

Investigation into the conduct of Ashley Brown

Public Statement

October 2020

Office of the
Independent
Commissioner
Against
Corruption



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Summary of the Report

Reports to the Office of the Independent Commissioner Against Corruption have shown that a small, but significant, number of candidates for recruitment abuse recruitment processes in order to obtain employment. The following are examples of behavior in reports received by me:

- dishonest, exaggerated qualifications;
- abuse of the Special Measures for Aboriginal candidates by false statutory declarations and false Certificates of Aboriginality (COA);
- nepotism;
- failure to declare a conflict of interest;
- failure to declare relevant connections;
- failure to disclose previous misconduct in employment; and
- failure to disclose history of offences.

These practices can succeed only if there is a failure to adhere to the proper recruitment practices, or those practices are inadequate. In fact, it has been said by employees with a past that would be relevant to know, that the interviewers “did not ask the right questions”.

The facts in this report highlight the importance of the Northern Territory Public Sector (NTPS) Special Measures eligibility criteria. Broader than that, the facts in this report demonstrate that there is a significant risk to the public sector if recruitment processes do not adequately prevent and detect candidates who falsify their applications and qualifications in order to win NTPS jobs.

Mr Ashley BROWN has applied for more than 80 NTPS positions.

Mr BROWN created and submitted two false COAs in an application for the position of a Security and Site Manager with the Department of Health (DoH), a Senior Administrative Officer 1 (SAO1) position. The position was one to which a Special Measures Recruitment and Selection Plan (Special Measures Plan) attached.

Mr BROWN was shortlisted with four others, on the basis of the Special Measures. Then, on the strength of his qualifications stated in his resume, he was considered suitable for the position.

Mr BROWN admitted that the qualifications he had recorded in his resume were falsified in that:

- he had exaggerated his work experience;
- he had listed as qualifications on his resume courses that had not been completed;
- he did not hold a Bachelor of Nursing or a Certificate IV in Security Risk Management;
- he had only briefly acted in the role of Senior Sergeant with the QLD Police; and,
- he had not been the State Coordinator for the Drug and Alcohol Unit in QLD Police.

Mr BROWN continued to insist he was Aboriginal because his grandmother told him a story to that effect in 1993.

At no time since 1993 has there been any evidence to substantiate a claim to Aboriginality, except his own statutory declarations. He finally fabricated two COAs. He used one COA 14 times attempting to obtain employment with the Northern Territory Government (NTG). He finally obtained employment with DoH by using both fabricated documents.

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Glossary

Definitions

Aboriginal Liaison Office – Aboriginal Liaison Office for Royal Darwin Hospital

Commissioner for Public Employment – the person holding or occupying the office of Commissioner for Public Employment, pursuant to section 3 of PSEMA.

Confirmation of Aboriginality, Certificate of Aboriginality or COA – proof required by the Office of the Commissioner for Public Employment pursuant to the *Commissioner’s Guideline: Special Measures Recruitment and Selection Plans*

Corrupt conduct – pursuant to section 10 of the ICAC Act

Department of Health – Northern Territory Government Agency

Employment Instruction – Issued by the Commissioner for Public Employment pursuant to section 16 of PSEMA

eRecruit – Northern Territory Government online recruitment system

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

Improper conduct – pursuant to section 9 of the ICAC Act

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

Public Statement – a statement issued under section 55 of the ICAC Act

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

Northern Territory Public Service or NTPS – the Public Service of the Territory referred to in the *Northern Territory (Self-Government) Act 1978 (Cth)*

OCPE or Office of the Commissioner for Public Employment – the Office of Commissioner for Public Employment

Pre-employment screening – Activities used to check an applicants’ suitability, integrity and identity for work in the public service¹.

¹ NSW Public Service Commission, Pre-employment screening checks, accessed online 1 July 2020 at <https://www.psc.nsw.gov.au/workforce-management/recruitment/recruitment-and-selection-guide/deciding-and-appointing/pre-employment-screening-checks>.

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

Request to Fill or RTF – A number allocated to individual roles in eRecruit

Special Measures Recruitment and Selection Plan – pursuant to *Employment Instruction Number 15 (Special Measures)*

Special Measures Statutory Declaration – pursuant to *Employment Instruction Number 15 (Special Measures)*

Persons mentioned in this Report

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

Ashley BROWN – the subject of this investigation, and successful applicant for the position of Security and Site Manager for the Department of Health

Jodi TRUMAN – Counsel Assisting the ICAC

Ken FLEMING QC – Independent Commissioner Against Corruption

Vicki Telfer – Commissioner for Public Employment

Witness A1 – former Councillor with the New South Wales Aboriginal Land Council (NSWALC).

Witness A2 – Senior Project Officer with the NSW Aboriginal Land Council.

Witness A3 – an indigenous public figure associated with the National Rugby League.

Legislation

Independent Commissioner Against Corruption Act 2017

Public Sector Employment and Management Act 1993

Aboriginal Land Rights Act 1983 (NSW)

ICAC jurisdiction and investigation methodology

1. On 25 September 2019, the ICAC received a report alleging that a person by the name of Ashley BROWN may have engaged in improper conduct.
2. The report referred to the alleged falsification of a Certificate of Aboriginality (COA) for the purpose of being considered for employment with the Northern Territory Public Service (NTPS) under a Special Measures Plan for applicants of Aboriginal and Torres Strait Islander descent.
3. By section 31 of the ICAC Act I can commence an investigation if I have information that, if true, would tend to show that improper conduct has occurred, is occurring, or is at risk of occurring.
4. An investigation into that report of suspected improper conduct was commenced by me on 22 October 2019.

