

Investigation Report

Operation Tasman

Alleged improper conduct in respect of the use of leave entitlements by a senior public officer

Section 50(1) of the *Independent Commissioner Against Corruption Act 2017*

Redacted and anonymised

February 2025

Office of the
Independent
Commissioner
Against
Corruption NT



Office of the Independent Commissioner Against Corruption (NT)
GPO Box 3750
DARWIN NT 0801

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

For formal complaints or reports, call 1800 250 918 or email report.submission@icac.nt.gov.au.

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This report

- [1] This report is made pursuant to section 50 of the *Independent Commissioner Against Corruption Act 2017* (ICAC Act). Section 50(1) states,

The ICAC may make a report (an investigation report) on an investigation to a responsible authority for a public body or public officer whose conduct is the subject of the investigation.

Section 50(7)(a) defines a responsible authority as,

for a public body or public officer other than a minister or an MLA:

(i) an entity having authority to deal with one or more matters relating to improper conduct the subject of the investigation to which the report relates; or

(ii) an entity whose functions include making future decisions in the public interest that may be better informed by receipt of the investigation report;...

- [2] This report will be provided to the Chief Executive Officer (CEO) of the relevant public body, as the public officer responsible for dealing with the improper conduct the subject of this investigation report.¹
- [3] This report will also be provided to the Commissioner for Public Employment (CPE) as the public officer whose functions include making future decisions in the public interest that may be better informed by receipt of this investigation report.²
- [4] Section 50(3) states that an investigation report may 'contain as much information as the ICAC considers appropriate in relation to the subject matter of the investigation to which the inquiry relates.' Not all the evidence collected throughout the course of the investigation has been included in this report. However sufficient information has been included so that the allegations can be understood and the basis for the findings and recommendations.
- [5] An investigation report may contain recommendations.³ There are four recommendations made as a result of this investigation.⁴
- [6] This is a redacted and anonymised version of the report. It is appropriate and in the public interest to publish this report to bring awareness of improper conduct in the use of leave entitlements by public officers, and the requirement for public bodies to ensure leave entitlements are used in accordance with the relevant By-laws, Enterprise Agreements (EA) and CPE Determinations. Leave must be appropriately approved and recorded.

Introduction

- [7] On 31 May 2022 Commissioner Riches commenced an investigation, based on information he was aware of, that if true, tended to show improper conduct had occurred. The improper conduct related to the misuse of leave entitlements by a public officer on an Executive Officer Contract (the public officer). This information was brought to the attention of the Commissioner as a result

¹ *Independent Commissioner Against Corruption Act 2017* (NT), s50(1).

² *Independent Commissioner Against Corruption Act 2017* (NT), s50(7)(a)(ii).

³ *Independent Commissioner Against Corruption Act 2017* (NT), s56.

⁴ *Independent Commissioner Against Corruption Act 2017* (NT), s56(3).

of an investigation into other allegations of improper conduct unrelated to this matter. That investigation has since been finalised.

- [8] On 5 July 2022 the Deputy Commissioner, as a delegate of the ICAC, adopted the investigation in accordance with section 31 of the ICAC Act.⁵
- [9] The allegations were categorised in two ways, namely,
- (i) Instances where the public officer was absent from work but had not submitted an application for leave through the MyHR system; and
 - (ii) Instances where the public officer had submitted an application through the MyHR system for personal leave without a medical certificate, but documentary records tended to show that he had used that leave entitlement for a purpose inconsistent with his conditions of employment. The more appropriate leave entitlement would have been recreational leave.

Background

- [10] In 2021, Commissioner Riches commenced an investigation into a public body regarding improper conduct. During that investigation the emails of a number of public officers were examined, including the public officer the subject of this investigation.
- [11] Information contained within the emails of the public officer indicated that on a number of occasions during the period 18 January 2018 and 31 May 2021, the public officer had misused leave entitlements afforded to him as a public officer.
- [12] It was identified that on six occasions, the public officer had represented that he was unwell and would not attend the workplace. On those occasions he submitted an application through the Northern Territory Government human resources and payroll system (MyHR) for personal leave without a medical certificate. Information obtained during the investigation showed that on those six occasions the public officer had been absent from work and that he had used the day to participate in recreational activities.
- [13] On a further nine occasions, the public officer was absent from the workplace and did not submit an application through the MyHR system for leave.

Legislative basis for investigation

- [14] Section 31 of the ICAC Act sets out the legislative basis for commencing an investigation. That section states,

The ICAC may commence an investigation if the ICAC has, or is aware of, information that, if true, would tend to show that improper conduct has occurred, is occurring or is at risk of occurring.

- [15] In determining whether to exercise the discretion to conduct an investigation, consideration must be given to acting in the public interest and the matters set out in Schedule 1.⁶

⁵ *Independent Commissioner Against Corruption Act 2017* (NT), s31.

