political Party.

I conducted a general enquiry with the NT Electorate Commission and asked 2 questions:

What if there was a Political Party registered in another state of the same name – could they register it here – ANSWER NO.

If there is a business name registered in another state that is the same as a Political Party that wants to register here would that have an impact – They said really

interesting question, it would come down to if it is actually registered in this state or another and what the purpose was behind it and there is an objection period in which the other party can lodge an objection.

Another interesting fact is the business name has not even been registered here – if someone wanted to they could pip Mills and Lambley at the post and register the name today then if and when they went to all the trouble of marketing, facebook etc and expenditure and went to register it an objection could be put in on the basis that the name is already registered with a thought that it may become a political slogan/slant.

Once again – Terry has not done his homework.

I'm also trying to see if Mr Young has any contact details, if he was to become aware that someone else is thinking of using his business name that I would say he registered with a thought of entering politics again under that banner (as he registered it 2 years ago after he was unsuccessful at election) – then he might be cranky pants. Something to make you smile."

73. At 11.07am Ms PURICK, from the Speaker's Chair, emailed Ms SMITH:

"Ooo you be the clever one, I could get some one to register...."

74. At 11.08am Ms SMITH emailed Ms PURICK:

"That is exactly what I was thinking....ha ha"

75. At 11.09am Ms PURICK emailed Ms SMITH:

"Ok can y U get me forms to register a business name please?"

76. At 11.11am Ms PURICK sent the following message from her mobile phone to another MLA, AB:

"I have been doing some research and....North Australia Party registered as a business name already in QLD but not as a party. If the QLD do register as party, can't register here. Need to do bit more work."

(Note the claim "I", namely Ms Purick.)

77. At 11.12am Ms SMITH emailed Ms PURICK:

"It is all online. \$36 for a year - \$84 for 3 years.

78. At 11.18am Ms PURICK emailed Ms SMITH:

"We have to find some one unrelated to us who is also devious?"

79. This is a reference to finding someone who could register the business name for them.

80. At 11.19am Ms SMITH emailed Ms PURICK:

"Mmmm ponder – but they have to object too."

81. Ms SMITH's Google search on Mr YOUNG located a news article. She sent that article in an email to Ms PURICK at 11.23am titled "This is Bruce". The message contained a link to a newspaper article in *The Bulletin* paper with a picture and story about Bruce YOUNG when he was the Member for Keppel in Queensland.

82. The session of the Assembly was adjourned between 11.56am and 2:00pm on 1 November 2018.

83. Throughout the afternoon of 1 November 2018 and again from the Speaker's chair until 2.55pm there were further emails between Ms SMITH and Ms PURICK.

84. At 2.47pm Ms SMITH to Ms PURICK:

"Same former LNP Member in QLD has Northern Australian Party registered as a business name."

85. At 2.55pm Ms PURICK to Ms SMITH:

"Mmmmmmm interesting."

86. At 8.31pm, Mr YOUNG sent an email to Ms SMITH passing on his contact details. Ms SMITH forwarded this information to Ms PURICK, shortly after receiving it with the following comment:

"Got old MP's contact details... shall we stir the pot in the interest of who registered the party first?"

87. On 4 November 2018, Ms PURICK flew to Alice Springs, and drove to Tennant Creek on 5 November 2018. On arrival in Tennant Creek she sent an email to Ms SMITH, responding to the last email of 8.31pm on 1 November:

"Did you have much joy re business names before I contact out (sic) QLD man?"

88. This is a reference to Ms PURICK wanting to contact Mr YOUNG.

89. At 2.42pm Ms SMITH responded via email to Ms PURICK advising her of her unexpected contact from Mr YOUNG:

"In respect to Bruce, he has the only ones that come up North Australia Party and the Northern Australia Party (maybe he did it in all states) and he is a smart cookie and called me via Gvt switch this morning (as he had my email address) so I was a bit cornered.

I let him know that I had sent on his contact details to a 3rd party and it was about a political party that may register using his business names – he said that no one is going to use his names (a bit like over my dead body) and he is going to speak to the Electoral Commission to find out what he has to do to lodge an objection if they register his names – he won't let them and will get a lawyer involved.

Hopefully the Electoral Commission will let him know that you can't object till it all happens – which is what I would think the case will be (then they can chase their tails around a bit more).

So he is already on the scent."

90. At 2.57pm that afternoon Ms PURICK sent a message to AB:

"A Bruce young from qld has locked up both north and northern Australia party names and 'over my dead body' will any one use his names!"

91. At 11.07am on 5 November 2018, Ms SMITH followed up her phone conversation with Mr YOUNG with a text message, repeating the information she had told him on the phone. Mr YOUNG responded to Ms SMITH's text message (time not known) saying:

"Thanks again, I'm keen to talk to them and wish them well. Regards"

92. Sometime after this (date and time not known), Mr YOUNG sent a second text message to Ms SMITH:

"G'day Martine I will be objection (sic) to a third party registering a Party without my consent. Regards"

93. There are inconsistencies between the evidence of Mr YOUNG and Ms SMITH. In his statutory declaration dated 29 October 2019, Mr YOUNG said that, to the best of his recollection, he did not speak with Ms SMITH, and he did not know who Martine SMITH was when he corresponded via the text messages.

94. But Ms SMITH states in her contemporaneous email of 5 November 2018 to Ms PURICK:

"In respect to Bruce, he has the only ones that come up North Australia Party and the Northern Australia Party (maybe he did it in all states) and he is a smart cookie and called me via Gvt switch this morning (as had my e-mail address) so I was a bit cornered."

95. Either way, Mr YOUNG, in his second text message to Ms SMITH, said he would object to someone else using the party name. Ms SMITH responded:

"All good - if you could keep my name out of how you became aware that would be great. Happy to keep you updated if I hear anything that you should be made aware off (sic). I would contact the NT Electoral Commission 08 8999 7617 or by e-mail ntec@nt.gov.au"

96. Unknown to Ms SMITH and Ms PURICK, Mr MILLS had spoken with Mr YOUNG about starting a political party in the Northern Territory. In his statutory declaration Mr YOUNG said:

"Sometime around early November 2018, I received a phone call from Terry MILLS who said he was considering starting a political party in the Northern Territory using my business name of North Australia Party. I advised Terry that I was okay with him using the name."

97. In his statutory declaration, Mr MILLS said he received a call from Mr YOUNG:

"When I spoke to Bruce he confirmed a person from the Speakers Office had contacted him and volunteered the person's name as Martine SMITH. I know Martine SMITH to be the Speakers Personal Assistant, I have known her in this and various roles for many years. Bruce indicated that he initially thought the contact was with the intent to assist in the development of a new political voice in the north, however as the contact continued he became puzzled and suspicious of the intent of the call as the focus was upon the registering of the name in the Northern Territory to block someone else from registering the same name in the Northern Territory."

98. On 8 November 2018, at 2.09pm Ms PURICK sent a text to Mr YOUNG's mobile phone:

"Is this Bruce?"

99. There was no response via text from Mr YOUNG. At 2.40pm Ms PURICK sent a further message:

"Yes all good."

100. A reasonable inference that I draw is that there was further contact between Mr YOUNG and Ms PURICK between the two text messages of 8 November 2018 by another form of communication.
101. The local media became aware of the contact by Ms SMITH with Mr YOUNG, and on 8 November 2018 at 3.56pm Matt CUNNINGHAM from Sky News sent the following text message to Ms PURICK:

"Hey Kezia. Can you give me a call. A couple of Queensland businessmen say someone from your office sent them a message last inquiring about the registration of the North Australia Party in the NT. Cheers."

102. Ms PURICK did not respond to Mr CUNNINGHAM, instead contacting AB via text message:

"Matt Cunninham (sic) onto me doing research into qld red question of name of party for mills and co. If you get asked deny deny deny."

AB responded:

"OK"

(Note again the reference to "me", namely Ms PURICK, doing the research.)

103. On 10 November 2018, Mr MILLS contacted Mr YOUNG asking for copies of the text messages with Martine SMITH, stating the ABC were ready to publish a story on the 'improper activities of the Speaker'. Mr YOUNG sent copies of the four text messages between himself and Ms SMITH.
104. On 12 November 2018, Sky News and ABC News reported the story with the following headlines respectively:
- "Speaker Kezia Purick accused of trying to spoil Terry Mills' party as rift deepens"*
- "NT Speaker's office accused of interfering in establishment of new Territory political party"*
105. The ABC News story quoted the text messages sent between Ms SMITH and Mr YOUNG as provided to Mr MILLS.

106. At 7.28pm on 12 November 2018, Ms PURICK sent a text message to AB:

"I understand there has been some media release my office and Martine. I have no intention of removing Martine and the media can go get stuffed."

107. CD gave evidence in relation to an involvement in the next step, which is supported by the statutory declaration of Ms SMITH.