Jurisdiction to commence an Investigation

5. Pursuant to section 10(2) of the *Independent Commissioner Against Corruption Act 2017 (ICAC Act)*, conduct is **corrupt conduct** if it is conduct engaged in by a public officer (whether or not the identity of the public officer is known):
 - (a) that constitutes reasonable grounds for dismissing or terminating the services of the public officer; and
 - (b) that is connected to public affairs; and
 - (c) that involves or results in any of the following:
 - (i) dishonesty.
6. Pursuant to section 10(4) of the ICAC Act, conduct is **corrupt conduct** if it is conduct engaged in by a person (whether or not a public officer or public body) that could impair public confidence in public administration and that involves any of the following:
 - (a) dishonestly obtaining or retaining employment or appointment as a public officer.
7. On 25 September 2019 Mr BROWN submitted an application for the position of Security and Site Manager for the DoH (RTF 174482), an SAO1 position, in eRecruit. He obtained the position, and commenced in the position on 18 November 2019.
8. Because he is a public officer pursuant to section 16 of the ICAC Act, the ICAC may investigate the conduct of Mr BROWN pursuant to section 10(2)(a), (b) and (c)(i) of the Act.

Section 10(4)(e) of the Act further enables investigation of Mr BROWN, whether or not he is a public officer.

Summary of Notices and Directions

9. To date the following Notices and Directions have been served:
 - section 147 Non-Disclosure Directions – 2
 - section 32 Notices to Produce Items or Provide Information – 1
 - section 34 Notices to Attend for Examination – 1

Procedural Obligations

10. This section deals with matters of privilege, rules of evidence, natural justice and assessment of evidence.

Privilege

11. In the course of this investigation I have respected matters of confidentiality and privilege pursuant to Part 5 of the ICAC Act, including:
 - client legal privilege;
 - privilege against self-incrimination as modified by the Act.

Rules of Evidence and Natural Justice

12. By section 60 of the ICAC Act I am not bound by the rules of evidence in the conduct of an investigation.
13. I am therefore concomitantly aware of the particular need to give due process and natural justice to a person the subject of an investigation and Report.
14. If I, in an Investigation Report, intend to make adverse findings about a person, by section 50(2) of the ICAC Act, I “must give the person...a reasonable opportunity to respond to the adverse material and include a fair representation of the response in the report.”
15. This investigation had regard to procedural fairness and natural justice throughout. The allegations were put to Mr BROWN during the examination process and his responses have been included in this report.
16. A draft copy of my final report was then sent to Mr BROWN on 04 September 2020, to ensure that he had the reasonable opportunity to respond to any adverse evidence and adverse findings in the draft report.
17. My correspondence to him is set out in Annexure 1 of this report.

18. Mr BROWN's responses to the draft adverse findings against him were received, and are recorded in full in Annexure 2 of this report.

Standard of Proof

19. In all of my considerations of the available evidence in this investigation I have used the balance of probabilities as the standard of proof required to establish any relevant fact.
20. I have taken into account, in the use of that standard of proof, the gravity of the allegations against Mr BROWN, and the consequences for Mr BROWN that may flow from this investigation.

Assessment of Evidence

21. I have followed carefully all of the evidence in this investigation, and any response from Mr BROWN, including unsworn responses.
22. In assessing the weight of any evidence I have taken into account:
 - my observation of the various witnesses examined in the course of the matter;
 - any inculpatory evidence;
 - any exculpatory evidence;
 - contemporary records such as emails and phone messages; and
 - documentary evidence.
23. Where I have doubted the veracity of evidence I have sought assistance from contemporary records to resolve doubts.
24. Mr BROWN's credibility was challenged during the examination process while under oath. He gave sworn evidence for over two hours before making full and frank admissions to providing misleading information during the examination.

A Report in Respect of a Public Officer

25. At the end of an investigation I am entitled to produce one or more reports.
26. Reports under the Act are dealt with by Part 3 Division 7, sections 48 to 59.
27. By section 50(1) I may make a Report to the authority who is responsible for the public officer whose conduct is the subject of the investigation. By section 50(7)(a) a **responsible authority** means:
 - a) *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.*

28. The Commissioner for Public Employment, Ms Vicki Telfer, has authority under the *Public Sector Employment and Management Act 1993 (PSEMA)* to deal with matters relating to improper conduct the subject of this investigation. Ms Telfer may also make future decisions in the public interest. Ms Telfer is a responsible authority pursuant to section 50(7)(a).
29. DoH Chief Executive Officer (CEO), Professor Catherine Stoddart also has authority to deal with matters relating to improper conduct the subject of this investigation.
30. In addition to these steps, I am entitled to make a public statement about a matter under section 55.

Factual Findings

31. The following narrative consists of facts found by me in this investigation. The facts are found on the balance of probabilities.

NTPS Public Service Special Measures

Recognising the value of Special Measures

32. In 2015, the former Commissioner for Public Employment, Mr Craig Allen, issued an Employment Instruction and Guidelines on Special Measures. The NTPS Senior Aboriginal Reference Group (SARG) was established to assist efforts to drive the implementation of the Aboriginal Employment and Career Development Strategy.
33. Since that time, the NTG has continued to encourage agencies to implement a Special Measures plan for the target Equal Employment Opportunity groups.
34. As a result, many Special Measures agency plans have been implemented, particularly in the area of Aboriginal recruitment.
35. Special Measures is delivering more relevant, efficient and effective services to contribute to improving social and economic outcomes for Aboriginal Territorians.

Success of Special Measures

36. The Commissioner for Public Employment's Review of the NTPS Special Measures plan in 2019 showed that many hundreds of Aboriginal people were being employed in the NTPS under Special Measures plans each year.

37. Between 2015 and February 2019, more than 1,500 Aboriginal NTPS job applicants were selected under the Special Measures plan. These jobs represent wages worth in the order of tens of millions of dollars to Aboriginal families annually.

The Aboriginal Employment and Career Development Strategy 2019 – 2020

38. As of March 2020 Aboriginal employment in the NTPS was at 11 per cent, an all-time high for the NTPS. Aboriginal employee participation in senior and/or executive roles at the SAO1 level (or equivalent) and above, has also increased significantly from 5.3 per cent in March 2019 to 6.2 per cent in March 2020.