⁶ *Independent Commissioner Against Corruption Act 2017* (NT), s20

Standard of proof and *Briginshaw*

- [16] In determining facts and making findings, the Deputy Commissioner, as delegate of the ICAC is bound by the civil standard of proof, that being the balance of probabilities. In making findings on the balance of probabilities, regard has been had to the principles enunciated in *Briginshaw v Briginshaw*.⁷

Executive Contract Officer

- [17] On 2 August 2017, the public officer signed an employment contract as an Executive Contract Officer for the period 1 January 2018 to 31 December 2021. That contract is to be read with the conditions set out in *Determination 13 of 2011* made pursuant to the *Public Sector Employment and Management Act 1993* (NT).
- [18] On 8 July 2021, the public officer signed a further contract for the period 1 January 2022 to 31 December 2025 as an Executive Contract Officer. This contract is also required to be read with the conditions set out in *Determination 5 of 2019* made pursuant to the *Public Sector Employment and Management Act 1993* (NT).
- [19] The conduct the subject of this investigation occurred during the period of these two contracts.
- [20] The conditions in *Determination 13 of 2011* made pursuant to the *Public Sector Employment and Management Act 1993* (NT) were adopted in *Determination 5 of 2019*, which replaced the earlier Determination.

Personal / Carer's Leave

- [21] Executive Contract Officers accrue three weeks personal / carer's leave per Employment Year.⁸ This leave accumulates from year to year.
- [22] An Executive Contract Officer may use their personal / carer's leave entitlement without providing a medical certificate/ documentary evidence, up to a maximum of five (5) days per Employment Year, provided no more than three (3) of those days are consecutive. This is set out at paragraph 39 of *Determination 13 of 2011* and paragraph 38 of *Determination 5 of 2019*.⁹
- [23] Paid personal / carer's leave can be taken by the Executive Contract Officer for a "personal illness or injury, or where the Executive Contract officer is required to provide care or support for a member of his/her immediate family or household because of personal illness, injury or an unexpected emergency affecting the member".¹⁰
- [24] An Executive Contract Officer must make all reasonable effort to advise the Employer as soon as reasonably practicable on any day of absence from his/her employment.¹¹

⁷ (1938) 60 CLR 336.

⁸ "Employment Year" is defined in *Determination 13 of 2011* and *Determination 5 of 2019* as "means each consecutive twelve (12) month period of service from the date of commencement of Contract."

⁹ *Determination 5 of 2019*, [39]

¹⁰ *Determination 13 of 2011*, [40].

¹¹ *Determination 13 of 2011*, [41].

Recreation leave

- [25] An Executive Contract Officer progressively accrues five (5) weeks paid recreation leave per Employment Year.¹²
- [26] The Employer may, on application in writing by the Executive Contract Officer, grant leave for recreation purposes, subject to the Employer's operational requirements.¹³

Termination for reason of misconduct or illness etc

- [27] *Determination 13 of 2011* states an Executive Contract Officer may be terminated for one or more reasons including,¹⁴
- (i) for committing any serious or persistent breach of the express or implied terms or conditions contained in a Contract;¹⁵
 - (ii) for having seriously misbehaved, committed serious misconduct or serious neglect in the discharge of his or her duties;¹⁶
- [28] The same conditions are adopted in *Determination 5 of 2019*, made pursuant to the *Public Sector Employment and Management Act 1993* (NT), which replaced *Determination 13 of 2011*.¹⁷

Submission of leave applications

- [29] The process for applying for use of leave entitlements requires the Executive Contract Officer to submit electronically, through the MyHR system, an application to use leave. That application is sent in the MyHR system to the employee's nominated supervisor / delegate for the application to be actioned. The employee will then be notified by email of the status of their leave application. An employee is also able to check the status of their leave application by accessing MyHR and viewing the application in the "Current Applications" section.

Evidence collected

- [30] On 1 May 1995, the public officer commenced working in the Northern Territory Government as a contractor. On 19 November 2004, the public officer moved into the Administration Officer (AO) stream with the classification of AO7. The public officer progressed through the classifications attaining Senior Administration Officer 1 (SAO1) classification on 1 July 2013. During this time the public officer held various roles.
- [31] On 1 January 2018 the public officer commenced in the Executive Contract Officer (EO2C) position. On 8 July 2021, the public officer signed a further contract which meant he would continue as in the Executive Contract Officer position until 31 December 2025.

¹² *Determination 13 of 2011*, [46] and *Determination 5 of 2019*, [45].

¹³ *Determination 13 of 2011*, [47] and *Determination 5 of 2019*, [45].

¹⁴ *Determination 13 of 2011*, [113].

¹⁵ *Determination 13 of 2011*, [113.1]; contract is defined in *Determination 13 of 2011* and *Determination 5 of 2019* as "means a Contract made pursuant to this Determination and nominated as an Executive Contract of Employment."

¹⁶ *Determination 13 of 2011*, [113.2].

¹⁷ *Determination 5 of 2019*, [112].

- [32] The public officer's emails were obtained which showed; the planning of fishing trips in advance of the day which he advised work he was unwell and would not be in, holidays interstate at the casino, travelling interstate for golf days and day trips to Litchfield. There were flight and accommodation bookings and photographs of trips taken attached to emails sent and received.
- [33] The public officer used his NTG email for personal matters and as such there were numerous emails evidencing social activities and personal relationships.
- [34] Calendar entries from the public officer's email account were obtained as well as financial records. The financial records showed his expenditure at various locations during the relevant period, confirming his movements and activities as evidenced in his emails.
- [35] The public officer participated in a voluntary interview at the Office of the ICAC on 12 July 2023, where he made voluntary admissions to some of the conduct.
- [36] The CE of the relevant public body provided a statutory declaration dated 1 September 2023.
- [37] Ms Vicki Telfer, who at the relevant time was the Commissioner for Public Employment, voluntarily provided information about the leave entitlements of an Executive Contract Officer.¹⁸
- [38] Counsel assisting prepared comprehensive written submissions.

