Office of the
Independent
Commissioner
Against
Corruption

ICAC

NT ICAC:
FIRST 100 DAYS

Introduction

The Independent Commissioner Against Corruption Act 2017 (the Act) was passed by the Legislative Assembly on 23 November 2017 and commenced on 30 November 2018.

The Independent Commissioner Against Corruption (ICAC) is an independent body responsible for receiving, identifying and investigating reports of corruption and misconduct by government/public bodies and public officers and those who receive government money including contractors and grant recipients.

The 11th of March 2019 marked the 100th day of the Act commencing. This report aims to keep the public informed about the progress that has been made since establishment of the ICAC.

The ICAC is a key element of the Northern Territory Government's focus on "restoring trust" in government. The ICAC is expected to play a significant role in upholding integrity standards in public administration. The ICAC is empowered, through the Act, to:

- apply for warrants to search private premises, intercept telecommunications, use surveillance devices, assume false identities, conduct controlled operations

- require information and items from people / agencies for investigations, inspect financial records, and require a person to answer specific questions

- use own motion powers to start an investigation.

The ICAC serves as the Chief Executive Officer of his own agency, with functions as set out in the Act. These functions include investigating improper conduct, protecting those who report or assist in detecting improper conduct, preventing such conduct through education and advice, and referring matters to other agencies with continuing monitoring and oversight. The ICAC is itself subject to oversight from the ICAC Inspector, evaluating its performance and reviewing specific matters as required.

Under the Act, the ICAC has more powers to investigate individuals and entities that were previously outside the jurisdiction of "watchdog" bodies. While the ICAC is also equipped with retrospective powers, enabling investigation of reports ranging back to the date of NT self-government in 1978, the ICAC has a duty to prioritise the most serious and systemic cases.

The establishment of any new office is a challenging task, and building the Office of the ICAC comes with the added complexity of new legislation, new powers and security and privacy considerations.

Every staff member of the Office of the ICAC is now occupied to capacity. It is anticipated that reports will continue to come in at about the same rate. In addition, there are a number of serious matters that require investigation and hearing. The recent NT Government staffing cap is noted. However, the Office of the ICAC is an election promise, a front-line service and responsible for generational change.

"It is clear to me, from the reports made to my office and matters which I have looked into, that public administration in the Northern Territory is as susceptible to corruption as any jurisdiction."

"I have received reports of serious corruption and I intend to investigate these matters to the full extent of my powers to bring those responsible to account."

"I will use the powers of this position carefully, and I may exonerate people accused of improper conduct where there is no basis for allegations."

"People who have been involved in, or have reasonable suspicion of, improper conduct must come forward and tell their story. The powers of the ICAC are broad and our reach is very deep, and not coming forward could have serious consequences for those involved in, or aware of, improper conduct."

Ken Fleming QC

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Reports and investigations

Since the ICAC Act formally commenced, the Office of the ICAC has received more than 100 reports alleging serious and improper conduct.

The ICAC has also initiated investigations into a number of matters.

For legal and operational reasons, the Office of the ICAC will not comment on whether it has received a report or commenced an investigation. It will only comment in exceptional circumstances, and when it is in the public interest to do so.

The ICAC has commenced a strategic engagement campaign to raise awareness of the ICAC and its functions among key stakeholders, including the Northern Territory Public Service. In the first 100 days, the ICAC has met with hundreds of public officers from more than a dozen public sector agencies to increase their understanding of their roles and responsibilities under the Act. This work will continue and a formal training regime will commence in coming months.
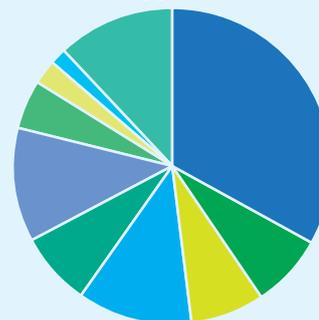
One of the ICAC's important functions is providing risk-based forecasting and analysis to public administration to improve the public sector's capacity to actively resist corruption. Over coming weeks and months, the Office of the ICAC will begin publishing intelligence products including case studies, guidelines and toolkits, to help identify and mitigate corruption risks.
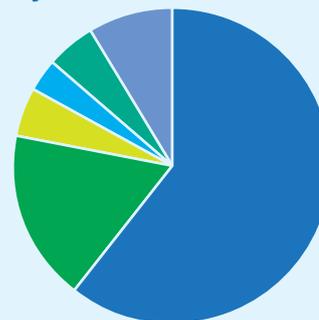
It is important to note that the ICAC must prioritise the most serious, systemic and sensitive matters, and, as demonstrated in other jurisdictions, that investigations into serious and systemic corruption typically can take from 6 to 18 months to complete. An individual investigation may span multiple years. The outcome of an investigation may include any of the following:

- reports by the ICAC, including general reports, investigation reports, public inquiry reports, reports concerning referrals

- recommendations made to public bodies or public officers by the ICAC in relation to dealing with improper conduct

- public statements in relation to matters dealt with by the ICAC

- briefs of evidence provided to, for example, law enforcement agencies for the purpose of investigating or prosecuting a person for an offence.
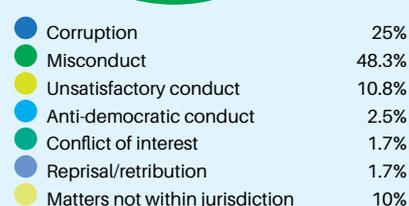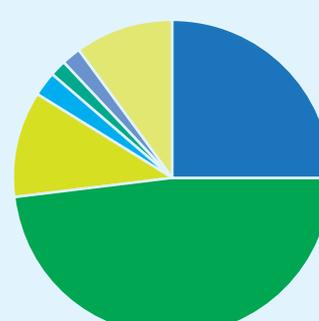
Classification of allegations by conduct type (as at 11 March 2019)

● Dishonesty	33.3%
● Conflict of interest	7.5%
● Breach of public trust	7.5%
● Inappropriate performance of functions	11.7%
● Misuse of official information	7.5%
● Misuse of resources	11.7%
● Dishonesty related to employment	5%
● Anti-democratic conduct	2.5%
● Retribution and reprisal	1.6%
● Other	11.7%

Classification of allegations by sector (as at 11 March 2019)

● NTG Agencies and Offices	60.8%
● NT Police	17.5%
● Councils	5%
● Non NTG-organisations	3.3%
● Courts	5%
● Not within jurisdiction	8.4%

Classification of allegations by seriousness (as at 11 March 2019)

● Corruption	25%
● Misconduct	48.3%
● Unsatisfactory conduct	10.8%
● Anti-democratic conduct	2.5%
● Conflict of interest	1.7%
● Reprisal/retribution	1.7%
● Matters not within jurisdiction	10%

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Staffing

Since its establishment, the ICAC has appointed staff to support the operations of the Office of the ICAC and put in place processes, procedures and key business systems.

The most senior member of staff, General Manager of the Office of the ICAC, Matthew Grant commenced in his role on 7 January 2019.

The General Manager is responsible for leading the operations of the Office of the ICAC including its investigations, prevention and business services functions.

A further eight staff have been appointed to assist the ICAC during its set-up phase. These staff are employed under the *Public Sector Employment and Management Act* (PSEMA) and as such are in a position of trust requiring standards of behaviour that reflect community expectations, and therefore must abide by a code of conduct.

The code of conduct incorporates a set of rights and obligations binding employees and agencies.

Due to the nature and sensitivity of tasks performed by Office of the ICAC staff, and as required under the Act, the ICAC has issued Guidelines and Practice Directions for ICAC Staff (Staff Guidelines).

The Staff Guidelines further clarifies and strengthens the responsibilities of staff. This includes information about:

- the need for the ICAC to operate independently
- conflict of interest
- acting as an authorised officer
- privacy, confidentiality and privilege
- whistleblower protection and protected communication.

The Office of the ICAC has researched the swearing-in practices of integrity agencies interstate and designed a process suited to the NT context and legislation. All staff are sworn-in to the ICAC as part of the terms of their employment with strict confidentiality requirements.

The swearing in process is just one measure to protect the privacy of those people who report improper conduct to the ICAC. There are strict protections in place for persons who make a report, also known as a 'protected communication'. Persons who make a protected communication incur no civil or criminal liability and do not become subject to disciplinary action (or other adverse administrative action) for doing so. The making of a report is deemed a protected action, and a protected communication remains privileged, even in an action for defamation.