108. On Tuesday 13 November 2018, Ms SMITH was at Ms PURICK's home. This was during the day. They were drinking alcohol and discussing the recent media attention. Ms SMITH was not able to drive home as she had drunk too much. She phoned CD to come and collect her.

109. CD arrived at about 3.30pm and stayed for approximately an hour. Ms SMITH and Ms PURICK were discussing how to deal with the media attention around the North Australia Party and the contact with Mr YOUNG. Ms SMITH was emotional, whereas Ms PURICK was blasé and confident.

110. Ms SMITH was overwhelmed with what was being reported, and that she had been named in the media. She suggested she leave the Speaker's office and return to her former job. Ms PURICK said she did not want Ms SMITH to leave and that things would get better. Ms PURICK said she would make a statement saying Martine had been reprimanded.

111. Ms PURICK asked CD what her thoughts were about a response to the media. CD recommended Ms PURICK needed to be clear in her messaging and have standard lines to push out. CD said it would all blow over.

112. There is no evidence to suggest CD was told the true facts. She knew only what was in the press and what was told to her that afternoon.

113. After taking Ms SMITH home, CD sent an email to Ms PURICK at 7.52pm which began with *"As discussed some lines you may wish to consider"*. The email included a number of dot point responses that could be used by Ms PURICK.

114. On 16 November 2018, Ms PURICK sent an email to all MLA with a Media Statement attached, and advised there would be no further comment from her office. Ms Purick further released, and read parts of the Media Statement, on radio 104.9 that day. The Media Statement read:

"I became aware recently that one of my personal staff made enquiries regarding the business name North Australia Party, which is registered in Queensland and had some contact with a past member of the Queensland Parliament. At no time did I

give direction to the staff member to make contact or any enquiry and as a consequence the staff member has been reprimanded for the actions and acknowledges her lapse in judgment and has expressed regret.

I express regret to the members for Blain and Araluen for the actions of my staff member and assure all members that staff in the speaker's office work towards the highest standards and will continue to do so.

My office will make no further comment on this matter."

115. The Media Statement from Ms PURICK incorporated some of the lines provided by CD.
116. I find from that evidence that Ms PURICK had made an assessment of how much the press knew. She then crafted the message around what the press knew, not the true facts, and she blamed Ms SMITH for the episode.
117. The press did not know what I now know. The degree to which Ms PURICK was prepared to mislead was carefully calculated.
118. Over the following days, the media continued to contact Ms PURICK about the text messages between Ms SMITH and Mr YOUNG.
119. Hansard records that, on 27 November 2018, Ms PURICK made a statement to Parliament repeating the comments made in the Media Statement. She said that Ms SMITH had apologised to her, had expressed regret for her actions and lapse in judgement, and that she had been reprimanded.
120. Ms SMITH apologised in person to Mrs LAMBLEY on 27 November 2018 and Mr MILLS on 28 November 2018.
121. Information from the Department of the Legislative Assembly is that fixed term (contracted) employees such as Ms SMITH are not subject to the formal disciplinary provisions under *Public Sector Employment and Management Act 1993*.
122. The status of such employees is not well known. However:
 - There must be a statutory base to expend public funds on employment.
 - That statutory base is the *Contracts Act 1978*.
 - A Minister may enter into such a contract for the purposes of departmental administration, or for a law that is in force.
 - The Department of the Legislative Assembly is administered by the Chief Minister.

- The Chief Minister may delegate particular powers to a delegate to exercise those powers.
- The Chief Minister has delegated employment powers for the hiring of staff for servicing the Speaker, Minister's and MLA's to the Clerk of Parliament.
- A power delegated to the Clerk cannot be on delegated on to anyone else.
- The Clerk is the only person who can administer Ms SMITH's contract.

123. Ms SMITH states that she was never reprimanded by Ms PURICK.

124. A search of Ms SMITH's employment records discloses no record of a reprimand.

125. There is clear evidence that Ms SMITH was not reprimanded, as insisted by Ms PURICK.

126. Therefore, from all information available to me it is a reasonable inference to reach the conclusion that Ms SMITH was not reprimanded.

127. To compound the issues, on 27 November 2018 Ms PURICK, in an apology to the Assembly said about her service to the Assembly as Speaker:

"In my service to this Assembly I have always tried to act in good faith and I trust you will allow me to continue to do so."

128. I am left in no doubt that Ms PURICK used her power and influence over Ms SMITH to achieve her ends and to use Ms SMITH in the whole of the process from about mid to late October 2018 right up to the time Ms SMITH gave evidence to me on 6 March 2020. However, when Ms SMITH was confronted with facts, including the emails of 1 November 2018, she cooperated fully with my investigation.

129. The power imbalance between the Speaker and her Executive Officer is patently evident.

Failure to Report a Breach of the ICAC Act

130. On 17 January 2020, Martine SMITH was served with a section 147 Non-Disclosure Direction from the ICAC. This was served at Ms SMITH's home at about 7.30am because service within the precincts of the Legislative Assembly is not allowed without the permission of the Speaker or Deputy Speaker.
131. The Non-Disclosure Direction was explained to Ms SMITH who told the Investigator that she understood what was being investigated. She was told she would be contacted again about the next steps in the investigation, which would include her giving evidence before the ICAC.
132. On that same morning Ms SMITH collected Ms PURICK from her home to take her to a medical appointment. While in the car Ms SMITH told Ms PURICK she had been served with the Non-Disclosure Direction. On arrival at the Speaker's office at Parliament House, Ms SMITH showed the Non-Disclosure Direction to Ms PURICK.
133. At 9.47am Ms PURICK sent a message to EF asking for the name of a private lawyer "*who specialises in ICAC law*" stating that a mate had been asked to help someone. EF responded with the name of IJ.
134. At 11.09am Ms PURICK sent a message via WhatsApp to KL:

"We need to talk.... Martine been served by ICAC over MILLS party business."

135. In a second message to KL, Ms PURICK advised she was sourcing a private lawyer. She later confirmed via a Whatsapp message that IJ was 'on board'.
136. At 12.24pm Ms PURICK sent a message to another person saying:

"Martine had been served by the ICAC, it's the mills new party stuff! Going to talk to KL after bone doc."

137. As a result of the above message received from Ms PURICK, KL went to the Speaker's office at lunch time armed with a copy of the ICAC Act, and met with Ms PURICK and Ms SMITH in respect of the Non-Disclosure Direction.
138. At 1:03pm Ms PURICK sent an email to IJ stating:
- "I have told her (Ms SMITH) under no circumstances does she meet without a lawyer as a meeting with the Commissioner is very unbalanced in power. I would like you to look after her, I will pay the bill."*

139. Ms PURICK was made aware of the service of the Non-Disclosure Direction on Ms SMITH within a matter of hours of being served the Direction. Ms PURICK did not report the breach to the ICAC. Instead, she told KL and another that Ms SMITH had been served. She then made enquiries about obtaining and funding legal representation for Ms SMITH.

Legal Context

140. This section deals with the role and authority of the public officers and public bodies named in this report.

The Speaker of the Legislative Assembly

141. By the *Northern Territory (Self-Government) Act 1978*, a Commonwealth Act (*Self-Government Act*) the Northern Territory was established as a body politic.
142. By Part 3 of the Act the Legislative Assembly was created and, inter alia, given its powers, privileges and immunities, structure and procedures.
143. By section 24 the new Legislative Assembly was required, before proceeding to the despatch of any other business, to “choose a member of the Legislative Assembly to be the Speaker of the Legislative Assembly and, as often as the office of the Speaker becomes vacant, the Legislative Assembly shall again choose a member to be speaker.”
144. The term **Speaker** is defined by section 4 of the *Self-Government Act* as “*the Speaker of the Legislative Assembly*”.
145. Section 12 enables the Legislative Assembly to make laws declaring the powers, privileges and immunities of the Legislative Assembly, and of its members and committees, subject to certain limits.
146. Section 30 enables the Legislative Assembly to make standing rules and orders, not inconsistent with the law of the Territory, with respect to the order and conduct of its business and proceedings.
147. Standing Orders were made pursuant to section 30 of the *Self Government Act*. Standing Orders relate to the control of the Legislative Assembly sittings and procedure. Specific functions are given to the Speaker under those Standing Orders.
148. The Speaker, of necessity, is a member of the Legislative Assembly, and before taking her seat as an MLA subscribed to an oath or an affirmation, the common words of which are –
“...I will render true and faithful service as a member of the Legislative Assembly of the Northern Territory of Australia...”
149. That is pursuant to section 13(6) and (7) and Schedule 3 of the *Self-Government Act*.
150. In addition to the matters above, the Speaker has responsibilities pursuant to the *Legislative Assembly (Powers and Privileges) Act 1992* such as in sections 10, 11, 14, 16, 24 and 25.

