

# Investigation into a Northern Territory Government procurement process

## Public statement

April 2021

Office of the  
Independent  
Commissioner  
Against  
Corruption



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## Summary of the report

Reports to the Office of the Independent Commissioner Against Corruption (OICAC) have demonstrated that procurement is a significant risk area for the Northern Territory Government (NTG). This is consistent with experience in integrity agencies across Australia and internationally. Approximately 20 per cent of reports to OICAC concern procurement.

Reviews of the NTG procurement framework are presently underway: first, Value for Territory reform; and a wider whole-of-government procurement framework continuous improvement program. The Value for Territory reform is expected to be completed by mid 2021, while the wider review of procurement is ongoing.

OICAC commenced an investigation into the conduct of public officers in a Northern Territory Government department following a report that those officers may have engaged in unsatisfactory conduct while on a procurement panel.

The investigation was conducted by Deputy Commissioner Rex Wild AO QC.

The investigation found that while the procurement did not follow best practice, there was no unsatisfactory conduct by the members of the assessment panel.

While there was no finding of unsatisfactory conduct, not following best practice can lead to improper conduct if left unchecked. A number of prevention recommendations have been made as a result of this investigation to address improper conduct risks.

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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

**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

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

**OICAC** – Office of the Independent Commissioner Against Corruption

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

**Public resources** – pursuant to section 14 of the ICAC Act

## Persons mentioned in this report

The identity of persons referred to in this report have been protected using the pseudonyms.

**Contractor A** – contractor that submitted an unsuccessful tender

**Contractor B** – contractor that was awarded the tender

**Public officer 1** – Northern Territory Government public officer and procurement panel member

**Public officer 2** – Northern Territory Government public officer and procurement panel member

## Legislation

*Independent Commissioner Against Corruption Act 2017*

*Procurement Act 1995*

## ICAC jurisdiction and investigation methodology

1. The OICAC commenced an investigation into the conduct of two public officers in a Northern Territory Government department following a report alleging that the officers may have engaged in unsatisfactory conduct as members of a procurement assessment panel.

### Temporal jurisdiction

2. 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.
3. The events of which this report speaks spread across a period of time in 2019.
4. All matters the subject of this report are dealt with pursuant to the ICAC Act.

### Summary of the notices and directions

5. The following notices and directions were served:
  - Section 147 non-disclosure directions – 5
  - Section 34 notices to attend for examination – 5

### Examinations

6. This was an inquiry into alleged improper conduct in relation to a procurement process by Northern Territory Government public officers. At the request of the Independent Commissioner Against Corruption, it was conducted by me, Deputy Commissioner Rex Wild AO QC, with all necessary delegations.

### Procedural obligations

#### Privilege

7. 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.

#### Rules of evidence and natural justice

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

9. I am therefore concomitantly aware of the particular need to give natural justice to any person the subject of an investigation and Report.
10. 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.”*
11. That process commenced in February 2021 when relevant public officers were supplied a draft of this report containing the relevant facts, and references to the relevant exhibits. Responses were received and the contents taken into account in the completion of this report.

## Standard of proof

12. 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.
13. I have taken into account, in the use of that standard of proof, the gravity of the allegations against the respective people and bodies against whom, and the consequences for those people and bodies as a result of this investigation.

## Assessment of evidence

14. I have followed carefully all of the evidence in this investigation, and any response from each and every person and body against whom allegations were made, including unsworn responses.
15. 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
  - documentary evidence.
16. Where I have doubted the veracity of evidence I have sought assistance from contemporary records to resolve doubts.

## Background

17. In 2019 a Northern Territory Government department commenced a select tender process via a request for quotation.
18. A procurement assessment panel was convened, consisting of two officers. Despite the tender arguably being a tier 3 procurement because of its value, this assessment panel did not comprise the requisite three members.
19. The draft Value for Territory spreadsheet prepared by the procurement assessment panel awarded the highest score to Contractor A. However panel assessment notes indicated that Contractor B was the successful tenderer, acknowledging that it was not awarded the highest points score.
20. After advice from the NT Government Procurement Service, the draft spreadsheet was altered by the panel to show Contractor B as the highest scorer. Contractor B was then awarded the tender.
21. The investigation that followed was into the conduct of the two public officers on the procurement assessment panel. Those officers, together with two other Northern Territory Government officers, one of whom was an experienced procurement advisor, were examined before me.