Proof of Eligibility and Certificate of Aboriginality

39. The Office of the Commissioner for Public Employment (OCPE) requires proof of eligibility for Special Measures plans, and for good reason. Services and entitlements that are for Indigenous people must go to Indigenous people. Those positions should be protected from fraud and corruption by those who are ineligible to receive them.
40. The issue of defining Aboriginality is complex, as highlighted by Merkel J. in *Shaw v Wolf & Ors* (1998) FCA 20 in the fourth last paragraph of that judgement:

“Aboriginality as such is not capable of any single or satisfactory definition.”

41. Earlier in that paragraph of his judgement Merkel J. said:

“In seeking to redress some of the wrongs of the past as well as to assist Aboriginal persons, a number of laws have been enacted and services provided by the state which understandably are solely for the benefit of Aboriginal persons. Consequently some criterion is necessary to define the beneficiary group.”

42. The Australian Institute of Aboriginal and Torres Strait Islander Studies, and others, recognise that proof of Aboriginality is required to ensure that Indigenous-specific services and programs reach Indigenous people: “Requesting proof of Aboriginal or Torres Strait Islander heritage from applicants helps to make sure that this intention is honoured.”
43. As said earlier, Special Measures plans were first introduced by Mr Craig Allen into the NTPS in 2015 under *Employment Instruction Number 15 (Special Measures)*.
44. Pursuant to section 3.1(c) of *Employment Instruction Number 15 (Special Measures)*, applicants selected under a Special Measures plan must provide proof of membership in the relevant Special Measures group by the method set out in the *Commissioner’s Guideline on Special Measures Recruitment and Selection Plans*.

45. NTPS applicants wanting to be considered under Special Measures initially were required to submit a Statutory Declaration declaring they are of Aboriginal or Torres Strait Island descent.
46. In May 2018, on the recommendation of the NTPS SARG, an additional requirement was introduced for applicants to supply a COA issued by a registered Aboriginal Land Council (ALC) to substantiate an applicant's eligibility under Special Measures plans.
47. The wording of the Statutory Declaration was amended to reflect the requirement for a COA to be submitted in conjunction with the statutory declaration.
48. Since 2018, to be eligible for a position subject to a Special Measures plan, the applicant must:
 - a) be Aboriginal as verified by a COA from a recognised Aboriginal organisation (or other satisfactory proof of Aboriginality as approved by OCPE); and
 - b) have previously and consistently, in all aspects of their day-to-day life, been known to be and/or have identified as an Aboriginal, and verify this by Statutory Declaration.
49. Applicants who wish to be given priority consideration under the NTPS Special Measures Plan are required to do the following when submitting applications:
 - a) indicate in the on-line recruitment system that they are Aboriginal;
 - b) fully complete and attach to their application a copy of the required Statutory Declaration of eligibility for positions subject to a Special Measures Plan; and
 - c) verify their eligibility for positions advertised under a Special Measures Plan.

Ashley BROWN

50. NTPS recruitment records confirm that Mr BROWN:
 - was an NTPS employee between May 2017 and November 2018;
 - had applied for 80 NTPS jobs between April 2017 and December 2019;
 - had uploaded COAs against 15 NTPS vacancies subject to Special Measures Plans; and
 - successfully applied for a permanent position as the Security and Site Manager with the DoH under a Special Measures Plan, commencing the position on 18 November 2019.
51. In support of his applications, Mr BROWN submitted two different COAs. These are referred to as COA1 and COA2 throughout this Report.

52. COA1 was used on four occasions from 12 September 2019 to 28 September 2019.
53. COA2 was used on 12 occasions from 25 September 2019 to 6 November 2019.
54. He also submitted a resume which was used on each occasion.

Security and Site Manager RTF 174482

55. The DoH advertised for a period of two weeks from 23 September 2019, the position of Security and Site Manager Position (RTF 174482).
56. The Security and Site Manager position was advertised as a permanent fulltime SAO1 based at Royal Darwin Hospital with a salary range of \$120,545 to \$136,666, plus superannuation.
57. The position was subject to a Special Measures Plan. A Special Measures Applicant Information Sheet was attached to the advertisement.
58. On 25 September 2019, Mr BROWN submitted an application for RTF 174482, identified as application 643027, in eRecruit. Mr BROWN uploaded the following documents as part of his application:
 - one page summary application with file name 'SAO1 Security and Site Manager Hospital.docx';
 - resume with file name 'ashley BROWN resume 2019 June.doc';
 - another document with file name 'stat dec aboriginal status.pdf' and
 - another document with file name 'Certificate of Aboriginality.docx' (COA1).
59. At the time of Mr BROWN's application he was not a current NTG employee.
60. On 06 October 2019 applications closed for RTF 174482 Security and Site Manager, with eRecruit recording 41 applicants for the position.
61. Mr BROWN was recommended as a Special Measures applicant, with the panel assessing him as suitable, referring to the following qualifications and experience contained in his resume:
 - Bachelor of Nursing.
 - Certificate IV in Security Risk Management.
 - joined the NSW Police from 1996 to 1999.
 - experience as a Senior Sergeant with the QLD Police.
 - experience as State Coordinator for the Drug and Alcohol Unit in QLD Police.

62. A member of the selection panel provided evidence by statutory declaration that they had some concerns with the legitimacy of COA1.
63. The panel member sought advice from the Royal Darwin Hospital Aboriginal Liaison Office. The panel member said in their Statutory Declaration that the Aboriginal Liaison Office advised that COA1 did not comply with Special Measures Proof of Eligibility requirements due to the absence of a common seal stamp.
64. Mr BROWN was contacted and he was advised that COA1 was not compliant as it did not have the common seal stamp.
65. Mr BROWN sent the panel member COA2 and uploaded this document into eRecruit with file name '174482 All Other Selection Documentation Cert of Aboriginality – BROWN.pdf' on 06 November 2019.
66. The panel member showed COA2 to the Aboriginal Liaison Office, who advised that it would comply because it did have a common seal stamp.
67. NTPS recruitment records show that Mr BROWN commenced the Security and Site Manager position on 18 November 2019.

