

ORIGINAL PAPER

No. 770  
Laid on the Table  
14 / 2 / 2023

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14 / 2 / 23  
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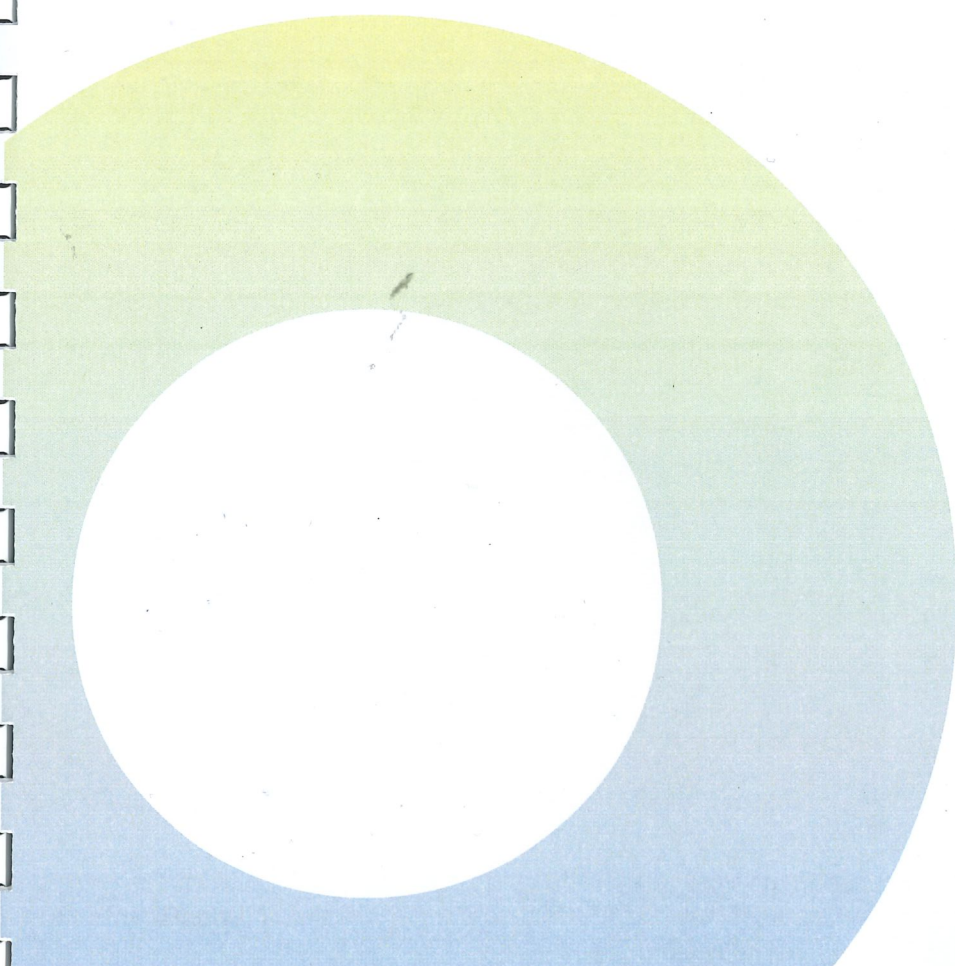
# General Report

Review of Batchelor Institute of Indigenous Tertiary Education

*Speake*  
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**Michael Riches**  
Independent Commissioner Against Corruption

January 2023



Office of the  
Independent  
Commissioner  
Against  
Corruption NT



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## Letter of transmittal

The Honourable Mark Monaghan MLA  
Speaker  
Legislative Assembly of the Northern Territory

Dear Mr Speaker

I submit a report in accordance with section 48 of the *Independent Commissioner Against Corruption Act 2017* (NT) (ICAC Act).

In accordance with section 49(3) of the ICAC Act, I recommend that this report be made public immediately. If you do not accept the recommendation then I note section 49(2) of the ICAC Act requires you to table the report in the Legislative Assembly within 6 sitting days after you have received it.