Allegations

- [39] The allegations of misuse of leave entitlements by the public officer fall into two categories. The first category relates to six occasions where the public officer represented that he was unwell, he did not attend the workplace and submitted an application through the MyHR system for personal leave without a medical certificate. He then used the day to participate in activities of a recreational nature.
- [40] The second category relates to nine occasions when the public officer was absent from the workplace and engaged in activities of a recreational nature. On these occasions the public officer did not submit a leave application.

Investigation

Personal leave used for activities of a recreational nature

- [41] On 19 January 2018, the public officer sent an email to the office manager stating he was still unwell and would not be in the office. At that time the public officer was at the Star Casino in Brisbane, having flown there the previous day, 18 January 2018. The public officer returned to Darwin on 21 January 2018. On 22 January 2018, the public officer submitted through the MyHR system an application for personal leave without a medical certificate for Friday 19 January 2018. This was approved by his supervisor. In his voluntary interview, the public officer accepted that he did travel to Brisbane and stayed at the Star Casino on the dates. He could not provide a reason as to why he applied for personal leave without a medical certificate.

¹⁸ Letter from Commissioner for Public Employment, Vicki Telfer, dated 31 March 2023.

- [42] On 7 September 2018, the public officer sent an email to a staff member stating he would not be in as a cold had come on. That same day, the public officer went on a fishing trip with others. On 10 September 2018, the public officer submitted through the MyHR system an application for personal leave without a medical certificate for 7 September 2018. This was approved by his supervisor. In his voluntary interview, the public officer agreed that he went on the fishing trip and that it was an inappropriate use of personal leave.
- [43] On Saturday 8 December 2018, the public officer flew from Darwin to Alice Springs. He returned to Darwin on Monday 10 December 2018 arriving at 7.15pm. On Monday 10 December 2018, at 7.24 am, the public officer sent an email to a staff member stating he would not be in that day, indicating that he was unwell. On 11 December 2018, the public officer submitted through the MyHR system an application for personal leave without a medical certificate for Monday 10 December 2018. This was approved by his supervisor. In his voluntary interview, the public officer accepted that he travelled to Alice Springs and that he should have applied for recreation leave for 10 December 2018 and not personal leave without a medical certificate. The public officer agreed this day should have been entered as recreation leave but could offer no explanation as to why he did not do so.
- [44] On Monday 29 June 2020, at 7.34 am, the public officer sent an email to a staff member stating he was not feeling well and that he would not be in. The public officer went fishing on this day with others. On 30 June 2020, the public officer submitted through the MyHR system an application for personal leave without a medical certificate for Monday 29 June 2020. In his voluntary interview, the public officer was shown an email trail which commenced on 24 June 2020 between himself and a family member with the subject line: feel like a fish on Monday. The content of the emails were about planning a fishing trip for 29 June 2020. During his voluntary interview, the public officer said he went on a lot of fishing trips and did not specifically remember this trip. He accepted that he did go on this trip based on the email exchanges with his family member.¹⁹ The public officer agreed that a fishing trip was inconsistent with the purpose of personal leave without a medical certificate.
- [45] On Friday 5 February 2021, at 8.02 am, the public officer sent an email to a staff member stating he wasn't feeling well and that he would not be in. The public officer went fishing that day with others. On Monday 8 February 2021, the public officer submitted through the MyHR system an application for personal leave without a medical certificate for Friday 5 February 2021. This was approved. On the same day, a member of the public officer's family sent him some photos of the fishing trip via email. In his voluntary interview, the public officer was shown these photographs and was asked whether, on the basis of the data showing the photos were taken on 5 February 2021, did he accept that he did go on the fishing trip. The public officer responded "*Yeah and I don't look that sick there*".²⁰ In his voluntary interview, the public officer agreed that the use of personal leave without a medical certificate was inconsistent with the Determination.²¹ He agreed that on this occasion recreation leave was the more appropriate leave application.
- [46] On Friday 15 October 2021, at 6.39 am, the public officer sent an email to a staff member stating he wasn't well and that he would not be in. The public officer went fishing that day with others. On Monday 18 October 2021, the public officer submitted through the MyHR system an application for personal leave without a medical certificate for Friday 15 October 2021. This was approved. In his voluntary interview, the public officer accepted that he went fishing that day and

¹⁹ The public officer's voluntary interview of 12 July 2023 at pages 44 and 45.

²⁰ The public officer's voluntary interview of 12 July 2023 at page 47.

²¹ *Determination 5 of 2019*.

that the use of personal leave without a medical certificate was inconsistent with the Determination.