COA Authenticity

68. OCPE oversees the application of the Special Measures plans.
69. On 20 January 2020, a Statutory Declaration was provided to me by an officer from the OCPE, which detailed OCPE's interactions with Mr BROWN in relation to Special Measures Statutory Declaration and COA requirements as follows:
 - on 23 November 2018, OCPE emailed Mr BROWN with the subject line 'Eligibility for Special Measures', advising he was using an older version of the Special Measures Statutory Declaration. OCPE attached the current version, and outlined the changes to eligibility under Special Measures Provisions, including the need to provide a COA.
 - Mr BROWN replied to OCPE asking for an example of a COA as his 'people' have never heard of this for employment purposes and only use Statutory Declarations. OCPE advised that it could not supply an example, as they look different from organisation to organisation. However Mr BROWN was told that COAs are not new and have been used by Government agencies for decades. OCPE also advised that most recognised Aboriginal Corporations and Organisations know what they are and how someone can apply to have one issued.

- on 30 April 2019, OCPE told Mr BROWN that, as he had not yet supplied the required statutory declaration or a valid COA in order to be eligible under Special Measures, agencies were being advised by OCPE that he was not eligible. OCPE attached the relevant Statutory Declaration to the email.
- on 13 August 2019 Mr BROWN emailed OCPE. He said that for the past 2 years he had been trying to obtain a COA and had contacted 10 different ALCs, all of whom had told him that they either do not issue them, or only issue them to local people. Mr BROWN stated:

“Based on that I have sufficient evidence that this certificate is not able to be obtained for the purpose of Special Measures and that a statutory declaration should suffice”.
- OCPE responded, telling Mr BROWN that only the relevant ALC from where his family came can issue a COA. OCPE also explained that not having a COA does not disqualify Mr BROWN from applying for employment with the NTPS. It only disqualifies him from priority consideration under Special Measures.

Witness A1

70. Witness A1 provided a statutory declaration, in which he said:

- he was a former Councillor for the Wiradjuri Region within the New South Wales Aboriginal Land Council (NSWALC) for 12 years, until officially stepping down in December 2019;
- the Wiradjuri ALC was not one of the 21 Local ALCs within the NSWALCs Wiradjuri Region;
- he had not previously seen the COA used by Mr BROWN before COA2 it was emailed to him by the NSWALC and ICAC;
- the COA falsely carries his name and forged signature, and that the signature that has been used bears no resemblance to Witness A1’s actual signature that he has used for over 18 years.

Witness A2

71. Witness A2, Senior Project Officer with the NSWALC, is responsible for supporting NSWALC’s in the Southern Zone, in which the Wiradjuri Region falls.

72. The support includes assisting ALCs to comply with the *Aboriginal Land Rights Act 1983* (NSW), providing financial and risk management, governance training, board elections, and day to day enquiries.
73. On 14 February 2020 Witness A2 provided a statutory declaration regarding the validity of the Wiradjuri ALC and how the COAs used by Mr BROWN compare to what is issued by NSWALCs. In his Statutory Declaration he:
- said that there are 21 registered NSWALCs within the Wiradjuri Region with each ALC having their own logo and letter head. Their version of a COA is issued as a 'Confirmation of Membership' with an ALC. It is only one page in length and is signed by the CEO of the relevant ALC (not computer generated);
 - provided a blank example of a Confirmation of Membership template used by NSWALCs;
 - stated the Wiradjuri NSWALC does not exist and, as such, Mr BROWN cannot be a member;
 - reviewed the two COA versions used by Mr BROWN and said that they are not consistent with what is issued by NSWALCs. The logos and letterheads were the NSWALC logo and not of a registered ALC;
 - stated he and his Director contacted Witness A1, who was one of the apparent signatories on COA2. Witness A1 said that he had never seen the document before, had never heard of Mr BROWN, and said he had not signed any COA for Mr BROWN.

Witness A3

74. On 12 March 2020 Witness A3, an Indigenous public figure associated with the National Rugby League, provide a Statutory Declaration regarding his interactions with Mr BROWN and his knowledge of the COAs. In the course of that statutory declaration he said:
- he had never seen COA1, he did not sign it, and would not sign it if requested, as he does not know Mr BROWN or his family links, so could not vouch for him;
 - the document is false and his name and signature have been used without his permission;
 - he had not seen COA2, he does not know of the Wiradjuri ALC, and would not have the authority to sign such a document;
 - the signature on COA2 resembles the signature he uses to sign memorabilia and collectable cards;

- he has an official signature for private and personal documents which he does not share publically. His name and signature as they appear on COA2 are false and he has not given permission for them to be used.

75. He further said that he was contacted via private Facebook message by a user named 'Ash BROWN'. Messages between 'Ash BROWN' and Witness A3 are set out below:

09 August 2019, 'Ash BROWN' to Witness A3: *"Hi [Witness A3], My name is Ashley and my family are from young in NSW. I identify as an aboriginal man and I need to get a certificate of aboriginally signed, are you able to assist me with this? or put me onto someone who could assist? Thanks for your time"*

11 October 2019, Witness A3 to 'Ash BROWN': *"Hi Ashley. No this is not something I can assist you with. It's something your family and community would have to do. So that would mean going to the Local Aboriginal Land Council in or around Young where local people can actually vouch for you and accept you."*

11 October 2019, 'Ash BROWN' to Witness A3: *"Cheers [Witness A3] appreciate your time. Also your an awesome player was a big fan would have love to play alongside you"*

Falsification of COAs and Resume

COAs

76. On 06 March 2020 Mr BROWN was served, pursuant to the ICAC Act, a section 34 Notice to Attend for Examination before me.
77. Mr BROWN attended at a private hearing before me on the 07 April 2020 and gave sworn evidence.
78. During the examination, in relation to his understanding of Special Measures Plans, Mr BROWN said:

"You can still apply for the position, but it's just they consider Special Measures people first before they consider anyone else."

Counsel Assisting the ICAC, Jodi Truman, asked Mr BROWN:

"Knowing that in putting this certificate in it would put you in that first group to be considered for the purpose of the position, correct?"

Mr BROWN replied:

"Yes that's correct."