Yours sincerely

A handwritten signature in black ink, consisting of a stylized 'M' and 'R' followed by a long horizontal line extending to the right.

Michael Riches  
Independent Commissioner Against Corruption

31 January 2023

## Introduction

Section 48(1)(a) of the *Independent Commissioner Against Corruption Act 2017* (ICAC Act) permits me to make a general report in relation to an audit or review carried out under section 23 of that Act.

Section 48(4) of the ICAC Act states that I may provide my report to 'a public body or public officer that the ICAC considers would be assisted by the report' or 'the Speaker of the Legislative Assembly'.

While my review related to the practices, policies and procedures of the Batchelor Institute of Indigenous Tertiary Education (the Institute), many of the matters I identified in that review will be of relevance to a broad range of other public bodies. Accordingly I have decided to make this report to the Speaker of the Legislative Assembly, so that its content can be considered more broadly. To that end the purpose of this general report is to educate, not to punish or embarrass.

## Audits or reviews

I think it appropriate to comment briefly about an audit or review under section 23 of the ICAC Act. Section 23(1) of the ICAC Act provides that I may, at any time, 'audit or review the practices, policies or procedures of a public body or public officer to identify whether improper conduct has occurred, is occurring or is at risk of occurring'.

The power to conduct an audit or review of this kind is very important. It allows me to probe deep within an organisation's processes to identify whether improper conduct has been, or is, occurring. Most importantly, in my view, it allows me to identify risks of improper conduct and to make recommendations for corrective action.

An audit or review of policies, practices and procedures is not an investigation into individual conduct. If matters of suspected improper conduct are identified in the course of a review, those matters are considered separately and in accordance with the ICAC Act.

On concluding an audit or review, I am required to provide a report in relation to the results of the audit or review to the person responsible for the public body, or the public officer who is subject to the audit or review.

On 17 June 2022 I provided my review report to the Institute. My report included 27 recommendations. On 19 September 2022 I was advised that the Institute had accepted all of my recommendations and had commenced a process for implementation. I am pleased that the Institute has committed to implementing my recommendations and I look forward to observing its progress.

## The review

I decided to conduct a review of the Institute after becoming aware of a number of reports made to my office, alleging various forms of impropriety and unsatisfactory process. I was also aware, having read information from a range of sources, that the Institute had experienced a period of what I will describe as turbulence, in respect of its leadership, financial sustainability and operations. Indeed, discussion about conducting a review of the Institute had occurred in my office prior to my commencement.

In all of the circumstances, I decided that it would be in the public interest that I conduct the review.

The review included interviews with current and former staff, meetings with executive leaders and a review of a substantial volume of documents.

It is appropriate that I acknowledge and express my appreciation to those staff, both past and present, who assisted in the review. I note, in particular, the cooperation of the former Chief Executive Officer, Mick Gooda, and the support given by the Chair of the Institute's Council.

My subsequent report addressed the following broad themes:

- governance framework, including policy approval and accessibility
- codes of conduct
- risk management and controls
- management of conflicts of interest
- recruitment
- performance management and training
- corporate culture.

In this report I will identify what I consider to be the salient lessons arising from this review which ought to be considered by all public bodies.

## A framework for a solid foundation - policies

In my view, there are two fundamental criteria underpinning high performing agencies. The first is an embedded framework that establishes clear direction, expectation and guidance for staff. The second is a corporate culture of respect, accountability and excellence.

In my experience, the likelihood of impropriety occurring in an agency is amplified where one, or often both, of these fundamentals are missing.

Staff in public bodies should expect to have ready access to guidance that is clear, unambiguous, up-to-date and which outlines the agency's principles, rules and expectations. An effective suite of policies<sup>1</sup> is often relied upon to provide the source of that guidance.

In the past I have observed the development of policies and guidelines that overlap, repeat or even conflict with each other. Conflicting policies are particularly problematic, creating ambiguity as to the 'correct' approach to particular activities or duties. I have also observed policies that are inaccessible to staff, or documents that have not been reviewed for so long as to no longer represent the practices of the agency. In such circumstances it is unsurprising that adherence to policies falls away, meaning that consistency and control is lost.