The Office of the ICAC has developed a conflict of interest management approach which is informed by national and international best practice. This includes practical tools to guide ICAC staff and managers as they consider their conflicts, and a decision making guide for managing complex conflict of interest matters. There are responsibilities on both ICAC staff and supervisors to manage conflicts and monitor conflict of interest management strategies to ensure they are followed. ICAC staff are required to make declarations regarding their private interests and associations, as well as the interests of immediate family members.

Commissioner Ken Fleming QC and Mr Matthew Grant.

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Business systems and processes

There are a number of agencies in the NT that may have matters simultaneously reported to them including the Office of Auditor-General, the NT Ombudsman, NT Police, the Information Commissioner and Office of the Commissioner for Public Employment (OCPE).

The Office of the ICAC has, as a priority, commenced building a relationship with Northern Territory integrity agencies to provide clarity for public bodies and public officers on where to report improper conduct and other sensitive complaints.

These integrity agencies are working together to minimise duplication of effort with investigations and to develop a Memorandum of Understanding which outlines the way in which the agencies will work together or keep each other informed of matters under investigation.

In addition, the Office of the ICAC is meeting with a number of government working groups to provide clarity on the role and functions of the ICAC and how they will be performed. This includes:

- briefings to NT Government Chief Executives

- the ICAC Operational Working Group – comprised of NTG corporate services, risk, governance and compliance executive directors

- the Human Resource Management and Development Committee – comprised of senior workforce planning and human resources directors an managers

- the NT Government Communications Forum – comprised of NTG communications directors and their staff

- establishment of a working group of key NT integrity agencies including NT Police, the Office of the Commissioner for Public Employment, the Auditor-General and the Information Commissioner, and the Ombudsman.

Investigation Management System

The Office of the ICAC has drafted a Business Case to present the rationale for equipping the Office of the ICAC with a contemporary, end-to-end business system to manage cases (reports of improper conduct) and investigations.

The security of information and maintaining the privacy of those who make a report to the ICAC are primary considerations outlined in the Business Case.

The system will ensure that information collected during the course of an investigation is kept strictly confidential and accessed only by authorised staff from the ICAC. In the situation of a conflict of interest, access to a particular investigation may need to be restricted to certain individuals within the ICAC.

The system will allow the ICAC to:

- securely store allegations of improper conduct

- triage and assess reports

- coordinate investigations

- record directions and authorisations during an investigation

- record decision rationale and documents, including evidence gathered during an investigation

- perform searches and analysis on reporting trends, crime types and other themes

- audit investigations and user actions.

The Business Case considers all applications, systems and services that could meet the ICAC's business requirements. Five options were subjected to a rigorous comparative analysis and assessment process against factors including time, cost, risk and degree of meeting the business requirements. However, only one option is determined capable of enabling the ICAC to fulfil its essential legislative role and functions. Consultation with other jurisdictions and engagement with Investigation Management Systems (IMS) vendors for product demonstrations indicate that this type of product will fulfil the Office of the ICAC's identified business requirements.

In collaboration with Information Communication Technology specialists from the NT Department of Corporate and Information Services and security contractors, the Office of the ICAC has proposed an approach to implement and project manage the recommended option and provided cost estimates to inform a submission for funding. Buy local rules will be considered during procurement.

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The implementation of this system will be coordinated under stringent project management controls, with ultimate control for the project falling to the ICAC.

The Office of the ICAC will continue actioning reports until the IMS is implemented under the most stringent NTG security controls. The ICAC will continue its work to uncover, investigate and prevent improper conduct in public administration during the implementation of the IMS.

Business systems and processes

The Office of the ICAC has commenced implementing business systems and processes to meet the needs of the agency in the following areas:

- conflict of interest
- communications and stakeholder engagement
- risk, audit and compliance
- human resources
- financial management.

The implementation of these systems takes time and must be done correctly. As with any new agency, resources within the Office of the ICAC are limited and staff are being asked to perform duties relating to the establishment of the Office of the ICAC while also performing operational activities.