Absent from workplace and no leave application submitted

- [47] On 18 January 2018, the public officer flew from Darwin to Brisbane, departing at 12.50 am. At 5.04 am, the public officer sent an email to the office manager stating he was unwell and that he would not be in to work. The public officer stayed at the Star Casino Brisbane and returned to Darwin on Sunday 21 January 2018. The public officer did not apply for any type of leave for Thursday, 18 January 2018. During his voluntary interview the public officer agreed that he had undertaken the travel but could not provide an explanation as to why he did not submit an application for recreation leave.
- [48] On the weekend of 10 and 11 March 2018, the public officer stayed at the Point Stuart Wilderness Lodge on a fishing trip with others. The public officer returned to Darwin on Monday 12 March 2018 but did not attend his workplace or perform any work related to his employment. The public officer did not submit a leave application for 12 March 2018. During his voluntary interview the public officer was unable to provide an explanation as to why he did not submit a leave application for 12 March 2018.
- [49] On Friday 13 July 2018, the public officer flew from Darwin to Brisbane departing at 1.05 am. At 6.51 am, the public officer sent an email to a staff member stating that he would not be coming in to work that day. The public officer stayed at the Star Casino and returned to Darwin on Monday 16 July 2018. The public officer did not submit a leave application for Friday 13 July 2018. He did submit a recreation leave application through the MyHR system for 16 July 2018. During his voluntary interview the public officer was shown an email he had sent to a family member on 12 July 2018, "Btw, tomorrow is a mental health day just in case someone talks to you" which was sent in the context that the public officer was travelling to Queensland on 13 July 2018 to attend the Star Casino. The public officer accepted that he travelled to Brisbane and was not at work on 13 July 2018. He could provide no explanation as to why he did not submit a leave application for 13 July 2018.
- [50] Between 12 and 19 October 2018, the public officer attended the Masters Games in Alice Springs to play golf. The public officer arranged with his supervisor that he would apply for four days recreation leave and work two days from Alice Springs. This covered the period between 12 and 19 October 2018. The four days recreation leave was applied for and approved. On Monday 22 October 2018, the public officer returned to Darwin but was absent from the workplace. He did not engage in any work related to his employment on that day. The public officer did not submit an application for leave through the MyHR system for 22 October 2018. During his voluntary interview the public officer agreed that, although there was no approval for him to be away from work on Monday 22 October 2018, he had been in Alice Springs for both work and personal reasons. He couldn't recall if another arrangement had been made for this date. The public officer did not produce any evidence demonstrating an agreement regarding his absence from the workplace on Monday 22 October 2018.
- [51] On Friday 4 January 2019, the public officer travelled to Litchfield National Park. An out of office message on the public officer's NTG email address, sent on 4 January 2019, stated he is on recreation leave and returning on 7 January 2019. The public officer did not submit an application for leave through the MyHR system for Friday 4 January 2019. In his voluntary interview the public officer agreed that he should have submitted an application for recreation leave for that date.

- [52] On Friday 29 March 2019, at 8.55 am, the public officer sent an email to the office manager stating that he was not well and would not be in the office that day. He also said that he would be flying to Alice Springs the next day. The public officer flew to Alice Springs on Friday 29 March 2019 returning on the afternoon of Monday 1 April 2019. The public officer submitted an application for recreational leave through the MyHR system for Monday 1 April 2019. He did not submit a leave application for Friday 29 March 2019. In his voluntary interview the public officer agreed that he should have submitted an application for recreation leave for 29 March 2019.
- [53] On the afternoon of Friday 26 July 2019 (NT public holiday), the public officer flew to Brisbane and stayed at the Star Casino. He returned to Darwin at 1.35 pm on Monday 29 July 2019. The public officer did not submit a leave application for Monday 29 July 2019. In his voluntary interview the public officer agreed that he undertook this travel but stated that he may have completed a half day at work on Monday 29 July 2019 as his flight returned at 1.35 pm. The public officer could not recall if he did attend the office but agreed he should have submitted an application for recreation leave for either a half or full day. The public officer did not produce any evidence to support the suggestion he may have worked a half day. He did not have a specific recollection of having worked a half day.
- [54] On 12 March 2020, the public officer was absent from work on approved recreation leave. On 13 March 2020, at 7.36 am, the public officer sent an email to the office manager stating "... not feeling well, don't think it's corona, but picked up a sore throat and headache. I'll check my emails a bit later for anything urgent". The public officer did not submit an application for leave through the MyHR system for Friday 13 March 2020. In his voluntary interview, the public officer agreed that he had gone fishing on Thursday 12 March 2020, but did not accept that he had gone fishing on 13 March 2020. The public officer accepted that he was not at work on 13 March 2020 and should have submitted an application for leave.
- [55] Between 17 and 28 May 2021 the public officer had approved long service leave. The public officer flew to Cairns on 17 May 2021 and returned to Darwin on Monday 31 May 2021. The public officer did not submit an application for leave for Monday 31 May 2021. In his voluntary interview, the public officer agreed that he had not submitted an application for leave for 31 May 2021 and that he should have applied for an extra day of recreation leave after the long service leave.

Other relevant information

- [56] During the investigation emails were obtained showing the public officer was not only aware of the requirements for applying for recreation or personal leave but on occasions had instructed staff on how leave was to be correctly submitted. In an email dated 1 May 2018 from the public officer to another staff member, he wrote that he was "just not keen if people supplement rec days with sick days".²² In another email dated 24 September 2020, while reviewing a staff members request for personal leave, the public officer wrote "I prefer guys to use up sick leave for genuine reasons like this on cert and that way if they are just a bit off down the track they don't feel they need to attend or not get paid".²³ After being referred to these emails, the public officer, in his voluntary interview, was asked whether he agreed that staff should not use personal leave days for recreational purposes and he replied "Yeah, generally". He was further asked if he

²² Tab 200 of evidence brief.