It is often the case that agencies will decentralise the creation and approval of policies, leaving it with individual work group leaders to determine policies. While there may be merit in such an approach, the effect is to create an environment where inconsistency in language, duplication and conflict can arise. While work groups should have a significant role in defining the content of a policy, there needs to be some centralised role in reviewing and approving such documents.

For those reasons a clear and robust policy governance framework, which ensures a consistent and disciplined approach to the creation, approval, dissemination and review of policies, is important.

I identified a number of deficiencies in the way policies were developed, approved and promulgated within the Institute. Those deficiencies included a lack of centralised control of the content and consistency of policies, the failure to conduct timely reviews and a lack of sufficient processes to ensure easy access by staff.

Accordingly I made the following recommendations:

1. The Institute should establish a mechanism to ensure that any new or amended policy is either drafted by, or considered by, a central body prior to submission for approval.
2. All organisational policies and procedures should be approved by the Institute's Council or executive team.
3. Steps are taken to ensure the BIITE Policy Library is a single, central electronic location accessible by all Institute staff.
4. Steps are taken to ensure the BIITE Policy Library contains only those policies and procedures that have current operation.
5. Steps are taken to ensure the content of the BIITE Policy Library can be easily searched to identify guidance relevant to any particular issue.
6. A dissemination and training strategy accompanies the approval of any new or amended policy.
7. The Institute, as a matter of priority, conduct a wholesale review of its policies to ensure contemporary relevance, consistency and clarity.

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<sup>1</sup> For present purposes the reference to policies includes reference to subordinate documents such as procedures and guidelines.

Similarly, I observed that Codes of Conduct developed for both council members and Institute staff had not been reviewed and updated for an extended period.

I made the following recommendations:

8. The Council should review the Staff Code of Conduct to ensure its content is relevant and meets contemporary expectations and needs.
9. The Council should review the Council Members Code of Conduct to ensure its content is relevant and meets contemporary expectations and needs.

## Financial controls and risk management

In the early stages of this review I was assisted by Bentleys Advisory consultants (Bentleys). Bentleys conducted a review of financial management controls within the Institute and identified a number of anomalies, including observed workarounds of existing policy requirements, at least one occasion of an apparent failure to abide by statutory obligations in respect of a loan, failures to adhere to delegations and an absence of controls relating to accounts payable processes.

Nevertheless, of the 103 financial management controls reviewed by Bentleys, 79 were found to be effective or mostly effective.

Public bodies have an obligation to manage effectively the public resources for which they are responsible. Robust controls for the management of public finances is critical, not only to ensure the efficient use of money to advance the objectives of the body, but to minimise the risk of impropriety associated with those resources.

The anomalies identified in this review are likely the product of:

- turnover of key staff
- a lack of understanding or awareness of process amongst existing staff
- poor systems
- inadequate oversight and review to ensure compliance.

Of course, those drivers would not be unique to the Institute. Such issues are likely repeated in numerous public bodies, and consideration should be given to how those issues can be addressed.

As a part of this review, the past two years of minutes from the Institute's Finance, Audit and Risk Management Committee were reviewed.

It was observed that while risk management had been discussed at some meetings, it was not a standing agenda item. It was also noted that in November 2020 there was discussion about a risk management optimisation project, however that project does not appear to have materialised.

I made four recommendations related to financial controls and risk management:

10. The Institute conducts a review of all financial controls contained within policies, procedures, guidelines and delegations, to ensure those controls are adequate and appropriate for the Institute's contemporary operations.
11. Include in new staff induction programs information about relevant policies and procedures, and how those policies and procedures may be identified and accessed.
12. The Institute develops an internal controls framework that can form a Controls Self-Assessment (CSA) tool for regular internal assessment of controls, identifying on an annual basis the level of compliance and key areas for improvement.
13. The Financial, Audit and Risk Management Committee (FARMC) include risk management as a standing item on its agenda.