79. In his sworn evidence to me, Mr BROWN gave varied responses as to his entitlement to claim Aboriginality and how the COAs came to be issued to him.
80. Under examination, Mr BROWN admitted to falsifying the COAs in order to secure employment with the NTPS:

MS TRUMAN: *So all the evidence you gave about how this document was created, before lunch, when you gave that evidence to the Commissioner about it, you knew what you were telling him was not true is that correct?*

MR BROWN: Yes.

MR BROWN: *Look Commissioner I just want to say, well yeah, I did it. I'm not proud of what I did. At the time I was ill with the headaches I had the brain surgery for, I am going blind in my left eye.*

COMMISSIONER FLEMING: *What do you say you did?*

MR BROWN: *I made the documents up when I was in QLD at my parents place. I was frustrated that I couldn't actually get identified even though I had been identifying myself as Aboriginal since 1993. I was just frustrated that I couldn't get this certificate, I was frustrated at why I needed it. I tried and tried and tried. I did send documents down to Young and when I got nothing back I was just so frustrated. I have been trying to get into the public service into jobs I knew I was qualified for and I just kept getting overlooked. I have applied to everyone for help in this matter and no one would offer me any assistance.*

COMMISSIONER FLEMING: *So the job you have got now you got upon the basis of a false document?*

MR BROWN: *I believe that's how I got the job.*

81. Under examination, Mr BROWN also admitted to ordering a common seal stamp online.

MS TRUMAN: *The Wiradjuri Aboriginal Land Council doesn't exist, so who made up the Wiradjuri land council stamp then?*

MR BROWN: *I got it made on-line.*

MS TRUMAN: *So you make up a letterhead, you make up signatures and you make up a stamp, you go to such lengths that you purchase on-line.*

MR BROWN: Yes.

82. In relation to the format of the COAs, Mr BROWN said:

- he created the COAs on a computer he no longer has;
- he created the text on COA1;
- he copied the text and the format of the COA shown to him by another person to create COA2;
- he copied and pasted the logos in the header from the 'Wiradjuri People' website.

83. I have set out previously the evidence in relation to the authenticity of COAs used by Mr BROWN from the following people, which was put to Mr BROWN during his examination:

- Witness A1, former Councillor with the NSWALC;
- Witness A2, Senior Project Officer with the NSWALC;
- Witness A3, an indigenous public figure associated with the National Rugby League.

84. In relation to Witness A1, Mr BROWN said:

- he did not know Witness A1 personally, but saw his name on the 'Wiradjuri People' website;
- he contacted Witness A1 and Witness A1 told him he could not help him;
- he put his name on COA2 anyway;
- he created the handwritten signature for Witness A1, and signed the documents without Witness A1's knowledge.

85. In relation to Witness A2, Mr BROWN said:

- his grandmother told him the Aboriginal Heritage in the family came from Young in NSW;
- he conducted an online search and came across 'Wiradjuri People' belonging to the Southern Region of NSW;
- he thought the Wiradjuri People could also be an ALC;
- he tried to make contact with representatives listed on the Wiradjuri People website regarding the COAs but did not get a response;
- he created the letterhead using images from the 'Wiradjuri People' website.

86. In relation to Witness A3, Mr BROWN said:

- he did not know Witness A3 personally, but knew him as an Aboriginal from the 'Wiradjuri People' website, and as a rugby league player;
- he introduced himself through Facebook Messenger asking if Witness A3 could sign off on a COA;
- he admitted Witness A3 told him he couldn't help him. Mr BROWN put Witness A3's name on both the COAs anyway;
- he created the electronic signature used on COA1 and forged the handwritten signature on COA2 for Witness A3. He then signed the documents without Witness A3's knowledge.

Resume

87. I refer again to the qualifications Mr BROWN says he had, which he included in the resume in his application for the role to which he was appointed, Security and Site Manager, Royal Darwin Hospital:

- Bachelor of Nursing;
- Certificate IV in Security Risk Management;
- experience as a Senior Sergeant with the QLD Police;
- experience as State Coordinator for the Drug and Alcohol Unit in QLD Police.

88. Although Mr BROWN's resume says he does have those qualifications and work experience, during the examination Mr BROWN told me that those qualifications and work experience were not true, or were exaggerated.

89. In his sworn evidence to me, Mr BROWN admitted:

- he had exaggerated his work experience;
- he had listed qualifications on his resume that had not yet been completed;
- he did not hold a Bachelor of Nursing or a Certificate IV in Security Risk Management;
- he had only briefly acted in the role of Senior Sergeant with the QLD Police; and
- he had not been the State Coordinator for the Drug and Alcohol Unit in QLD Police.

Breach of section 147 of the ICAC Act

90. On 06 March 2020, Mr BROWN was served a Direction pursuant to section 147 of the ICAC Act requiring him to refrain from disclosing:

- a) any information given to him by the ICAC or any member of the ICAC's staff;
- b) that an investigation is being conducted by the ICAC; and
- c) that he has been required to give information, or an item, under section 32, 34, or 71(1)(g) of the Act.

91. Mr BROWN was told at the time of service that he could not speak to anyone about this unless they were a legal practitioner for the purposes of obtaining professional legal advice, or a health practitioner for obtaining professional assistance. Mr BROWN said he had a friend with a law degree and asked if he could tell him. It was reiterated to Mr BROWN that it had to be a practicing legal practitioner for the purpose of obtaining professional legal advice.

92. In my opening remarks for Mr BROWN's examination I reiterated the legislative requirements of the section 147 Direction not to disclose certain information. At that time Mr BROWN said he understood the requirements of the section 147 Direction.

93. In his evidence under examination, Mr BROWN admitted to breaching the terms of the section 147 Direction:

MS TRUMAN: *Your original section 147 was given to you on 06 March this year wasn't it and that original 147 you immediately breached that, didn't you?*

MR BROWN: *Yes.*

MS TRUMAN: *You got served at 11am and 40 minutes later you're sending texts about it aren't you?*

MR BROWN: *Yeah.*

94. In his evidence, Mr BROWN made admissions to breaching the terms of the section 147 Direction by messaging to, or speaking with, five individuals with whom he was not authorised to share confidential information under the section 147 Direction.