## Findings of improper conduct

22. On the balance of probabilities, I find that there was insufficient evidence of unsatisfactory conduct as defined by section 12 of the *Independent Commissioner Against Corruption Act 2017* (NT), against either of the public officers on the procurement panel in relation to the procurement process.
23. Unsatisfactory conduct must cause one of four negative outcomes:
- substantial mismanagement of public resources
  - inappropriate or significantly inefficient use of public resources
  - substantial mismanagement in relation to the performance of official functions, or
  - substantial detriment to the public interest.
24. In the circumstances, I find that the conduct of the two public officers did not cause any of the four negative outcomes.
25. However, I find that the officers had engaged in conduct that did not comply with the rules and governance of the procurement function, best described as failing to adhere to best practice. The officers effectively conceded this during their respective evidence before me.

## Corruption prevention

26. Procurement is a significant risk area for the Northern Territory Government (NTG). This is consistent with experience in integrity agencies across Australia and internationally. Approximately 20 per cent of reports to OICAC concern procurement.
27. In the Northern Territory, published data indicates that the NTG procures \$1 billion of goods and services annually. That creates a serious risk of improper conduct if fraud and corruption controls; and procurement legislation, policies and rules are not fit for purpose, out of date, or not complied with.
28. This procurement demonstrated that the NTG procurement guidelines and related documents are either not fit for purpose or poorly understood by public officers—or both.
29. This investigation served to reinforce the personal responsibility borne by every public officer to comply with relevant policies and procedures.
30. A procurement assessment panel is convened for a reason and should exercise its responsibilities accordingly. The Northern Territory Government Procurement Framework is clear [emphasis added]:

*All* government staff **must** follow the rules of procurement when buying goods and services.<sup>1</sup>

31. This matter is yet another reminder of what successive Auditor-Generals' compliance and procurement audit reports have found over the past 10 years, specifically:

June 2020 – Department of Local Government, Housing and Community Development – *Room to Breathe* remote housing – non-compliance with procurement policies

June 2020 – selected agencies – compliance audit – lack of compliance with Procurement Directions and policies

August 2019 - Territory Families – procurement compliance – control deficiencies, weaknesses and non-compliance

August 2019 – selected agencies – compliance audit – lack of compliance with Procurement Directions and policies

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<sup>1</sup> <https://nt.gov.au/industry/procurement/how-procurement-works/procurement-framework>

March 2019 – Department of Housing and Community Development – Performance Management – Procurement Compliance – non-compliance with procurement rules – control deficiencies and weaknesses

August 2018 – Department of Trade, Business and Industry – Darwin ship lift project – procurement process

August 2018 – selected agencies – compliance audit – lack of compliance with Procurement Directions and policies

November 2017 – Department of Infrastructure, Planning and Logistics – Indigenous Employment Provisional Sum – control weaknesses in procurement

August 2017 – selected agencies - compliance audit – lack of compliance with Procurement Directions and policies

March 2017 – Department of Infrastructure, Planning and Logistics – procurement review – non-compliance with Procurement Directions

June 2016 – selected agencies – construction of Palmerston Hospital – governance of procurement process

June 2016 – selected agencies – compliance audit – lack of compliance with Procurement Directions and policies

October 2015 – selected agencies – compliance audit – lack of compliance with Procurement Directions and policies

October 2014 – selected agencies – compliance audit – lack of compliance with Procurement Directions and policies

October 2013 – selected agencies – compliance audit – lack of compliance with Procurement Directions and policies

October 2012 – Department of Lands and Planning – Mandorah Ferry Service – procurement conduct review – procurement process investigation

October 2012 – selected agencies – compliance audit - lack of compliance with Procurement Directions and policies

October 2011 – selected agencies – compliance audit – lack of compliance with Procurement Directions, Treasurer’s Directions and procurement policies – also Procurement Review – Key Findings

October 2010 – selected agencies – compliance audit – lack of compliance with Procurement Directions, Treasurer’s Directions and procurement policies.

32. I note that the Auditor-General regularly attends meetings of the Public Accounts Committee of the Northern Territory Legislative Assembly, and provided advice to that Committee on three occasions between August 2019 and March 2020.
33. Noting that the Northern Territory Government is currently undertaking a review of procurement, the following recommendations are made.

# Recommendations

It is recommended that:

## Recommendation 1:

Procurement review and reform should remain a government priority, with firm timelines set and adequate resources to deliver the reform.