## Conflicts of interest

In its simplest form, a conflict arises where an individual's personal interests conflict with the individual's official duties. It is inevitable, particularly in a relatively small jurisdiction such as the Northern Territory, that conflicts of interest will arise from time to time.

The existence of a conflict of interest is, in itself, not problematic. As I have said, such conflicts will inevitably arise. The problem arises when those conflicts are not properly dealt with. A conflict of interest must be:

- identified; and
- disclosed; and
- managed.

During the course of this review I identified some limitations in the Institute's enabling legislation as it relates to conflicts of interest.<sup>2</sup> While the BIITE Act includes provisions relating to conflicts of interest, those provisions apply only to 'the Council, a Council committee or the Board'.<sup>3</sup> That means that most Institute staff are not subject to those provisions.

Moreover, the provisions address only pecuniary interests. They do not address other interests, such as familial or social interests. As a consequence, a member of the Institute's Council could conceivably sit on a selection panel where an applicant is a close family member, and the conflict of interest provisions in the BIITE Act would have no application.

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<sup>2</sup> *Batchelor Institute of Indigenous Tertiary Education Act 1999* (BIITE Act).

<sup>3</sup> See sections 3, 26 and 26A.



The existing, although quite outdated, Code of Conduct for Council Members addresses conflicts of interest in a broader sense, in that interests can extend beyond pecuniary interests to include personal interests.<sup>4</sup> However, that Code provides little guidance as to how conflicts ought to be managed once identified and disclosed.

The Staff Code of Conduct does not actually define the nature of interests that are captured, and the Institute did not, at the time of conducting the review, have a conflict of interest policy.

I made the following recommendations in respect of conflicts of interest:

14. An Institute wide policy and procedure is developed and implemented requiring staff, not captured by the disclosure of interests requirements in the BIITE Act, to disclose such categories of interests as are articulated in the policy.
15. The policy and procedures should include information about the nature of interests to be disclosed, the circumstances in which a conflict of interest must be disclosed, to whom such disclosures are to be made and how decisions will be made as to how such conflicts will be managed.
16. The policy and procedure must address administrative process such as how information about interests and conflicts will be stored and how they will be reviewed.
17. The Institute develop and deliver training to staff about the identification, disclosure and management of conflicts of interest.

## Recruitment

Recruitment and appointment were the most prominent issues raised by current and former Institute staff spoken to during the review.

Actual or perceived impropriety in recruitment can have a tremendous impact upon the culture of an organisation. Confidence in the senior leadership of an organisation may decrease where recruitment processes have occurred, or are perceived to have occurred, outside established processes.

There were a number of occasions identified where a recruitment process appeared to have occurred contrary to policy. Such occasions included direct appointment of staff without a selection process.

I do not suggest that a selection process must be undertaken in respect of every appointment. There may be unique occasions where a direct appointment is appropriate, provided of course the appointment is still meritorious, and not driven by some personal interest.

The difficulty that arises is where such appointments are made without any documented explanation as to why that course was taken. Making a written record about departures from established process has two benefits. First, it ensures there is a permanent record of the decision-maker's reasoning, which can be particularly useful where an inquiry might be convened

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<sup>4</sup> Such as familial or social interests.

to assess allegations of impropriety in the process. Second, the very process of distilling reasons into writing forces the decision-maker to confront directly the propriety of the decision itself.

As I have said, perceived anomalies in selection processes can have a devastating effect on workplace morale and can lead to mistrust of the organisation's leadership. Great care must be taken to ensure such processes are, and are seen to be, fair and ethical.

I made three recommendations in respect of recruitment:

18. Approval to depart from the Institute's standard recruitment process should only occur after consideration by the executive team.
19. Where a decision is made to depart from the Institute's standard recruitment process, detailed reasons for that decision must be recorded in writing by the decision maker.
20. To the extent that training does not currently occur, any staff member who is to sit on a recruitment panel ought to be required to participate in dedicated recruitment training.

## Performance review and development

An effective performance review and development program supports a culture of respect, accountability and excellence. A formal, consistent and regular performance review process applicable to all staff will assist to ensure expectations are being met and that organisational values are being modelled.