²³ Tab 206 of evidence brief.

agreed that staff should not supplement recreational days with the use of personal leave and he replied "Yeah".²⁴

- [57] The work unit of the public officer uses a records database to manage contractors, record staff training, proposed leave and work from home arrangements. It allows the tracking of contractors and their availability. It also allows for the timesheets of contractors to be checked against their recorded availability in the database. Any proposed leave is then required to be submitted separately through the MyHR system.²⁵
- [58] During the investigation it was identified that on a number of occasions the public officer made plans to leave work at lunch time to engage in pre-planned recreational activities. This was evidenced by email correspondence and financial documentation. It was noted that on these occasions when the public officer left the office at or about lunch time, no application was submitted for recreation leave through the MyHR system. Whilst information was obtained about those occasions, no further consideration has been given to those instances and no findings have been made. Assuming there was prior agreement or approval for this to occur, then that approval process should be documented in writing and confirm the period for which the public officer would be out of the office.

Chief Executive Officer of the relevant public body

- [59] The then Chief Executive Officer of the relevant public body, Mr AA, advised that in approximately 2005/2006 the public officer commenced as a direct report to him. For the majority of time the public officer has been employed in the public body, he has directly reported to Mr AA. Mr AA stated that if a direct report was going to use personal leave and not be in the office that day, as a general rule, he would expect that person to let him know, even if it was by text message.
- [60] All leave applications are to be submitted through MyHR. Mr AA said he expects all of his direct reports to use MyHR to request and record authorisation for leave, and that expectation has been the "practice for many, many years".²⁶ If an application for leave has not been submitted through MyHR then it doesn't exist in MyHR which means it then does not exist on the Personnel Information and Payroll System (PIPS).²⁷ If it is not on PIPS then it cannot be deducted from an employee's entitlements.²⁸ It was Mr AA's view that "PIPS is the source of truth for leave balances and leave transactions for the Northern Territory Government".²⁹
- [61] Mr AA advised that if an employee had put in "a very strong contribution over a long period of time" and they asked for a Monday off to have a long weekend, then he might tell them to inactivate their leave application or he would tell them to not put in a leave day in recognition of their hard work, or if they had put in a leave day he would wait for the day to pass and then he would inactivate the application.³⁰ He did qualify this by saying the occasions when he would do

²⁴ The public officer's voluntary interview of 12 July 2023 at page 34.

²⁵ The public officer's voluntary interview of 12 July 2023 at pages 14 and 15.

²⁶ Statutory declaration of AA, dated 1 September 2023, [10] and [11].

²⁷ Statutory declaration of AA, dated 1 September 2023, [10] and [11].

²⁸ Statutory declaration of AA, dated 1 September 2023, [13].

²⁹ Statutory declaration of AA, dated 1 September 2023, [13].

³⁰ Statutory declaration of AA, dated 1 September 2023, [14].

this were few and far between. Mr AA advised he doesn't recall telling the public officer that "a day off was on us" but that it was possible he had.³¹

[62] Mr AA was asked about the records database used by the public officer's work unit. He said he did not have an intimate understanding of the records database but that he believed it was used to record leave and manage workload. Mr AA said he never looked at the records database and it is not a source of truth. He said that MyHR is the source of truth.

[63] Mr AA said that the public officer was not on call per se, but that if he called him at the weekend and he was in range he expected him to answer. He would never invade a person's private time unnecessarily, but that he had a reasonable expectation that due to the role and the type of service they were responsible for that they would answer.³²

Commissioner for Public Employment

[64] The former Commissioner for Public Employment, Ms Vicki Telfer, who was the relevant Commissioner during this period of this investigation was asked, if an Executive Contract Office (ECO) takes personal leave without providing medical or documentary evidence, for a purpose other than set out at [40] of *Determination 13 of 2011*, which is "an ECO may take personal leave for a personal illness or injury, or where they are required to provide care or support for a member of their immediate family or household because of personal illness, injury or an unexpected emergency affecting the member"³³ is this a misuse of the personal leave entitlement. Ms Telfer said, "it is correct that taking leave for any other reason may be a misuse of the personal leave entitlement". However, Ms Telfer added the caveat that "without particulars, however, it is difficult to be definitive".³⁴

[65] A follow up question was asked of Ms Telfer in relation to when a supervisor becomes aware that an ECO has taken personal leave without a medical certificate for a purpose other than set out at [40] of the Determination,³⁵ whether there is a requirement or expectation on the supervisor to make enquiries as to whether the entitlement has been used legitimately, that is in accordance with the terms of the Determination. Ms Telfer advised that "clause 5.1 of the NTPS Code of Conduct requires all public service officers to be accountable for their own actions and decisions. If a supervisor is approving leave, they are accountable for that decision and should take all reasonable steps to ensure the leave is for legitimate purposes".³⁶

[66] Information was sought from Ms Telfer in her role as the Commissioner for Public Employment to understand the position of the authority responsible for issuing the Determination relevant to the use of personal leave entitlements. The response from Ms Telfer highlighted the need for clear direction to public bodies and public officers as to what is a legitimate use of a personal leave without a medical certificate entitlement, as this entitlement is vulnerable to misuse. It is also an improper conduct risk.