151. Further, by the *Public Sector Employment and Management Act 1993* (PSEMA), and in respect of employees employed in the Public Sector, the Speaker is defined as the **Commissioner** for the employees in the Department of the Legislative Assembly. The Speaker would then have the obligations of a Commissioner as set out in PSEMA in respect of those employees.
152. In respect of other employees, such as electoral officers and those employed in MLA's, ministers', and the Speaker's office, those employees are subject to a contract under the *Contracts Act 1978* entered into between the Chief Minister and the employee. The Chief Minister has delegated power to enter into such contracts to the Clerk of Parliament. The Clerk of Parliament is the Chief Executive Officer of the Department of the Legislative Assembly.
153. The Speaker accordingly occupies the following public offices:
- As a member of the Legislative Assembly.
 - As Speaker.
 - As Commissioner pursuant to the PSEMA for public sector employees in the Department of the Legislative Assembly.

The role of the Speaker

154. The Speaker's office and role is, in addition, the result of history and convention.
155. By the *Legislative Assembly (Powers and Privileges) Act 1992*, section 4, the powers (other than legislative powers), privileges and immunities of the Assembly or its members, committees and officers, to the extent they are not declared by the Act, are those attached to the House of Representatives of the Commonwealth, and of the members, committees and officers, respectively, of that House.
156. While the powers, privileges and immunities are established by the Northern Territory Act, and otherwise by the Commonwealth Act, the role of the Speaker and the attendant obligations in respect of the Northern Territory Legislative Assembly traces the obligations back through the Commonwealth Parliament to the House of Commons, with any necessary variations relevant to a particular Parliament.
157. Two short extracts from *House of Representatives Practice (7th Edition)* reflect the dignity of the Office of the Speaker:
- “...It is sufficient to say that it is an office of great importance not only in its significant and onerous duties but particularly for what it is held to represent.”

“The Speaker embodies the dignity of the nation’s representative Assembly. The office is above the individual and commands respect.”

158. In July 2019 the Honourable Kezia Purick MLA, Speaker of the Legislative Assembly of the Northern Territory, in speaking at a conference on the topic of the role of a Speaker in determining who might be in opposition, concluded her comments:

“The Speaker remains in the service of the Assembly and is accountable to its membership for so long as the Assembly determines (in my case) that I should hold the position. To choose a different particular grouping to become the opposition when there is, by convention and past practice, an already recognised grouping in existence would be, in my view, an abuse of my trusted and impartial position.”

159. Further, on 27 November 2018 Ms Purick, as Speaker, said to the members of the Legislative Assembly:

“In my service to this Assembly I have always tried to act in good faith and I trust you will allow me to continue to do so.”

160. The important concepts from those extracts, and from the mouth of the Speaker are:

- The Speaker is in the service of the Assembly.
- It is a trusted position.
- The Speaker is impartial in that position.
- The Speaker has an obligation to act in good faith.

Obligations of a Member of the Legislative Assembly

161. There are further obligations upon the Speaker, in addition to those mentioned in the paragraph above.
162. The Speaker is, and remains, an MLA.
163. The *Legislative Assembly (Members’ Code of Conduct and Ethical Standards) Act 2008*, by the Schedule, establishes the Code of Conduct and Ethical Standards (The Code). The Code outlines the behaviour expected of an MLA.
164. The Act, by section 5 and the Schedule Part 1 describe how the Privileges Committee may enforce the Code.
165. Part 2 of the Code sets out the following requirements of an MLA:

“5. Honesty

Members must act honestly in all their official dealings, and must take care not to mislead the Assembly or the public

9. Accountability

Members are accountable to the Assembly, their constituents and the public generally.

Commentary

Public office is a public trust. The holders of public office who make decisions affecting the welfare, rights or obligations of others have an obligation to ensure they use their powers and influence lawfully and fairly and must be prepared to demonstrate that this obligation has been met.

The people of the Northern Territory are entitled to know why the Assembly or a member has taken a particular policy position.

Accountability fosters integrity and probity in official decision-making, good governance, and the prevention and detection of corruption. It encourages public confidence and trust.

10. Responsibility

Members must act in accordance with the principle of responsibility.

This means members must endeavour to ensure their decisions reflect a proper consideration of all relevant matters, including the reasonably foreseeable consequences for those likely to be affected by their decisions.

Members must also foster, by their conduct in office, respect for democratic institutions, rights and freedoms and the principles of good governance. In particular, members must foster the following:

- (a) respect for the institution of the Parliament;*
- (b) respect for the Rule of Law;*
- (c) recognition of the value of social and cultural diversity;*
- (d) fairness and integrity in official decision-making;*
- (e) freedom of reporting by media;*
- (f) the independence of the public service;*
- (g) freedom of speech;*
- (h) access to justice.*

A member's conduct in office should be exemplary in regard to the member's work ethic and standards of ethical behaviour.

Members must manage, economically and responsibly, the resources and facilities provided to them and their staff at public expense.

Members must recognise the public service as a non-partisan public resource, and treat public servants in accordance with established conventions of public service neutrality.

11. Public Interest

In performing official functions, members must act in what they genuinely believe to be the public interest.

In particular, members must seek to ensure their decisions and actions are based on an honest, reasonable, and properly informed judgement about what will best advance the common good of the people of the Territory.

Commentary

The public's confidence in the institutions of government is strengthened when members demonstrate the highest standards of professional competence, efficiency and effectiveness, uphold the laws of the Territory, and seek to advance the common good of the people of the Territory at all times."

166. It is, in my view, without doubt, that an MLA, no matter what other offices the MLA may hold, has obligations to act honestly, accountably to the public, responsibly, and at all times in the public interest. That is so by the very nature of being elected to represent the electorate, occupying a position of public office, and that office being "a public trust." Those obligations are reinforced by the fact that they are included in the Code imposed by the Assembly itself.
167. Further, it is beyond doubt that a person occupying the position of Speaker not only has the obligations of an MLA, because the Speaker still represents the electorate, but in addition has the responsibility of equality of service to all members of the Assembly, and of trust, impartiality, and good faith to all members of the Assembly.
168. The Speaker embodies the dignity of the Northern Territory's representative Assembly.

A Breach of Public Trust

169. By the ICAC Act section 10(3), conduct is corrupt conduct if it is engaged in by an MLA, and it is connected to public affairs, and it involves a serious breach of public trust by the MLA.
170. By section 13(1) of the ICAC Act 2017 the meaning of *breach of public trust* is set out:

"Breach of public trust means conduct by a public body or public officer that is intentionally or recklessly inconsistent with the functions of the body or officer, including the duty of the body or officer to act in the public interest."

171. The then Chief Justice of the High Court of Australia, Chief Justice Robert French AC, on 22 June 2011 delivered a paper to the Seventh Annual St Thomas More Forum Lecture titled *Public Office and Public Trust*. From that paper I extract the following at pages 7 and 8:

"In the case of a person occupying public office, the relationship will always be defined by the constitutional proposition that the office is held for the benefit of others. Public offices are created for public purposes and for the benefit of the public. It is not necessary to travel beyond the boundaries of utilitarian ethics to conclude that ethical behaviour by a person exercising public power requires that person to exercise that power honestly, conscientiously and only for a purpose for which that power was conferred. This is in one sense nothing more than a manifestation of the application of the rule of law to public decision-making. In our representative democracy, the Commonwealth, the State and Territory Parliaments are authorised by the Constitutions of the Commonwealth and the States, and the Self-Government Acts of the Territories, to make laws creating powers, duties, privileges and immunities. Each member of Parliament is a public officer with powers exercised collectively with other members of parliament and subject to rules and constraints, including constitutional limits upon the exercise of those powers... The powers which are conferred on any public official must necessarily be exercised only for the purposes of, and in accordance with, the law by which those powers are conferred."

172. I am not concerned with the exercise of a particular power as such, but with the integrity of conduct in an honourable public office.

173. While the concept of the trust, and a fiduciary, may not have found its way into substantive law in Australia in respect of elected officials, it is useful in assessing the obligations, by analogy, of the elected official. I then revert to the propositions above from pages 7 and 8 of the Honourable Chief Justice. In addition, I repeat words from the Code of Conduct imposed by MLAs on themselves in respect of the exercise of their self-defined public trust obligations:

- Honesty (Clause 5).
- Public office is a public trust (Clause 9).
- Respect for the Rule of Law (Clause 10).
- Manage economically and responsibly the resources and facilities provided to them and their staff at public expense (Clause 10).

- Treat public servants in accordance with established conventions of public service neutrality (Clause 10).
- Act in the public interest (Clause 11).
- Uphold the laws of the Territory (Clause 11).

Connected to Public Affairs

174. It is necessary that conduct, for it to be corrupt conduct, must be engaged in by an MLA, and it is connected to public affairs.