Indeed, the Institute's Enterprise Agreement sets out the performance development cycle applicable to Institute staff.

During the course of the review it became apparent that the performance development clauses in the Enterprise Agreement had been largely ignored, and that little by way of performance development was occurring.

I am confident that there are other public bodies where a similar observation could be made.

I made the following recommendation:

21. The Institute applies the performance development processes to every staff member as required by the Enterprise Agreement.

## Training

A number of issues identified during the course of the review might indicate a lack of sufficient training and structured professional development for staff. It is critical that staff are invested with the knowledge and skills necessary to perform their roles, and to model organisational expectations and values.

I recommended that:

22. The Institute develops and delivers a training program aimed at informing staff of their ethical responsibilities, reporting requirements, whistleblower protections and management of improper conduct.

23. The Institute ought to implement a leadership and governance training program for all staff who have management or governance responsibilities.

## Corporate culture

I am firmly of the view that the single most important anti-corruption measure is a corporate culture where respect, accountability and excellence is embraced. Corporate culture relies heavily on the willingness of managers to model appropriate behaviours, champion organisational expectations, and call out and deal with conduct that falls short of those expectations.

Indeed, the importance of corporate culture was recognised by the Northern Territory Parliament. Section 8(2) of the ICAC Act states that a public body engages in conduct if:

- (c) the conduct occurs and a corporate culture exists in the public body that directs, encourages, tolerates or leads to it occurring; or
- (d) the conduct occurs and the public body has failed to create and maintain a corporate culture to deter or prevent it from occurring.

A number of current and former Institute staff described the Institute's corporate culture in negative terms. Improving the Institute's corporate culture is critical.

A positive corporate culture takes time and significant investment. Senior leadership must set the organisational tone. They do so by having shared objectives and values. They must collectively insist on standards of behaviour and be willing to deal with departures from those standards. Of course senior leaders themselves must model the behaviours and standards expected of others.

The attitudes and behaviours modelled by leaders not only influences the attitudes and behaviours of staff, but will also impact upon their job satisfaction and their commitment to the organisation. Staff look to their leaders to set the standard, to value their contribution and to motivate and encourage them to perform. Poor leadership, disenfranchisement of staff and dissatisfaction with the work environment create an organisation more vulnerable to improper conduct.

I made the following recommendation:

24. The Council, and the executive team, commit to such steps as are necessary to ensure shared values and objectives underpin and support improvements to the Institution's corporate culture.

I encourage leaders in every public body to consider their organisation's corporate culture and, to the extent necessary, how it can be improved.

## Other matters

During the course of the review I identified some other issues.

### *Assets*

Some irregularities were identified in respect of the management of the Institute's assets. Asset logs did not appear to be properly maintained and information was missing in respect of certain assets. A number of assets, including artworks, had been recorded as missing. Mobile telephones were still recorded against staff who were no longer employed in the Institute.

Accordingly I recommended that:

25. The Institute's asset management register ought to be reviewed to ensure accuracy and completeness.

### *Procurement*

During the review a number of procurement activities were reviewed. In many cases important documents were missing and there was a lack of information as to how certain suppliers had been selected.

Procurement is universally regarded as a high risk activity susceptible to corruption. It follows that procurement processes must be strictly applied and that adequate records are maintained justifying procurement decisions.

I recommended that:

26. The Institute reinforce to all staff the need for strict compliance with procurement policies and procedures.

### *Institute Advisory Board*

Section 24 of the BIITE Act establishes the Institute Advisory Board. The Board has a number of statutory functions, as set out in that section. The Board is required by statute to meet at least four times per calendar year.

During the course of the review it became apparent that the Board was not in existence, and had not been for some time.

I was told, albeit anecdotally, that a Minister of the Crown had 'authorised' the Institute to operate without the Board. I do not know whether that is in fact the case. Of course, a Minister of the Crown cannot 'authorise' a public body to disregard a legislative provision. There is nothing in the BIITE Act that would empower a Minister, or any person, to permit a legislative provision to be ignored. To the extent that such authorisation was given, it was meaningless.