## Recommendation 2:

The review should consider corruption risks in procurement and allocate necessary resources to incorporate prevention and detection into any reforms.

## Recommendation 3:

The review should consider the findings and recommendations from previous Auditor-Generals' reports on procurement compliance and incorporate these findings into any reforms.

## Recommendation 4:

The review should focus on simplifying the existing procurement processes to achieve workability and compliance by public officers undertaking 'casual' or 'occasional' procurement.

## Recommendation 5:

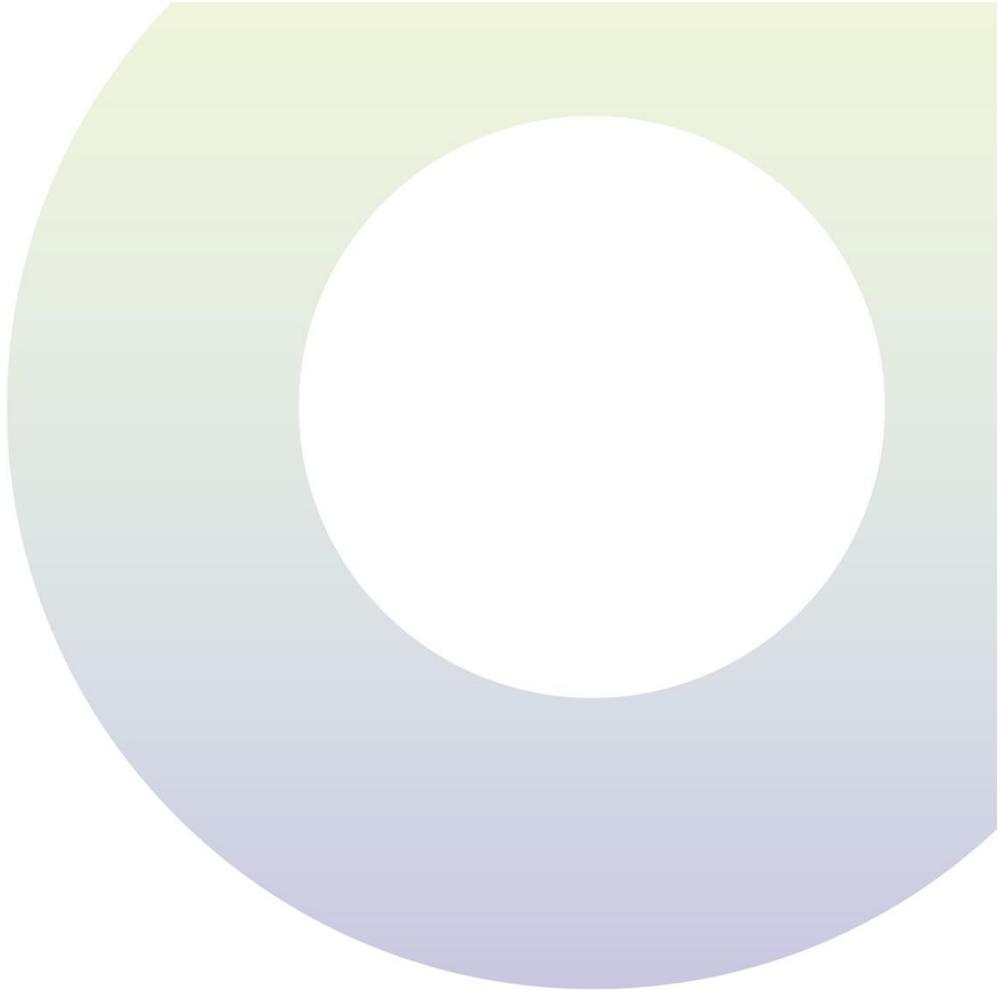
That Procurement NT review the Procurement Capability Framework with NTG agencies to determine agency requirements for procurement roles, skills, capability and training.

## Recommendation 6:

That a procurement communication and engagement strategy be developed to ensure timely and regular sharing of procurement training, advice, resources, and updates to relevant stakeholders across government.

## Recommendation 7:

The Office of the Commissioner for Public Employment, Department of Corporate and Digital Development and Procurement NT undertake a systemic review of all procurement, ethical decision making and fraud and corruption prevention training across government, and report to Government on a recommended training delivery framework.



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