Corruption prevention strategy

Vision
The vision of the ICAC is to foster public institutions that actively resist corruption by putting public interest first and providing transparency and certainty in the provision of service to all Territorians.

Outcomes

- More Territorians know about corruption, believe it impacts them personally and believe that institutions are responsible for preventing corrupt conduct.
- Most Territorians and public sector employees believe it is their responsibility to report improper conduct and feel empowered to do so.
- The Office of the ICAC is consulted when relevant whole of government approaches are being developed or revised.
- Public bodies regularly review and implement effective corruption prevention practices.
- Increased awareness, understanding, support and advocacy of the ICAC and its functions from the general public.

Pillars

Awareness:

- Engage with the community and public sector to build awareness of corruption and its harms.

Reporting:

- Develop a culture of reporting in NT public administration and the broader community.

Alerting:

- Evaluate broader public sector trends and issues, identify serious misconduct and corruption risks and provide intelligence products to NT public bodies.

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Prevention and engagement

The Office of the ICAC has established a Prevention Unit with the following objectives:

- build **awareness** of help raise the profile of the Office of the ICAC, its roles and functions
- to actively promote **reporting** of improper conduct of public administration in the NT through community engagement, training and education
- **alerting** agencies and organisations to information and intelligence to stay ahead of corruption risks.

Awareness
To build awareness of the Office of the ICAC, its roles and functions, the ICAC has:

- commenced a strategic stakeholder engagement campaign, which includes a series of public information sessions throughout the NT's major regional centres, to be advertised in major news outlets across the NT
- published a series of fact sheets and presentations on a range of topics including mandatory reporting, the role of the ICAC, making reports and privacy protections
- engaged with local media to discuss the role, functions and powers of the ICAC, and provide information about reporting processes.

Reporting
To actively promote reporting to the Office of the ICAC, the ICAC has:

- presented to NTG agencies on a range of topics including mandatory reporting obligations, definitions of improper conduct and the powers of the ICAC
- commenced planning with OCPE for an audit of existing training for public servants on a range of topics including procurement, ethical decision making, conflict of interest, investigations and a range of other topics
- scheduled a series of training workshops for NT public officers, coordinated through OCPE.

Alerting
To alert public administration in the NT to corruption risks, the ICAC has:

- commenced discussions with OCPE and Charles Darwin University's Northern Institute on a major study on the prevalence and perception of corruption in the NT
- commenced recruitment of a Senior Governance and Policy Analyst to research and publish intelligence-led reports on best practice approaches to key risks.

Guidelines and Directions

The ICAC has an obligation to issue guidelines and directions on a range of topics, pursuant to the Act. The following guidelines and directions have been issued within the first 100 days of the ICAC:

The Whistleblower Protection Guidelines and Directions: This document outlines protected communications, the role of the Nominated Recipient, and mandatory reporting obligations for public bodies and public officers.

Mandatory Reporting Guidelines and Directions for public officers, public bodies and the community: This document sets out the requirements for a public body, public officer or the community to report suspected improper conduct, including the threshold for what 'suspected' encompasses. It sets out how suspected improper conduct must still be reported to the ICAC, even if they have already been reported to another public body or public officer (for example, the Ombudsman or Northern Territory Police Force).

Guidelines and Practice Directions for ICAC Staff: These guidelines clarify and strengthen the responsibilities of staff. This includes information about the need for the ICAC to operate independently, identifying and managing conflict of interest, acting as an authorised officer, privacy, confidentiality and privilege, and whistleblower protection and protected communication.

The Office of the ICAC must issue guidelines to minimise retaliation under the Act. These guidelines may include measures for education and training, policies and processes, allocating responsibility and resources, creating a suitable organisational culture, and managing situations in which persons are, or are likely to be, at risk of retaliation.

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Conclusion

The Office of the ICAC will continue to work on attracting the right people, and putting in place the right structures and processes to deliver its statutory responsibilities to the highest standard. Among the Office of the ICAC's priorities are:

- establishing a Memorandum of Understanding with NT integrity agencies

- bedding down ICAC business systems and processes

- investigating improper conduct, with a priority on the most serious and systemic cases

- building public awareness of the ICAC, encouraging reporting and equipping agencies to identify and manage corruption risks within their agencies.

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