To that end, I recommended that:

27. The Institute Advisory Board should be reconstituted to comply with legislation.

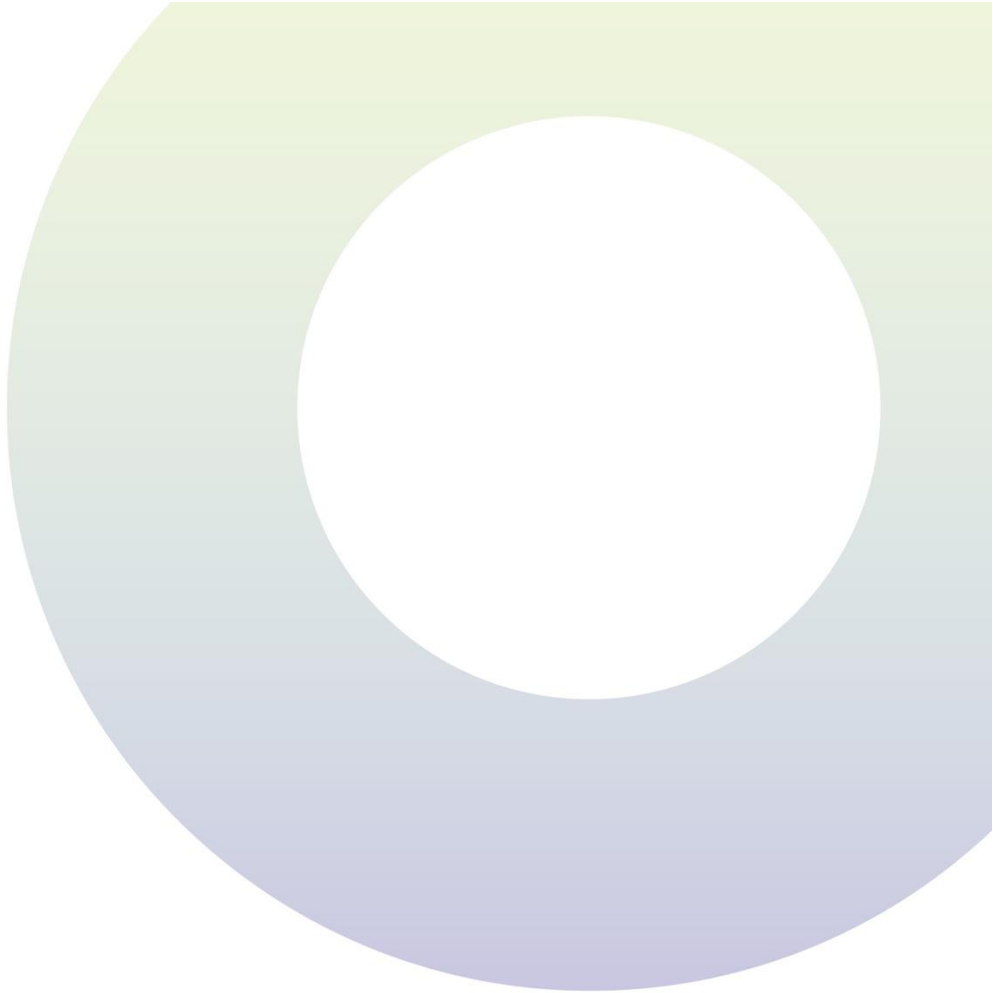
## Concluding remarks

I will continue to monitor the progress made by the Institute in implementing my recommendations.

As I indicated at the outset, the purpose of this General Report is educational. It is not to punish or embarrass the Institute. A great many of the issues identified during this review will exist in other public bodies. For that reason, I hope the review will not only assist the Institute, but other public bodies who take the opportunity to consider the content of this report.

To that end I will assist any public body to improve its anti-corruption efforts to the extent that my resources will allow.

I express my gratitude to Eric Vo of my office who assisted in the preparation of this report.



Contact the ICAC

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