³¹ Statutory declaration of AA, dated 1 September 2023, [28].

³² Statutory declaration of AA, dated 1 September 2023, [24].

³³ Which is mirrored in the earlier determination at [39] of *Determination 5 of 2019*.

³⁴ Letter from Ms Vicki Telfer to Ms Naomi Loudon dated 31 March 2023.

³⁵ *Determination 13 of 2011* and *Determination 5 of 2019*.

³⁶ Letter from Ms Vicki Telfer to Ms Naomi Loudon dated 31 March 2023.

Response from the public officer

- [67] On 9 January 2024 the public officer provided the Office of the ICAC with a written response to the submissions of counsel-assisting. The written response was dated 8 January 2024.
- [68] The public officer suggested that the use of the records database as the pre-approval process for leave, led to instances where staff had forgotten to submit an application for leave through the MyHR system, but that this had been recognised through audits. He explained that he is not audited by anyone, the inference being that this is why his failure to submit a leave application through MyHR was not identified and brought to his attention. This investigation has focused on the misuse of leave entitlements by the public officer. There is no evidence to suggest there have been other instances where staff have entered their leave in the records database but not in MyHR other than the assertion from the public officer. This explanation fails to take account of two issues. Firstly, the public officer has been employed in the NTPS since at least 2005 and for a significant period of time has been required to submit applications for leave through the MyHR system. Secondly, it fails to explain why on six occasions the public officer submitted an application for personal leave without a medical certificate, when the appropriate leave was recreation which he acknowledged and agreed during his voluntary interview.
- [69] Further, records obtained from the public body show that on two occasions during the relevant period the public officer submitted leave through the MyHR system, however the AGS number of the approver did not generate and as such the leave application did not when first submitted go through to Mr AA for approval.³⁷ Both applications were subsequently approved by Mr AA. There is no evidence that on the dates the subject of this investigation the public officer submitted a leave application through the MyHR system and the AGS number of the approver did not generate which resulted in leave not being forwarded to the relevant delegate for approval.
- [70] The public officer gave an explanation during his voluntary interview that he had submitted leave applications through MyHR on occasions and the AGS number of Mr AA, as his supervisor, had not auto-filled in the online form. He thought that might have been the reason that the MyHR system had not recorded leave applications on the occasions identified in this investigation where he had not submitted any leave. His reasoning was that because the AGS number of Mr AA had not auto-filled in the form, the leave application had not gone through to Mr AA on MyHR to be actioned. The public officer was unable to provide any evidence of these occasions other than at his interview where he acknowledged this happened on two occasions stating “And so then I figured out, what was happening was – it happened twice his - the MyHR record would generate, but then as I said, put zeroes through his AGS number which means it couldn’t rectify it”.³⁸
- [71] There was a failure of the public officer to provide any real explanation for the pre-planning, sometimes days or weeks in advance, of fishing trips and long weekends interstate, and then on the day representing he was unwell and that he would not be in the office.

³⁷ Document of screenshots from the MyHR system for period 1 January 2018 to 5 February 2022.

³⁸ The public officer’s voluntary interview of 12 July 2023 at page 69.

- [72] The public officer referred specifically to the May 2021 leave, which was a combination of long service leave and recreation leave. He explained that the “practice of using multiple leave types for the one continuous break appears to have led to oversight in adding rec [sic] leave for the 31st May 2021”. This may be an explanation for that specific occasion but this is the only occasion where there is a combination of two types of leave entitlements that were used. It fails to adequately explain what appears to have been a course of conduct over a period of time.
- [73] The public officer referred to taking mental health days in some of the emails that were obtained during this investigation. When asked for his understanding of what personal leave can be used for, he stated personal illness or injury or “sometimes mental”.³⁹ In his voluntary interview the public officer explained that he used some of the leave he took as mental health days but stated “*Probably taken liberties there that I probably shouldn’t have and it is inappropriate*”.⁴⁰ In his written response the public officer wrote “Council (sic) helping me work through this has helped and identifying my misuse under the guise of a mental health day was a stretch and not within the guidelines or the standards I set for my staff”.⁴¹
- [74] Where there was evidence of misuse of leave entitlements, the public officer advised during his voluntary interview that he would rectify to ensure there were no outstanding debt issues.⁴²
- [75] What is clear from the MyHR records obtained from the public body is that there were occasions when the public officer submitted leave for the wrong date or decided to cancel leave that he had submitted through the MyHR system and which had already been approved. On at least one of those occasions he emailed Mr AA and advised the application he had submitted was for the wrong dates and sought his approval to cancel his leave, which Mr AA provided in writing via email. On three occasions during the relevant period the public officer cancelled his leave application through the MyHR system which was actioned by Mr AA. None of those dates are relevant to the occasions considered in this investigation.

Independent Commissioner Against Corruption Act 2017

- [76] The ICAC can investigate public officers for improper conduct.⁴³ Public officer is defined to include a member, officer or employee of a public body.⁴⁴ A public body is defined to include an Agency.⁴⁵
- [77] Improper conduct is defined by section 9 of the ICAC Act to include corrupt conduct, misconduct and unsatisfactory conduct.
- [78] Relevantly, corrupt conduct is defined in section 10(2) of the ICAC Act as conduct engaged in by a public officer:
- (a) that constitutes reasonable grounds for dismissing or terminating the services of the public officer; and
 - (b) that is connected to public affairs; and

³⁹ The public officer’s voluntary interview of 12 July 2023 at page 18.