Findings of Corrupt Conduct

Dishonestly obtaining employment as a public officer

95. Pursuant to section 10(2) of the ICAC Act, conduct is **corrupt conduct** if it is conduct engaged in by a public officer (whether or not the identity of the public officer is known):

(a) that constitutes reasonable grounds for dismissing or terminating the services of the public officer; and

(b) that is connected to public affairs; and

(c) that involves or results in any of the following:

(i) dishonesty

96. Pursuant to section 10(4)(e) of the ICAC Act, conduct is corrupt conduct if it is engaged in by a person (whether or not a public officer or public body) that could impair public confidence in public administration and that involves dishonestly obtaining or retaining employment or appointment as a public officer.
97. Pursuant to clause 3.1(c) of *Employment Instruction Number 15 (Special Measures)* applicants selected under the (Special Measures) plan must provide proof of membership in the relevant Special Measures group by the method set out in the Commissioners Guideline to Special Measures.
98. I find on the balance of probabilities that in breach of section 10(2)(a)(b) and (c)(i), and section 10(4)(e) of the ICAC Act, Mr BROWN dishonestly obtained employment as a public officer in that he:
1. On 25 September 2019 uploaded COA1 to RTF 174482 Security and Site Manager, a full-time permanent SAO1 vacancy.
 2. After being requested by the selection panel to provide a COA with a common seal stamp he further submitted COA2. He did this knowing the COA documents were not genuine and that the selection panel would rely on them.
 3. COA1 and COA2 both have forged signatures on them.
 4. Falsified two COAs as set out above.
 5. Dishonestly claimed qualifications in his resume which he did not have.
 6. Was as a result, selected as the preferred Special Measures applicant for the position on 06 November 2019 and commenced the role on 18 November 2019.

Attempting 14 times to obtain employment

99. I find on the balance of probabilities Mr BROWN knowingly falsified two versions of COAs and submitted the documents against 15 NTPS vacancies subject to Special Measures plans in order to give him priority consideration for the positions.

100. He falsified COA1 and first uploaded it into eRecruit on 12 September 2019. After being told that COA1 was not acceptable as it did not have a common seal stamp, Mr BROWN ordered a stamp online and falsified COA2. This was first uploaded into eRecruit on 02 October 2019.
101. By sections 9(1)(a), 9(2)(a) and 9(3) of the Act an attempt to engage in corrupt conduct is improper conduct. Mr BROWN attempted to obtain employment by using the falsified documents 14 times. He was unsuccessful in obtaining the 14 positions.
102. Although unsuccessful in obtaining positions, Mr BROWN submitted 14 applications for Special Measures roles using falsified COAs.

Breach of Non-disclosure Directions - section 147 of the ICAC Act

103. Pursuant to section 147(4) of the ICAC Act, a person given a direction under section 147(1) of the ICAC Act commits an offence if:
 - a) *the person intentionally engages in conduct; and*
 - b) *the conduct results in a contravention of the direction and the person is reckless in relation to the result.*
104. On the balance of probabilities Mr BROWN contravened section 147(4) of the ICAC Act by disclosing information regarding the ICAC to five unauthorised persons.
105. The penalty for such a breach is a maximum term of imprisonment for two years. Such a breach, by section 10(1), is corrupt conduct.

Misleading Information – section 154 of the ICAC Act

106. Pursuant to section 154(1) of the ICAC Act, a person commits an offence if:
 - a) *the person intentionally gives information to another person; and*
 - b) *the information is misleading and the person has knowledge of the circumstance; and*
 - c) *the other person is acting in an official capacity and the person has knowledge of the circumstances.*
107. On the balance of probabilities Mr BROWN contravened section 154(1) of the ICAC Act by intentionally giving information, knowing the information was misleading, to me while I was acting in an official capacity. Mr BROWN had knowledge that I was acting in an official capacity during the examination on 07 April 2020. I have set out below the misleading information:
 - During the examination under oath Mr BROWN stated that he had drafted the wording on COA1 before sending it to Witness A3, who he had previously contacted to

endorse the COA. He stated COA1 was emailed back to him by Witness A3 with the letterhead and signatures added.

- Later that day Mr BROWN admitted he falsely added the signature.
- During the examination under oath Mr BROWN stated that he had hand written the wording on COA2 using the format of another person's COA and posted it to the address on the 'Wiradjuri People' website. It was returned to him by post in the format of an official COA. The text had been typed, letterhead added, it was signed by Witness A3 and Witness A2 and had the Wiradjuri ALC common seal stamp on it.
- Later that day Mr BROWN stated that he had created the entire certificate by copying the images in the letterhead from the 'Wiradjuri People' website, had stamped the COA with the common seal stamp he had ordered on-line and had created the signatures for Witness A3 and Witness A1 without their knowledge.

108. Further, while Mr BROWN told me under oath, initially, he had the qualifications listed in his resume and referred to by me in paragraphs 61 and 87. He later recanted as I have recorded in paragraph 89.

109. The penalty for each of the two breaches above is a maximum term of imprisonment for two years. Such breaches by section 10(1), constitute corrupt conduct.

Recommendations

110. Public sector recruitment is vulnerable to improper conduct.
111. This investigation has highlighted systemic risks in the NTPS recruitment framework. That framework incorporates the PSEMA, subordinate legislation including Directions, Employment Instructions and Commissioner's Guidelines, and agency-specific policies, procedures and work practices.
112. Public sector recruitment panels play a key role in ensuring that candidates possess the requisite skills and experience, and demonstrated integrity, prior to being appointed as a public officer.
113. However, public sector recruiters can perform only the due diligence required under the recruitment framework.
114. Pursuant to section 13 of PSEMA, the Commissioner for Public Employment's functions include but are not limited to the following:
 - to promote the upholding of the public sector principles;
 - to determine practices and procedures relating to the recruitment and employment of persons as employees, the promotion of employees and the employment, transfer, secondment, redeployment, discipline and termination of employment of employees and any other matters relating to human resource management;
 - to consult with, and advise, CEOs in relation to the development and application of appropriate human resource practices and procedures in their Agencies;
 - to consult with CEOs in relation to the application of public employment policies in their Agencies;
 - to advise the Minister on, and monitor the implementation of, public employment policies;
 - to assist, as appropriate, CEOs in evaluating the performance of employees employed in their Agencies; and
 - to conduct or cause to be conducted inquiries and investigations into, and reviews of, the management practices of Agencies.
115. Pursuant to section 24(3)(f) of PSEMA, in performing the functions of the CEOs, the CEO is responsible for devising and implementing employee performance management and development systems for the Agency.