175. The ICAC Act, by section 4, defines the term **connected to public affairs** as:

“Connected to public affairs, in relation to conduct, means:

- (a) conduct in the course of, or closely related to, the performance of official functions, including conduct engaged in otherwise than in the performance of official functions that adversely affects or could adversely affect, directly or indirectly, the honest, impartial or effective performance of those functions; or*
- (b) conduct that affects the use, allocation or receipt of public resources to which a public officer has access in connection with being a public officer; or*
- (c) conduct involving the use of authority or perceived authority that a person has as a result of being a public officer or representing themselves as a public officer.”*

176. Early discussion of the origins of the definition can be found in the Victorian Court of Appeal Case, *R v. Quach* [2010] VSCA 106. Note the conclusions of Redlich JA at paragraphs 35 to 41. While that case is a criminal case, the concept of “performing a duty or function of the office” and “connected to public affairs” are similar, and the discussion assists in interpreting the definition set out above. See further the discussion in *Obeid V R* [2015] NSW CCA 309 at paragraphs 133 to 140.

177. It is, to my mind, clear that there is a connection to Ms PURICK’s performance of official functions as found above.

- Ms PURICK has conducted correspondence on 1 November 2018, from the Speaker’s chair, and while performing her Speaker function.
- Most of the emails from Ms PURICK have the ‘footer’:
*“HON. Kezia Purick MLA
 Speaker and Member for Goyder
 8999 6556 electorate office*

8946 1433 speaker's office

Mobile: 0407 035 976

"Fighting to Keep Rural, Rural".

- A Media Statement on 16 November 2018 was headed:
*"Hon Kezia Purick MLA
Northern Territory Speaker"*
 - The Media Statement was subtitled:
"Statement from the Speaker's Office, NT Legislative Assembly."
 - The Media Statement concluded:
*"My office will make no further comment on this matter.
HON. Kezia Purick MLA
Speaker and Member for Goyder"*
 - The Media Statement had the following on the footer:
"Contact: Office of the Speaker 8946 1433 or Michael Tatham 8946 1422."
 - The statement referred to:
"... one of my personal staff..."
"... staff in the Speaker's office..."
 - On 27 November 2018, Hansard records that the Speaker made a Speaker's statement in and to the Assembly similar to the Media Statement.
 - The Speaker used her authority as Speaker, and public resources allocated to her, including staff, offices, phones and computers, paid from the public purse to achieve the above.
178. The Speaker herself connected the events of this Report to the role of the Speaker, and went to the extent of apologising for the events in her capacity as Speaker.
179. I find for the foregoing reasons that Ms PURICK's actions were connected to public affairs.

Failing to Report a Breach of the ICAC Act

180. By section 22 of the Act:

- I am required to issue directions and guidelines governing the reporting to the ICAC of improper conduct (section 22(1)).
- A public officer must report improper conduct to the ICAC in accordance with the directions (Section 22(5)).

181. The Directions were established by me and are published on the ICAC website as required by section 130(1)(e) of the Act.

182. The Directions require all suspected improper conduct as defined by section 9 of the Act to be reported to me.

183. A proven breach of section 147 of the Act carries a maximum penalty of 2 years imprisonment. By section 10(1) such a proven breach constitutes corrupt conduct.

184. But the reporter need not be satisfied that an offence has occurred. A reporter has the mandatory obligation to report “suspected” improper conduct. Section 22(2)(b) allows the Guidelines to set out what may constitute “suspicion”. That is done in paragraphs 18, 21, 22 and 23.

185. The potential breach by Ms SMITH was immediately known to Ms PURICK. The failure by Ms PURICK to report such suspected conduct is a failure to uphold a law of the Territory, namely the ICAC Act. Ms PURICK’s default is contumelious.

Misleading Information – section 154 of the ICAC Act

Corrupt Conduct – Breach of section 154 of the ICAC Act

186. By the ICAC Act section 10(1) conduct is corrupt conduct, engaged in by a public officer that constitutes an offence the maximum penalty for which is a term of at least two years imprisonment, with or without a fine. The conduct must be connected to public affairs.
187. I refer to the discussion in respect of 'connected to public affairs' above.
188. Section 9(1)(e) describes **improper conduct**, as conduct constituting an offence against the ICAC Act.
189. Assume that I am conducting an examination under Section 34 of the Act. A number of things follow:
- The person being examined is there pursuant to a notice under Section 34.
 - It is clear that I would be acting in an official capacity.
 - The person being examined would have knowledge of that.
190. If, in those circumstances, a person gives evidence known to them to be false, then it is an offence against Section 154(1) with a maximum penalty of imprisonment for 2 years.
191. By section 10(1) such conduct is corrupt conduct because the conduct may constitute, or satisfies the elements of, an offence against the Act, the standard of proof being on the balance of probabilities.
192. On 5 May 2020, Ms PURICK was required to appear before me pursuant to the section 34 Notice to Attend for Examination served on 14 April 2020. Ms PURICK was required to attend on 6 May 2020 to continue with her evidence. Ms PURICK gave sworn evidence having taken an oath on the Bible.

First Issue

193. Ms PURICK said a number of times during her evidence that she knew nothing of the actions undertaken by Martine SMITH in relation to the North Australia Party. She said her Media Statement of 16 November 2018 was truthful.
194. At page 43 of the transcript, Ms PURICK was asked about a previous answer given to me:
- “MS TRUMAN:** Okay so you said a moment ago when I asked you about ‘we need to learn from this’ you said that she needs to be more honest with me.
- MS PURICK:** Well if she’s going to do something that she needs to let me know.

MS TRUMAN: Okay so she should be sending you emails or sending you a text or giving you a call and keeping you updated about what's happening?

MS PURICK: Either, I'm not particular.

MS TRUMAN: And she hadn't done, you say to the Commissioner, she hadn't done that in terms of what she was up to with Mr Young? Or the North Australia Party?

MS PURICK: I knew that she'd looked for the registered business name and that it was registered then she went and did the things that she did.

MS TRUMAN: You didn't know that she was going to do those?

MS PURICK: No.

MS TRUMAN: You didn't know that she was going to do anything other than the fact that she'd registered?

MS PURICK: That's correct.

MS TRUMAN: Looked at the registration.

At page 57 of the transcript, Ms PURICK said:

MS PURICK: I had knowledge of her wanting to look for the registered business name and that's all.

At page 59 of the transcript:

MS TRUMAN: Just so that I understand, are you telling the Commissioner today on your oath that this was all Ms Smith's idea?

MS PURICK: Yes I do.

MS TRUMAN: She did not discuss it with you other than to tell you that she was doing a business name search?

MS PURICK: Yes.

MS TRUMAN: She didn't seek your authorisation at any stage?

MS PURICK: No. Not that I recall.

MS TRUMAN: She didn't keep you updated as to what she was doing?

MS PURICK: She passed information to me but I don't recall.

MS TRUMAN: What was the information that she passed to you?

MS PURICK: I don't know, that she'd contacted the registrar of business names and the name was registered.

MS TRUMAN: That was all?

MS PURICK: And it was to a man in Queensland.

MS TRUMAN: That was all that she told you about?

MS PURICK: That I recall.

At page 63 of the transcript:

COMMISSIONER: Are you still saying that Ms Smith was doing this all on her own?

MS PURICK: Yes I do Commissioner.

COMMISSIONER: And you had nothing whatsoever to do with it?

MS PURICK: I didn't initiate the work she undertook. No Commissioner.

At page 73 of the transcript Ms PURICK was asked about the registration forms for registering a business name:

Ms TRUMAN: Did you look up at all how you could register a business name?

Ms PURICK: No, I didn't.

Ms TRUMAN: Did you ask Ms Smith how you could go about registering a business name?

Ms PURICK: No. I didn't.

Ms TRUMAN: Did you look at the forms to do so?

Ms PURICK: No. I didn't.

Ms TRUMAN: Did you ask for a copy of the forms?

Ms PURICK: No."

195. The emails dated 1 November 2018 show:

- Ms PURICK was being kept informed by Ms SMITH of the enquiries she was making.
- Ms PURICK directed Ms SMITH to get her the registration forms.
- Ms PURICK suggested they find someone devious to register the name for them.
- Ms PURICK asked and followed up with Ms SMITH for the contact details for Mr YOUNG
- Ms PURICK was keen to speak with Mr YOUNG herself.
- Ms PURICK followed up the request to Ms SMITH.

196. Further on 1 November 2018, at 11.11am Ms PURICK sent a text message to AB saying **she** had been doing some research into the business name of the North Australia Party.

197. Ms PURICK was asked about the Media Statement she prepared and released on 16 November 2018. In her evidence to me, Ms PURICK said the Media Statement was prepared by her.

198. At page 54 of the transcript, Ms PURICK was asked about the comments in the Media Statement:

"MS TRUMAN: Alright, now you say 'At no time did I give direction to the staff member to make contact or any enquiry' what do you mean by that?