⁴⁰ The public officer’s voluntary interview of 12 July 2023 at page 80.

⁴¹ The public officer’s written response dated 8 January 2024.

⁴² The public officer’s written response dated 8 January 2024.

⁴³ *Independent Commissioner Against Corruption Act 2017* (NT), s16.

⁴⁴ *Independent Commissioner Against Corruption Act 2017* (NT), s16(2)(e).

⁴⁵ *Independent Commissioner Against Corruption Act 2017* (NT), s16(1)(a)

- (c) that involves or results in any of the following:
 - (i) dishonesty;
 - (ii) a breach of public trust;
 - (iii) the illegal or otherwise inappropriate performances of official functions; or
 - (iv) an adverse effect on the honest, impartial or effective performance of official functions by any public officer or public body or group of public officers or public bodies.

[79] Misconduct is defined by section 11(2) of the ICAC Act as conduct engaged in by a public officer:

- (a) that constitutes reasonable grounds for taking disciplinary action against the officer (short of dismissal or termination of appointment) or varying the terms of the officer's appointment; and
- (b) that is connected to public affairs; and
- (c) that is conduct mentioned in paragraph 10(2)(c).

[80] Section 4 of the ICAC Act defines the term 'connected to public affairs' in relation to conduct as;

- (a) conduct in the course of, or closely related to, 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.

[81] 'Breach of public trust' is defined in section 13 of the ICAC Act and includes conduct '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.'

Findings

[82] The public officer at all relevant times was a public officer.

[83] The conduct the subject of this investigation is connected to public affairs.⁴⁶ The conduct relates to the use of leave entitlements by a public officer. The inappropriate use of personal leave without a medical certificate in circumstances which was inconsistent with the purpose of that entitlement and the failure of the public officer to submit recreational leave applications as required. This had two results. Firstly, the public officer claimed an entitlement where he had not satisfied the criteria required to access that entitlement and, secondly, that the public officer was paid for work he did not do as he was absent from the workplace and did not engage in work activities.

⁴⁶ *Independent Commissioner Against Corruption Act 2017* (NT), s4.

Six occasions the public officer submitted an application for personal leave without a medical certificate

- [84] In relation to the six occasions the public officer submitted a personal leave application without a medical certificate, the Deputy Commissioner, as delegate of the ICAC, is satisfied on the evidence collected throughout the course of the investigation of the following:
- (i) that on six occasions on the days specified above, the public officer represented that he was unwell and was not able to work. On each of those six occasions he engaged in recreational activities. On each of those six occasions the public officer submitted, through the MyHR system, an application for personal leave without a medical certificate.
 - (ii) that in relation to the six occasions, the public officer organised recreational activities on these days, weeks or days in advance of 'calling in sick' to work. There was preplanning of these recreational activities which afforded the public officer a reasonable opportunity to submit a recreational leave application, however he instead falsely represented he was unwell so that he could access his personal leave without a medical certificate entitlements.
 - (iii) during his voluntary interview the public officer accepted that on these six occasions he engaged in recreational activities. On some of those occasions the public officer agreed that the more appropriate leave was recreational.
 - (iv) the public officer accepted that he had misled people in his organisation to think that he was unwell when he in fact was not.⁴⁷
 - (v) whilst the EA and Determination are clear when personal leave without a medical certificate can be used, the use of this leave entitlement for recreational activities on the basis of taking a 'mental health day' appears to be inconsistent with the terms of the relevant EA and CPE Determinations.
 - (vi) the conduct of the public officer on the six occasions identified is inconsistent with the reasonable expectations of the behaviour of a person in a senior leadership position in a public body to use personal leave entitlements for the intended purpose for which they have been given.
 - (vii) the conduct of the public officer is contrary to the terms of his employment contract as an ECO. The public officer used personal leave without a medical certificate for an unauthorised purpose contrary to the express provisions of the relevant Determination.⁴⁸ The public officer intentionally misrepresented that he was unwell and then fraudulently claimed personal leave without a medical certificate. He did so knowing the true purpose of his absence, being recreational activities, was outside the scope of personal leave without a medical certificate as stipulated at paragraph 40 of *Determination 13 of 2011* and paragraph 39 of *Determination 5 of 2019*.

⁴⁷ The public officer's voluntary interview of 12 July 2023 at page 79.

⁴⁸ *Determination 13 of 2011* and *Determination 5 of 2019*.