116. Pursuant to section 24(4), a CEO also has any other functions conferred under PSEMA or any other Act.
117. Pursuant to Part 5 section 29(1) of PSEMA the CEO of an Agency may employ a person as an employee, or promote or transfer an employee, to perform duties in the Agency. That is stated to be "subject to this Act."
118. Pursuant to section 16(1) of PSEMA, the Commissioner for Public Employment, by Gazette notice, may make rules, not inconsistent with the Act, to be known as "Employment Instructions".
119. Pursuant to section 16(1) of PSEMA, the Commissioner for Public Employment has issued Employment Instructions in relation to the following:
 - *filling vacancies*
 - *employee performance management and development systems*
 - *discipline*
 - *employment records*
 - *code of conduct*
 - *special measures*
120. Based on that statutory backdrop, I make the following recommendations in order to address improper conduct risks in the NTPS recruitment framework.

Discipline and records of candidates' histories

121. Public sector employees with a history of wrongdoing, or an alleged history of wrongdoing, are able to serve in the public sector because agencies have limited visibility of persons who have resigned while subject to disciplinary processes.
122. Part 8 of PSEMA deals with matters of discipline, including, but not limited to, the criteria for breaches of discipline, the circumstances under which a CEO of an Agency may take disciplinary action, taking of disciplinary action if an employee changes Agency, and the disciplinary action that may be taken by the CEO of an Agency.
123. *Employment Instruction Number 7 (Discipline)* sets out rules for undertaking a disciplinary process in accordance with PSEMA. This Employment Instruction is to be read in conjunction with Part 8 of PSEMA, and *Employment Instruction Number 3 (Natural Justice)*.

124. Section 15 of PSEMA sets out the investigatory powers of the Commissioner for Public Employment, including powers to:

- enter and inspect premises occupied by an Agency;
- obtain relevant information from persons as, and in the way, the Commissioner considers appropriate;
- consult with persons as the Commissioner considers appropriate; and
- make inquiries as the Commissioner considers appropriate.

125. Pursuant to section 64A of PSEMA, a person who conducts an investigation under PSEMA for the Commissioner or a CEO, or who is an employee or former employee, is not subject to civil or criminal proceedings in relation to a report prepared in good faith by the person for PSEMA or in the course of his or her employment about:

- the work that has been, is being, or is to be performed by an employee; or
- the work that was performed by a former employee; or
- the conduct of an employee or former employee.

126. I have observed the following:

- that CEOs tend not to investigate a breach of discipline after an employee has resigned from the public service;
- that public sector employees who are subject to disciplinary investigation may continue to serve elsewhere in the public sector after they have resigned from the Agency in which they were subject to disciplinary investigation;
- that the Commissioner for Public Employment may not have the legislative authority to strike out persons from future NTPS employment who are unfit for public service (for example, vexatious applicants and persons who have engaged in serious and/or prolonged wrongdoing during their employment within the public service);
- that there is no across government register of employees who are, or have been, subject to disciplinary processes, whether or not they have resigned before disciplinary processes have been finalised; and,
- that there is no across government register of employees who have dishonestly attempted to obtain, or obtained or retained, employment or appointment as a public officer.

127. Due to the factors mentioned above, public sector recruitment panels are limited in their ability to perform due diligence in relation to candidates for public sector roles.
128. The matter of an investigation which has been commenced, where the employee being investigated has resigned, has a number of problems associated with it.
129. It is thought that there is no jurisdiction to continue such an investigation after the person has resigned.
130. I understand the practical sense of that, in that resources would need to be assigned after a person is no longer an employee.
131. However, it leaves open the possibility that nothing will be recorded on the persons file, and the person may apply subsequently for employment with the NTPS.
132. PSEMA section 49A allows a CEO of an agency if, on reasonable grounds, the CEO is satisfied that the employee has committed a breach of discipline, to take action against the employee.
133. Section 49A(2) gives the CEO powers to, effectively, investigate such a breach.
134. Section 49A(3) requires a CEO, before the CEO takes disciplinary action against the employee, to be satisfied –
- “(a) the action is appropriate and reasonable in the circumstances; and*
- (b) the employee:*
- (i) has been given written notice of the proposed action and the grounds for taking it; and*
- (ii) has been given a reasonable opportunity to show why the action should not be taken.”*
135. Section 49A(4) and (5) require the CEO to give written notice of the decision to the employee. The notice must give reasons for the decision and inform the employee of a right to appeal.
136. It would appear to me that that statutory process of natural justice is unnecessarily complicated by the fact that it does not commence until the CEO is satisfied that the employee “has committed a breach of discipline”.
137. It would appear to me, and I recommend, that the process should be further broken down to stages.
138. A CEO should commence an investigation if the CEO is satisfied that, on reasonable grounds, there is a suspicion that the employee may have committed a breach of discipline.