MS PURICK: *I didn't direct my staff member to make enquiries about the registration of the business name.*

MS TRUMAN: *Alright, did you ever say to her 'don't'?*

MS PURICK: *No.*

MS TRUMAN: *You say 'and as a consequence the staff member has been reprimanded for the actions.'*

MS PURICK: *That's correct.*

At page 56 of the transcript, Ms PURICK confirmed the truthfulness of the Media Statement:

MS TRUMAN: *So your evidence to the Commissioner is that this media release of the 16th of November 2018 is truthful?*

MS PURICK: *Yes."*

199. As detailed above, Ms PURICK was involved in the whole process. She was directing the actions of Ms SMITH on 1 November 2018. These actions were made in an attempt to block Mr MILLS and Mrs LAMBLEY from registering the business name themselves, and therefore having the name North Australia Party for their new political party.

200. During the first day of the hearing Ms PURICK was shown the emails and phone messages obtained as part of the investigation. She responded:

"I don't recall saying that."

"It was 2 years ago and I don't remember the specifics."

"I have no comment, I did nothing with the information."

201. Later on day one of the hearing, after being asked about the emails of 1 November 2018 again, Ms PURICK conceded Ms SMITH had told her of the actions she was taking. She conceded she had joined in.

COMMISSIONER: *Is it your evidence now at no time did I give direction to the staff member to make contact or any inquiry?*

Ms PURICK: *We have seen I asked to get forms or papers or what does it cost to do business names.*

COMMISSIONER: *What did you mean by any enquiry?*

Ms PURICK: *I don't know, Commissioner.*

COMMISSIONER: *Knowing what we know now in the sequence of events are you still saying that this is a truthful press release?*

Ms PURICK: *Yes, I believe so. Yes, it was done with careful consideration.*

COMMISSIONER: *Very careful consideration because, what? You didn't ask her to do it she did it herself?*

Ms PURICK: *As I said, the original concept and idea was from Martine Smith and then once I became aware of things ...*

COMMISSIONER: *You joined in.*

Ms PURICK: *Well, she did tell me other things that she was doing and I didn't really think anything would come of it and just received information and passed information back to her.*

COMMISSIONER: *You joined in.*

Ms PURICK: *That's what it would seem, Commissioner, yes.*

COMMISSIONER: *And you in fact actively encouraged her to find out the information and the contact so that you could contact.*

Ms PURICK: *It would appear that way, Commissioner, but I don't recall it like you're stating."*

Second Issue

202. At page 127 of the transcript, Ms PURICK was asked if she had told anyone to delete messages.

Ms TRUMAN: *You have those exchanges, those exchanges via email, did you ever tell anyone to delete those?*

Ms PURICK: *No.*

Ms TRUMAN: *No. You've never said, delete, delete, delete those?*

Ms PURICK: *No. I delete my stuff as a matter of course.*

Ms TRUMAN: *I'm not asking you. Have you told someone to do it?*

Ms PURICK: *No. I don't recall telling anyone to delete messages."*

203. Ms SMITH refutes this and states when the media became aware of her contact with Mr YOUNG, Ms PURICK told her to "delete, delete, delete" meaning emails and text messages.

Third Issue

204. Ms PURICK was also asked about getting people to deny certain communications between them. At pages 127 and 128 of the transcript, Ms PURICK was asked if she had told anyone to deny they had a particular conversation:

Ms TRUMAN: *Have you ever told any of the people you communicate, that's not fair, I'll do it one by one, let's start with AB. Have you ever told AB to deny communications that AB had with you?*

Ms PURICK: No, I haven't.

Ms TRUMAN: If the media contacts AB - deny, deny, deny. Have you ever said that?

Ms PURICK: No, I haven't. No.

Ms TRUMAN: That would be completely inappropriate, wouldn't it?

Ms PURICK: I have not done that.

Ms TRUMAN: No, no. It's okay, you've told us that. Answer this question, that would be completely inappropriate, wouldn't it?

Ms PURICK: It's hypothetical because I didn't do it.

Ms TRUMAN: And hypothetically if someone did that would be completely inappropriate, wouldn't it?

Ms PURICK: It didn't happen, Counsel.

205. Ms PURICK was shown the text message she sent to 'AB:

"Matt Cunninham (sic) onto me doing research into qld red question of name of party for mills and co. If you get asked deny deny deny."

206. When asked about this message Ms PURICK said she didn't recall. She accepted it was sent from her phone.

Findings of Corrupt Conduct

Serious Breaches of Trust Connected to Public Affairs

207. I make the following further findings.

208. Ms PURICK's conduct set out in the findings of fact was in the course of or closely related to her official functions as Speaker and/or a Member of the Legislative Assembly. That conduct adversely affected, or could adversely affect, directly and indirectly, the honest and impartial and effective performance of her functions as Speaker and/or member of the Legislative Assembly. That conduct was intentional, or at least reckless, and inconsistent with her functions as Speaker and/or member of the Legislative Assembly.

209. Further and additionally, Ms PURICK used the resources of her office including her tax payer funded staff, offices, telephones and computers as Speaker and/or member of the Legislative Assembly to give effect to that conduct.

210. Further, and additionally, Ms PURICK used the authority of the Office of the Speaker and/or Member of the Legislative Assembly to give effect to that conduct.

211. I find on the facts that the following breaches of section 10(3) of the Act were committed by Ms PURICK, those breaches being corrupt conduct because each breach constitutes a serious breach of public trust by a public officer that was connected with public affairs, namely her duties as Speaker and/or MLA.

212. The serious breaches of public trust I find are as follows:

1. The act of an MLA, and while occupying the position of Speaker, intervening in the attempted creation of a political party by other MLA's, contrary to the Speaker's obligations of impartiality, good faith, and equal service to all members of the Legislative Assembly.
2. The act of an MLA, and while occupying the Office of the Speaker, acting dishonestly by releasing an untrue statement on 16 November 2018 about her involvement in the matter set out 1 to other MLAs and to the public.
3. The act of an MLA, and while occupying the Office of the Speaker, using the position and resources of her office as Speaker, to give effect to the matter set out at 1 and 2.

Further and additionally Ms PURICK must have had a reasonable suspicion that Ms Smith may have been in breach of an obligation under the ICAC Act in showing her a section 147

notice of non-disclosure. Contrary to her obligations to report such a suspected breach to me pursuant to section 22 of the Act, Ms PURICK failed to do so. That was contrary to Ms PURICK's obligation to uphold the laws of the Territory, and constitutes a further serious breach of public trust.

4. The act of an MLA, and while occupying the Office of the Speaker, failing to uphold the law, namely, by failing to report a suspected breach of section 147 of the ICAC Act of which she knew, to the ICAC pursuant to obligations under section 22 of the ICAC Act.

Misleading Information – section 154 ICAC Act

213. A finding of corrupt conduct is not a finding that a person is guilty of, or has committed an offence (section 50(5)).
214. However, corrupt conduct is defined in section 10(1) as conduct that constitutes an offence for which the penalty is a term of imprisonment of 2 years or more.
215. My findings are made on the balance of probabilities, not beyond reasonable doubt.
216. A finding on the balance of probabilities of corrupt conduct in respect of the elements, or constitution of an offence, is not a finding that the person is guilty of such an offence. Nor is it an opinion on the prospects of success of a prosecution for such an offence. A prosecution is entirely the province of the Director of Public Prosecutions and the criminal courts.
217. On that basis I make the following findings in respect of corrupt conduct and section 154.

First Issue

218. Ms PURICK misled me when she denied she directed Ms SMITH, or knew anything about the actions taken by Ms SMITH in relation to the North Australia Party. Between 1 November 2018 and 5 November 2018, Ms PURICK directed and encouraged Ms SMITH in the actions undertaken. Ms PURICK asked Ms SMITH to obtain the registration forms to allow registration of the business name in the NT, suggested to Ms SMITH they find someone to register the name for them and asked Ms SMITH about the contact details for Mr YOUNG so she could contact him.
219. Further, in an attempt to mislead me, Ms PURICK gave false information during her examination when she said the Media Statement of 16 November 2018 was truthful. The Media Statement was false.

220. I find that, in each of the instances above, Ms PURICK's conduct in misleading me is corrupt conduct.

Second Issue

221. Ms PURICK denied that she ever told anyone to delete text messages between her and Ms SMITH, and any relating to the formation of the Media Statement of 16 November 2018. I accept the evidence of Ms SMITH to the contrary, and find that Ms PURICK's conduct in misleading me is corrupt conduct.

Third Issue

222. Ms PURICK denied that she told AB to deny communications that she had with AB. I accept the evidence of the email of 8 November 2018 that Ms PURICK told AB "if you get asked deny, deny, deny". I find that Ms PURICK's conduct in misleading me is corrupt conduct.

Recommendations

223. Pursuant to section 56 of the ICAC Act I may, at any time, make recommendations to a public body or public officer in relation to preventing, detecting, investigating, prosecuting or otherwise dealing with improper conduct, if I consider the recommendations are within the functions of the body or officer to implement or progress.

Members' Code of Conduct

224. As discussed earlier, the *Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act 2008* establishes a Code of Conduct and Ethical Standards for Members of the Legislative Assembly. It also provides one avenue for enforcement of the Code.