Nine occasions the public officer did not submit a leave application

- [85] On the nine occasions the public officer did not attend the workplace, did not engage in work related to his employment and failed to submit a leave application as required which resulted in no leave entitlement being deducted from his accrued leave balance, the Deputy Commissioner, as delegate of the ICAC, is satisfied on the evidence collected of the following:
- (i) that the public officer knew he was required to submit an application for recreation leave through the MyHR system to be approved by the delegate.
 - (ii) the public officer knew that there was “no such thing” as a “flexible work arrangement” for ECOs.⁴⁹
 - (iii) that on each of the nine occasions specified above, the public officer was absent from the workplace, did not engage in work related activities and did not submit an application for recreation leave, or any other type of leave, through the MyHR system.
 - (iv) the conduct is objectively dishonest.
 - (v) the conduct is inconsistent with the reasonable expectations of the behaviour of a person in a senior leadership position in a public body. It is a breach of the trust placed in the public officer.
 - (vi) that the public officer’s conduct is inconsistent with the terms of the Public Service Code of Conduct, which is a proposition that the public officer agreed at his voluntary interview.⁵⁰
 - (vii) the conduct of the public officer is contrary to the terms of his employment contract as an ECO. The public officer failed to submit an application for leave when he was absent from the workplace and did not engage in any work-related activities. He did this with either the intention of obtaining a benefit, that is a day off without a deduction from his leave entitlements, or through complete disregard.
- [86] The public officer’s response to the submissions of counsel-assisting fails to appreciate the significance of his conduct and the level of trust placed in him by virtue of his position.
- [87] The result of a failure to submit and have approved a leave application appropriate to the absence is that leave balances are not accurately maintained. As such, at the end of a contract, a payment is made to account for the recreational leave that a person has accrued, that the person is not entitled to.
- [88] The conduct the subject of this investigation, by an Executive Contract Officer, with a high level of trust placed in them and minimal oversight with an expectation the person will demonstrate integrity through compliance with the Determination in respect of leave entitlements, is serious.
- [89] The public officer was also responsible for ensuring that others in the agency appropriately used their leave entitlements and he did that by ensuring audits occurred and that leave entitlements were used in accordance with the EA. He was thorough in following up staff to ensure leave

⁴⁹ The public officer’s voluntary interview of 12 July 2023, at page 5.

⁵⁰ The public officer’s voluntary interview of 12 July 2023, at pages 79 and 80.

applications were submitted and that the leave requested was appropriate and in accordance with the EA.

- [90] This is not a matter of providing further training. The public officer demonstrated, through his email correspondence with other staff members and at interview, that he was aware of the various leave entitlements which accrued each year, including what personal leave without a medical certificate could be used for. It is concerning that a person in the public officer's position, with over 20 years' service in the NTPS acted in the way he did. His conduct is dishonest and he has abused the trust placed in him to be a leader in his public body.
- [91] The public officer's conduct represents a serious and persistent breach of the terms of his contract and is reasonable grounds for dismissing or terminating his contract. The conduct involves dishonesty and a breach of public trust.
- [92] The delegate finds the conduct constitutes corrupt conduct pursuant to section 10(2)(a)(b)(c)(i) and (iii) of the ICAC Act. It is only necessary for a finding of corrupt conduct to be satisfied of either (i) or (iii) in section 10(2)(c). In making this finding, the delegate has given consideration to all of the evidence collected, including the submissions of the public officer and the civil standard of proof, being the balance of probabilities, and has had regard to the principles enunciated in *Briginshaw v Briginshaw*.⁵¹

Other considerations

- [93] Consideration should be given to whether this conduct is systemic in the NTPS. Whilst I have made no finding in relation to this, if such conduct is widespread in the NTPS, then there is a need for clear guidance from the Office of the Commissioner for Public Employment, through written documents and training, to ensure all public officers, whether applying for leave or approving the use of leave entitlements, understand their obligations. It is also imperative that delegates are conducting due diligence when approving leave. Consideration must be given to how absences are verified and outstanding leave applications are followed up.

Recommendations

- [94] The following recommendations are made to the Office of the Commissioner for Public Employment (OCPE) to address improper conduct risks in the use of leave entitlements.⁵²
- (i) To promote consistency across government, the OCPE review relevant EA and CPE Determinations to ensure that the circumstances in which personal leave without a medical certificate can be taken, is consistent with contemporary understandings of personal illness and injury, including any mental health considerations.
 - (ii) A process be established, and documented which outlines the process for persons responsible for approving personal leave without a medical certificate to follow, to satisfy themselves that the leave taken is in accordance with the leave entitlement.

⁵¹ (1938) 60 CLR 336.

⁵² *Independent Commissioner Against Corruption Act 2017* (NT), s56.

[95] The following recommendations are made to the relevant public body to address improper conduct risks in the use of leave entitlements.⁵³

- (i) The records database only be used by Contractors who are not entitled to NTPS leave provisions and cannot submit their leave through the MyHR system. All employees of the NTPS are to submit applications for leave through the MyHR system so there is an accurate record of current leave entitlements and leave taken.
- (ii) That the practice of 'gifting' days off to employees in return for high performance either cease, or if this is a practice supported by the Office of the Commissioner for Public Employment, then guidelines and criteria for what conduct qualifies as high performance and when 'gifting' days off is appropriate be developed and promulgated to all accountable officers to ensure consistent application.

Naomi Loudon

Deputy Commissioner

Delegate of the Independent Commissioner Against Corruption

⁵³ *Independent Commissioner Against Corruption Act 2017 (NT)*, s56.

Contact the ICAC

Freecall 1800 250 918

Level 7, 9 Cavenagh Street
Darwin NT 0800

GPO Box 3750, Darwin NT 0801

icac.nt.gov.au

Office of the
Independent
Commissioner
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Corruption NT