225. The principles in the Code fall under 4 main heads:

- a) integrity; and
- b) accountability; and
- c) responsibility; and
- d) the public interest.

226. Commentary contained within the Code describes the importance of parliamentary probity and integrity to public confidence and trust as follows:

"The public's confidence in the institutions of government is strengthened when members demonstrate the highest standards of professional competence, efficiency

and effectiveness, uphold the laws of the Territory, and seek to advance the common good of the people of the Territory at all times.”

227. The Legislative Assembly has extraordinary powers to self-regulate the conduct of members in respect of the conduct of the business of Parliament. Those powers were founded in the United Kingdom’s Parliament centuries ago.

228. The Assembly may refer an alleged breach of the Code to the Privileges Committee under section 5. If the Committee finds a breach established, the Committee may punish it as a contempt of the Assembly, pursuant to Part 1 of the Schedule to the Act.

229. Section 3 of the *Legislative Assembly (Powers and Privileges) Act 1992* describes contempt of the Assembly as an “offence against the Assembly”. Pursuant to section 5 of the *Legislative Assembly (Powers and Privileges) Act 1992*, “Essential Elements of offences”:

“Conduct (including the use of words) does not constitute an offence against the Assembly unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by the Assembly or a committee, of its authority or functions, or with the free performance by a member of the member’s duties as a member.”

230. Section 25 sets out the imposition of penalties by the Assembly:

“The Assembly may impose on a person for an offence against the Assembly (determined by the Assembly to have been committed by the person) a penalty of imprisonment that may be imposed under section 7(1) of the Parliamentary Privileges Act 1987 (Cth).”

231. Despite widespread and persistent disquiet regarding the conduct of some members, the Legislative Assembly has not used its powers to investigate the conduct of members in this, and the preceding two parliaments.

232. Improper conduct risk is heightened when those with power and authority to govern are subject to limited oversight, especially where those with authority are unwilling to intervene. Where those who engage in improper conduct hold positions of power, there is limited risk of detection, and staff will be more reluctant to challenge high-status individuals.

233. The ICAC Act gave me the power to investigate corrupt conduct by a minister or MLAs. This matter of jurisdiction is dealt with elsewhere in this report.

234. Pursuant to section 50(7)(c) of the ICAC Act, the Clerk of the Legislative Assembly and the Deputy Speaker are responsible entities with authority to deal with matters relating to improper conduct that is the subject of this investigation.
235. I recommend that the Deputy Speaker and/or the Clerk:
- 1) Facilitate training for all existing and incoming members on their obligations under the *Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act 2008*;
 - 2) Facilitate training for all existing and incoming members on their obligations under the *Independent Commissioner Against Corruption Act 2017*, including mandatory reporting guidelines and directions issued pursuant to section 22.
 - 3) Develop a members' handbook including guidelines which provide examples of what conduct may cause, or have the potential to result in, breaches of the Code and a significant breach of Public Trust.
236. The Legislative Assembly may wish to review its parliamentary procedure and practice dealing with alleged breaches of the Members' conduct under the *Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act 2008*. The Legislative Assembly may also wish to consider the establishment of a Parliamentary Integrity Commissioner to provide advice to members on the Members' Code of Conduct and Ethical Standards, report to the Legislative Assembly on potential breaches of the Code, consider reports of breaches of the Code by the public and members, and review the operation of the Code.

Staff Conduct

237. Public bodies have a duty to act as a steward and to represent the interests of the society as a whole. For public officials to act in the public interest, they need to have, and understand, a set of guiding ethics. These may not be the same as an individual's personal values, or the ethics of another profession¹.
238. This investigation discovered a lack of guidance around the conduct and ethical standards expected of members' personal staff employed under the *Contracts Act 1978*, and the

¹ NSW Independent Commission Against Corruption, *Public sector ethics*, accessed online at <https://www.icac.nsw.gov.au/prevention/foundations-for-corruption-prevention/public-sector-ethics>.

performance and employment management framework that applies to them. I am aware that the Commissioner for Public Employment is actively considering this issue.

239. Where there is an imbalance of power there is an increased risk of improper conduct. Those close to power are at higher risk of compromising their values in order to fit into a culture of personality or to win the approval of those with authority.
240. This investigation indicates an unhealthy culture of personality existed within the Speaker's office. It observed occasions of unwavering loyalty towards members to the detriment of the staff member. It has also highlighted the unique integrity challenges faced by those working amongst members in a highly political and often closed environment.
241. The risk of retaliation against those who disclose wrongdoing in these circumstances is greater due to the high profile of the public officers involved.
242. Public bodies have the primary responsibility for protecting and supporting protected persons and providing them with protection against retaliation. The ICAC's role is to guide public bodies to fulfil their responsibilities, to oversee public bodies to ensure that they are taking appropriate steps to protect whistleblowers, and to take action if whistleblowers are not protected, or retaliation occurs.
243. Pursuant to section 50(7)(c) of the ICAC Act, the Chief Minister is the responsible entity with authority to deal with matters relating to staff employed under the *Contracts Act 1978*. This power has been delegated to the Clerk of the Legislative Assembly. The Chief Minister and the Clerk are the responsible entities with authority to deal with matters relating to Department of the Legislative Assembly.
244. I recommend that the Chief Minister and the Clerk:
 - 1) In consultation with the Commissioner for Public Employment, establish and publish a Code of Conduct and Ethical Standards for personal members of staff employed under the *Contracts Act 1978*. The Code of conduct and ethical standards may include guidance on the judgment required of public officers when receiving inappropriate or unlawful direction from supervisors.
 - 2) Facilitate training and education for members, Department of the Legislative Assembly employees, the Clerk, and Deputy Clerk, and the personal staff of members, including the Speaker, under the *Contracts Act 1978* regarding the Code of conduct and ethical standards in 1.

- 3) Incorporate a series of case studies highlighting corruption-conducive situational contexts that may apply to the Department of the Legislative Assembly and members' personal staff employed under the *Contracts Act 1978* into education programs and material.
- 4) Review the Department of the Legislative Assembly's whistleblower protection policies and practices against the requirements under the ICAC Act and ICAC guidelines and directions, and report to the ICAC on the findings and recommendations of this review.
- 5) Schedule training, to be delivered by the ICAC, for all Department of the Legislative Assembly employees and the personal staff of members on the role and functions of the ICAC.

Misuse of Resources

245. Members enjoy access, both in their electorate and in Parliament, to resources provided at public expense, including but not limited to human resources, mobile phones, laptops, vehicles, and offices.
246. This investigation identified that the Speaker used the resources of her office as Speaker to intervene in the attempted creation of a political party by other members, contrary to the Speaker's obligations of impartiality, good faith, and equal service to all members of the Legislative Assembly.
247. The Public has little oversight of the use of members' resources, including allowances and information communication technology.
248. The current electoral allowance for members ranges from \$60,500 to \$118,500 per electorate. Expenditure is incurred at the sole discretion of members in servicing their electorate. Expenditure of this allowance is far from transparent, making it difficult to determine whether or not the behaviour of members is in line with community expectations. A lack of oversight also increases the risk that members' will misuse government resources.
249. The investigation identified a practice whereby members and their staff communicated sensitive work information using private online messaging services. This represents a significant information security risk to the Northern Territory Government. Even information that appears to be benign in isolation could, along with other information, have a considerable security impact, according to the *Australian Government Information Security Manual Guidelines for Personnel Security*.

250. Pursuant to section 50(7)(c) of the ICAC Act, the Deputy Speaker is the responsible entity with authority to deal with matters relating to improper conduct that is the subject of this investigation.

251. I recommend that the Deputy Speaker:

- 1) Provide education and training to all current and future members on measures to reduce information security risks.
- 2) Provide explicit and formal advice to members regarding the requirement that they use approved communications methods for all Parliamentary business.

252. The Legislative Assembly may wish to review information security risks and publish Information Security protocols for members. It may wish to review the transparency of electoral expenditure and provide guidance to members on principles of transparency, integrity and accountability arrangements in relation to electorate allowances.

Referrals to Referral Entities

253. By section 50(3)(c) I can include information in a Report as to whether an allegation of improper conduct, in my opinion, warrants reporting to a Referral Entity.

Referral to the Deputy Speaker

254. By section 25 I may refer a matter which has come to my attention that may involve improper conduct, to a referral entity.
255. For an MLA who is the Speaker, that referral entity, by section 25(2)(a)(ii), is the Deputy Speaker.
256. I have referred in this Report to the *Legislative Assembly (Members Code of Conduct and Ethical Standards) Act 2008* and the Code of Conduct and Ethical Standards set out in the Schedule to that Act.
257. By Section 5 of that Act the Assembly may refer an alleged breach of the Code to the Privileges Committee to inquire into, and report on the alleged breach if such a breach is found, the Assembly may punish the breach as a contempt.
258. By section 3(3) of the *Legislative Assembly (Powers and Privileges) Act 1992*, a contempt of the Assembly is included as a reference to an offence against the Assembly.
259. It is a matter entirely for the Legislative Assembly to make its own determinations, and to investigate and impose penalties, if so minded.
260. For that purpose I am referring this Report, including the chronology set out below, and facts in my possession which cannot be set out in this Report, to the Deputy Speaker.

Timeline for the consideration of the Deputy Speaker

15 October 2018	Media reports about Mrs LAMBLEY and Mr MILLS seeking to form a new political party and asking for clarification around the status of being in Opposition.
1 November 2018 – 11.06am to 8.31pm.	Emails from Ms SMITH to Ms PURICK regarding business name check, registering the name and contact details for Mr Bruce YOUNG. Ms SMITH received contact details from Mr YOUNG.
1 November 2018 – 11.11am	Message to AB “I have been doing some research....”

5 November 2018	Mr YOUNG phoned Ms SMITH via Government switchboard.
5 November 2018	Text messages between Mr YOUNG and Ms SMITH.
5 November 2018 – 2.57pm	Ms PURICK to AB message re Bruce YOUNG.
10 November 2018	Mr MILLS sent text to Mr YOUNG asking for a copy of the text messages with Ms SMITH, to pass to the ABC who were going to publish a story. Copies provided by Mr YOUNG.
12 November 2018	Ms PURICK and Ms SMITH contacted by Matt CUNNINGHAM. Sky News story re North Australia Party.
13 November 2018	Ms PURICK's residence – discussion between Ms PURICK and Ms SMITH about the media interest. CD attended and conveyed Ms SMITH home. 7.52pm - email sent with dot points.
15 November 2018	Draft Media Statement from Ms PURICK sent to KL for amendments.
16 November 2018	Speaker made a Media Statement stating she had recently become aware that personal staff had made enquiries regarding the business name of North Australia Party. Speaker advised she did not give any direction to make contact and the staff member had been reprimanded.
17 – 21 November 2018	Media reports re North Australia Party and contact with Mr YOUNG.
5 June 2019	This matter reported to OICAC as suspected improper conduct.
16 August 2019	An investigation commenced into this report of suspected improper conduct.
17 January 2020 – 7.30am	Ms SMITH served with s147 Non-Disclosure Direction. At service it was explained that Ms SMITH could not disclose the fact that she had been served with a notice and the fact that an investigation was being conducted.

	<p>She was further advised that the next step would be to require her to attend an examination with a tentative date of 31 January 2020.</p> <p>Ms SMITH advised Ms PURICK she had been served.</p>
17 January 2020 – 9.47am	Ms PURICK to EF - identify a lawyer for Ms SMITH.
17 January 2020 – 11.09am	Message from Ms PURICK to KL – advised Ms SMITH served. Sourcing lawyer.
17 January 2020 – 12.24pm	Message from Ms PURICK to another – advised Ms SMITH served.
17 January 2020	Meeting between Ms PURICK, Ms Smith and KL about the service of direction
21 January 2020	Ms SMITH requested a date other than 31 January 2020 for her to give evidence because her legal advisor was not available. That concession was made.
23 January 2020	Ms SMITH was advised the 31 January 2020 hearing was put off because of the unavailability of her legal Counsel.
12 February 2020	Ms PURICK moves a motion in the Assembly to establish an ICAC Standing Committee.
14 February 2020	<p>NT News contacted Ms PURICK via email re being investigated.</p> <p>10am – Ms PURICK sent message to KL who advised her to send email to ICAC.</p> <p>10.18am – Ms PURICK sent email from NT News to ICAC.</p> <p>1.29pm – Ms SMITH sent NT News email to ICAC and asked if ICAC would be investigating a leak from ICAC.</p> <p>5.38pm – ICAC responded that her allegation will be assessed.</p> <p>6.19pm – Ms SMITH emailed ICAC advising “ICAC compromised” and that she had sent the email to the ICAC Inspector.</p> <p>Ms PURICK discussed the NT News email with Ms SMITH and KL. Ms SMITH reported that Ms PURICK said that it “must have come from Terry Mills and she was really angry”. It was also discussed that, in</p>

	<p>relation to a NSW ICAC case the woman involved “sent a lot of emails and it became all too much for the ICAC and it got dropped”.</p> <p>Ms SMITH said subsequently that the complaint to the ICAC Inspector was the result of “brainstorming” by Ms PURICK and KL.</p>
20 February 2020	<p>Ms SMITH was served with a Notice to Produce documents in her possession relating to any reprimand she had received. She said there were none.</p> <p>Debate on the motion to create the ICAC Standing Committee resumed. Notably membership of the Committee “will be subject to conflict of interest considerations to ensure members are free from perceived or actual bias.</p> <p>LAMBLEY comments about Ms PURICK’s motives for establishing ICAC Standing Committee as “very concerning”. Ms PURICK “rejected the accusation that she was being investigated”.</p>
21 February 2020	Mix 104.9 – Ms PURICK made comment about “not” being under investigation by the ICAC.
26 February 2020	<p>12.30pm – Ms SMITH served with s34 Notice to Attend for examination on 6 March 2020.</p> <p>That day Ms SMITH showed Ms PURICK the Notice to attend for Examination and then discussed it with Ms PURICK and KL.</p>
6 March 2020	<p>Ms SMITH attended for examination, but argued that, because the Speaker was not a “public officer” under the Act, and she was employed by the Speaker, the ICAC had no jurisdiction to examine her.</p> <p>Ms PURICK contacted Ms SMITH at the lunch break of the examination and said “less is better remember”</p>
March to early April	Ms PURICK became a member of the Standing Committee on the ICAC, it would seem, as a process under Standing Order 181.
14 April 2020	Ms PURICK served with a Notice to Produce Information and a Notice to Attend for Examination.
17 April 2020	Ms PURICK is seeking to have the Standing Committee on the ICAC meet. She is reminded of paragraph 4 of the Terms of Reference, which relates to membership and conflicts of interest. She responds:

	"As to ICAC committee I think just to get it going."
21 April 2020	CD attended for examination. Date set for examination of Ms PURICK. The date was set aside because the Assembly sat a few days later and the Privileges Legislation intervened.
5 and 6 May 2020	Ms PURICK attended for examination. Examination of Ms PURICK.

Referral to the Director of Public Prosecutions

261. I have determined further that the facts set out in this Report, together with facts in my possession that cannot be set out in this Report should be referred to the Director of Public Prosecutions as a brief for his consideration of evidence.

Annexure 1: Response on behalf of Kezia Purick

The relevant paragraphs of Ms Purick's response are here set out and numbered as per the original response received from Ms Purick's lawyers on 11 June 2020.

RESPONSE

13. The ICAC has identified 4 counts of corrupt conduct pursuant to s. 10(3). Under s 10(3), conduct is Corrupt Conduct if it is:

“conduct engaged by in by a ... MLA:

(a) that is connected to public affairs; and

(b) that involves a serious breach of public trust by the ... MLA.”

14. Ms Purick contends that the conduct alleged against her would not constitute corrupt conduct under s. 10(3) of the ICAC Act and falls so far short of corrupt conduct that it is doubtful whether it could even be regarded as improper conduct under the ICAC Act.

15. The foundation of the finding of corrupt conduct appears to be that Ms Purick breached her obligations of impartiality and equal service to all members of the Legislative Assembly by virtue of her role as Speaker in acting in the manner alleged in October and November 2018 in relation to the North Australia Party.

16. The draft report sets out numerous extracts of evidence referring to “Background” which point to animosity between Ms Purick and two other MLA's, Terry Mills and Robyn Lambley. The suggestion in the draft report is that the impugned activities of Ms Purick were motivated by that animosity and that the wellspring of the animosity was Ms Purick's bitterness about not being made deputy leader to

Mr Mills when the CLP (of which they were all previously members) took government in August 2012.

17. The draft report fails to take into account a number of important contextual matters.
18. First, it overlooks completely the nature of the relationship between Ms Purick and Mr Mills as political adversaries and the legitimate adversarial role taken on by elected members of the Legislative Assembly towards each other. Notwithstanding that Ms Purick was Speaker of the Assembly, she maintained a political personality amongst the elected members, and she continued to represent her electorate of Goyder in an openly adversarial manner towards her political opponents, including Mr Mills.
19. Second, it selectively paints Ms Purick as motivated by spite and affords no weight to Ms Purick's explanation that they do not share the same values. Ms Purick has identified that Mr Mills is, in her opinion, homophobic, misogynistic and a religious zealot. Any one of those reasons might provide a valid foundation for Ms Purick regarding Mr Mills as a political adversary and practising her politics on that basis.
20. Third, it fails to acknowledge that Mr Mills had effectively been baiting Ms Purick in the weeks leading up to 30 October 2018 by continuously ascribing to the Speaker responsibility for choosing the Opposition, even after being told otherwise. Mr Mills was plainly playing a political game in pressuring the government and

the Speaker to strip the Country Liberal Party (CLP) of status as the Opposition and to confer it upon him and Ms Lambley². The activities involving the enquiries into the North Australia Party happened in the heat of political battle between Mr Mills and Ms Purick as Speaker.

21. Fourth, it fails to clearly identify that within that political dynamic, over the period in question both Mr Mills and Ms Purick had had wins and losses. On 30 October 2018, Ms Purick as Speaker had forced an embarrassing public backdown and apology on Mr Mills. A fortnight later, it was Ms Purick who was forced to apologise. Such is the rough and tumble of politics.
22. It is a gross oversimplification of the matter to conclude that in the events in question, Ms Purick acted out of bitterness towards Mr Mills for having been passed over as Deputy Leader of the CLP when it won government in 2012.
23. The proper function of the ICAC is to determine whether, within that obviously politically driven dynamic, a public official has engaged in improper conduct within the meaning of the ICAC Act. The draft report does not address that issue at all. Ms Purick has not been afforded an opportunity to understand the case put against her.

² See as an example, the extracted media articles attached to this Response.

COUNT 1: THE ACT OF AN MLA, AND WHILE OCCUPYING THE POSITION OF SPEAKER, IN OCTOBER AND NOVEMBER 2019 INTERVENING IN THE ATTEMPTED CREATION OF A POLITICAL PARTY BY OTHER MLA'S CONTRARY TO THE SPEAKER'S OBLIGATIONS OF IMPARTIALITY AND EQUAL SERVICE TO ALL MEMBERS OF THE LEGISLATIVE ASSEMBLY.

24. The draft Report includes a description of the political events in October 2018 when Mr Mills wanted to create a new party in the Northern Territory.
25. The relevant background is that Mr Mills having publicly floated the idea of the creation of a North Australia Party that would have reach across the Northern Territory, Queensland and Western Australia, the Speaker's Office engaged in political mischief-making in relation to that name.
26. It appears to have been established as part of this Investigation that Ms Smith initiated the activity. She embarked on a conversation with Ms Purick about the fact that "North Australia Party" as a party name might be already taken on 1 November 2018. Before she even raised the matter with Ms Purick, Ms Smith had already gone so far as to identify who was behind the business name identified that it was not registered in the NT, made enquiries of the Electoral Commission and tried to contact the owner.
27. Ms Smith's work background included working for politicians in a

partisan political environment. She would have undoubtedly had exposure to politically charged activity within the confines of a Member's office. The making of an enquiry about the registration of the North Australia Party is an example of that type of activity and is, in that sense, unremarkable. However, whether such behaviour would be expected to occur within the Office of the Speaker is another matter.

28. The evidence strongly points to the conclusion that Ms Smith was the one who came up with the idea that Mr Mills (and Ms Lambley) could be beaten to the use of the name in the NT, however this is not reflected in the Report. The ICAC refused Ms Purick's request for confirmation of whether Ms Smith had admitted that the enquiry was her idea.
29. Mr Mills did not form a political party until September 2019. Having previously identified a North Australia Party as a potential vehicle for holding the balance of power in the Federal Parliament, there does not appear to be any suggestion that he did anything more about it. The ICAC does not appear to have investigated what actual steps Mr Mills took to establish a political party, either in October 2018 or later.
30. At the time of the events the subject of the investigation, Mr Mills does not appear to have had any prospect of establishing a political party in the NT under the Electoral Act. He did not reach the requisite number of 200 members required for registration of a political party for another year.

31. At worst, the conduct under investigation may be regarded as the pursuit of a political opportunity (point scoring) by Ms Purick and/or Ms Smith intended to further embarrass Mr Mills, who at the time was continuing to make public claims about the role of the Speaker in choosing the Opposition, as well as promoting himself and the independent MLA's as an alternative Opposition.

COUNT 2: USING THE POSITION AND RESOURCES OF HER OFFICE AS SPEAKER TO GIVE EFFECT TO [COUNT 1].

32. The draft report does not specify what position and resources were used by Ms Purick to give effect to the alleged interference.
33. The evidence gathered by the ICAC and referred to in the draft report amounts to the incidental use of emails, text messages and phone calls over a period of days. The amount of time used up in the conduct of such inquiries was unlikely to exceed a few minutes at a time and collectively, could not have amounted to more than an hour or 2 of time. The entire exchange between Ms Purick and Ms Smith, while Ms Purick was in the speaker's chair in the Assembly on 1 November 2018, spanned 13 minutes.
34. Whilst the incidental use of the resources of the office of Speaker on a frivolous politically motivated activity such as this might be regarded as wasteful, it would not be regarded as a breach of public trust sufficient to constitute misconduct under the ICAC Act.

COUNT 3: ACTING DISHONESTLY ON 16 NOVEMBER 2018 BY RELEASING AN INCORRECT STATEMENT ABOUT HER INVOLVEMENT IN THE MATTER TO OTHER MLA'S AND THE PUBLIC.

35. The draft report does not include any finding as to whether, and in what manner, the statement constitutes Corrupt Conduct. Further, it does not distinguish between the release of the statement to the Public and its release to Members, nor acknowledge the role of the Legislative Assembly in the control of conduct of Members in relation to other Members and the Assembly.
36. Any question concerning Ms Purick's conduct in issuing the statement to other MLA's is properly a matter for a Privilege Motion in the Legislative Assembly pursuant to Standing Order 229. Any issue of breach of privilege of the Assembly or of Contempt of the Assembly arising from the contents of the statement is a matter which the Assembly itself may judge, including whether the matter is of a trivial nature or unworthy of the attention of the Assembly.
37. An investigation by the Privileges Committee would ensure that natural justice and procedural fairness were afforded Ms Purick. Ms Purick would have the opportunity to view all the evidence gathered which might inculcate her in relation to the alleged dishonesty. Ms Purick would have the opportunity to examine

witnesses³.

COUNT 4: THE ACT OF AN MLA, AND WHILE OCCUPYING THE OFFICE OF THE SPEAKER, FAILING TO UPHOLD THE LAW, NAMELY ON 17 JANUARY 2020 OR SUBSEQUENTLY FAILING TO REPORT A BREACH OF S. 147 OF THE ICAC ACT, OF WHICH SHE KNEW, TO THE ICAC PURSUANT TO OBLIGATIONS UNDER SECTION 22 OF THE ICAC ACT

38. Ms Purick does not respond to the matters relating to Count 4.
39. The ICAC was requested to provide evidence to prove that it was conducting an investigation into the alleged failure by Ms Purick to report a breach of s. 147 of the ICAC Act when it obtained evidence by means of compulsory examination and production of documents. The ICAC has refused to do so.
40. Ms Purick was served a s. 34 Notice on 21 April 2020 which referred only to the subject matter of the examination as being an allegation of interference in the establishment of the North Australia Party NT. Objection was taken by Ms Purick's legal representative to questions on the matters relating to Count 4. In light of the objection, a further s. 34 Notice was provided to Ms

³ Standing Orders 210 and 232

Purick. Any evidence given by Ms Purick prior to the issuing of the second notice is evidence which the ICAC was not authorised to obtain and should not be included in the report. No findings should be made against Ms Purick based on evidence which the ICAC did not have authority to obtain.

41. The final two counts of Corrupt Conduct were identified in the letter dated 11 May 2020 as Corrupt Conduct pursuant to s. 10(1) of the ICAC Act. Conduct is corrupt conduct under s 10 (1) if it is:

Conduct engaged in by a public officer ...

- (a) that constitutes an offence, whether in the Territory or elsewhere, for which the maximum penalty is imprisonment for a term of at least 2 years, with or without a fine; and
- (b) that is connected to public affairs

42. On 29 May 2020 the ICAC advised that he did not intend to pursue any adverse findings against Ms Purick in respect of Count 5 (Complicity and Common Purpose with Martine Smith in relation to a breach of s. 147 of the ICAC Act).

**COUNT 6: A BREACH OF S. 154 OF THE ICAC ACT BY
GIVING KNOWINGLY MISLEADING INFORMATION TO THE
ICAC**

43. Ms Purick does not respond to the matters contained in Count 6.

44. The ICAC is unable to be satisfied that Ms Purick has committed an offence against s. 154 of the ICAC Act unless such an offence is proven upon a prosecution of Ms Purick. Ms Purick is entitled to the full benefit of her defence to any such prosecution.
45. Moreover, the ICAC could not make a finding of Corrupt Conduct within the meaning of s. 10(1) of the ICAC Act without contravening s. 50(4) of the ICAC Act. It should therefore not include any reference to an alleged offence against s. 154 in the Report.



Contact the ICAC

Freecall 1800 250 918

Level 7, 9-11 Cavenagh Street

Darwin NT 0801

GPO Box 3750 Darwin NT 0801

icac.nt.gov.au

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Independent
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