139. If that was so, then the CEO could exercise the powers in section 49A(2) to investigate the allegations.
140. If, at that point in time, the CEO forms a view that there are reasonable grounds to suspect that the employee has committed a breach of discipline, the CEO should be required to give the employee the right to respond to any inculpatory material accumulated by the CEO, and to the CEO's reasons for believing that there are reasonable grounds for the CEO to have reached the tentative view that the employee has committed a breach of discipline.
141. The employee, at that point, is given the right to be heard in respect of the matter. The right to be heard is not to be elevated into a necessity to receive a response. Natural justice requires the opportunity be given to a person to respond. If the person chooses not to respond that does not mean that natural justice has not been given. Natural justice is simply giving fulsome and adequate opportunity to an employee to do so.
142. It is only after that response has been received, or the fulsome opportunity given, that the CEO should make any determination "that an employee in the agency has committed a breach of discipline, (and) the CEO may take action against the employee under section 49C."
143. I make that recommendation on the basis that, as the section stands at the moment, natural justice does not seem to be given until such times as the investigation and determination are concluded.
144. But there is a second reason for making the distinctions.
145. If an investigation commences, and an employee resigns partway through the investigation, even though the employee is no longer in employment, the former employee can be given the right to natural justice.
146. Such a process would at least complete the investigation stage. Importantly, the results can then be recorded on a former employee's file.
147. If such a former employee was not given natural justice to respond to allegations, and a record of some sort is made on the persons file, or in a register of people who have resigned during investigations, an unfairness may occur against such a person subsequently.
148. However, if the person has been given natural justice, the procedural steps would have been satisfied. A notation could be made on a file without risk of an injustice. Such a record could be made, safely, on a register of such people who resigned during disciplinary proceedings.

149. If a person had not resigned during that process, then, if the decision to take disciplinary action has been made, the notice pursuant to section 49A(5) can be given.
150. I note that PSEMA section 64A, referred to above, gives protection from civil or criminal proceedings to a person who conducts an investigation under the Act or who is an employee or former employee under the Act in respect of a report prepared in good faith for the Act.
151. It is clear that the drafter of section 64A had in mind the completion of reports about a former employee.
152. **Recommendation:**
- OCPE to create an across government register of public officers who have been subject to completed disciplinary action.
 - OCPE to issue instructions to CEOs to report annually on employees who have resigned under investigation, provide a summary of any decision to investigate any alleged breach of discipline, and make records available to OCPE where candidates subject to disciplinary proceedings have applied for NTPS roles.
 - OCPE to make relevant information available to the appropriate authority that has received an application from a candidate who appears on the across government register.

Risk-based pre-employment screening

153. The absence of risk-based pre-employment screening processes in the NTPS has the potential to compromise the suitability and integrity of people engaged to work in the public service.
154. Section 5D of PSEMA outlines the Merit principle. It states:
- “1) The merit principle is that the employment of a person as an employee, or the promotion or transfer of an employee, under this Act must be based solely on the person's suitability:*
- a) to perform the relevant duties; and*
 - b) for employment in the relevant workplace; and*
 - c) for employment in the Public Sector.*
- 2) A person's suitability is to be determined having regard to the person's:*
- a) knowledge; and*

- b) *skills; and*
- c) *qualifications and experience; and*
- d) *potential for future development.”*

155. The Commissioner for Public Employment’s functions include the determination of practices and procedures relating to the recruitment and employment of persons as employees, pursuant to section 13(c) of PSEMA.

156. The OCPE’s recruitment and selection policy is designed to ensure:

“that the most suitable applicants are selected to vacancies, and that NTPS selection processes are:

- *Simplified (i.e. not lengthy or unduly process-oriented)*
- *Consistent across NTPS Agencies*
- *Fair and Transparent*
- *Courteous and Respectful of Applicants*
- *Designed to assess applicants’ suitability based on proven capabilities*
- *Informative about the reasons for selecting successful applicants.”*

157. Pre-employment screening is commonly used to ensure the suitability, integrity and identity of people engaged to work in the public service. For example, the NSW Public Service Commission² stipulates the following:

“Subject to legislative requirements, it is up to the employer to determine the pre-employment screening checks required for the role.

The level of pre-employment screening needed will vary according to the organisational context and role being filled. It is therefore necessary to consider the essential requirements of the role, identify any risks associated with these requirements and decide on the screening needed to manage these risks.”

158. The OCPE has not issued risk-based pre-employment screening guidelines to agencies.

² NSW Public Service Commission, *Pre-employment screening checks*, accessed online 1 July 2020 at <https://www.psc.nsw.gov.au/workforce-management/recruitment/recruitment-and-selection-guide/deciding-and-appointing/pre-employment-screening-checks>.

159. **Recommendations:**

OCPE to develop and publish guidance on risk-based pre-employment screening checks including but not limited to:

- the level of discretion to be exercised by an Agency as to when to request disclosure of serious discipline history from applicants;
- relevant criminal histories;
- the circumstances under which pre-employment screening checks may be required;
- the types of risks that must be considered by an agency when considering the requirement for pre-employment screening processes;
- the types of pre-employment screening checks that may be required;
- requirements for informing applicants of pre-employment screening requirements, including the accuracy of resumes;
- requirements for seeking consent from candidates to undertake pre-employment screening checks, including the accuracy of resumes;
- the requirement for Chief Executive Officers of an Agency to report annually to the OCPE a summary of the application of risk-based merit-based selection processes;
- case studies highlighting situational contexts where pre-employment screening may be required.

OCPE to develop and introduce a mandatory pre-employment declaration for all NTPS candidates, with fields including:

- a disclosure of NTPS agencies and bodies that the candidate has worked for;
- relevant criminal history (excluding spent convictions) and current criminal charges;
- details of voluntary separation or workers compensation entitlements received;
- eligibility to work in the Northern Territory.

Note for the above: OCPE's guidance should consider a recruitment panel's requirement to provide certain information to the applicant for response where adverse information is taken into account by a panel such that it adversely affects the recommendation for appointment, and the recruitment panel's requirement to document and consider any response from the applicant ahead of making their final recommendation.

- OCPE to incorporate guidance on risk-based pre-employment screening above in merit-based selection advice and training.

- DoH to implement a requirement for all security staff to undergo a criminal history check as part of suitability.

Record keeping

160. Inadequate record keeping compromises the ability of agencies and integrity bodies to investigate alleged misconduct on the part of the candidate.
161. Special Measures Candidates are required to provide a statutory declaration with their applications, and if selected, a COA of prior to commencement.
162. **Recommendations:**
 - OCPE to require recruitment selection panels to keep a record of Special Measures Statutory Declaration and COA of the successful Special Measures applicant in eRecruit. This should be incorporated into recruitment selection panel training.
 - Department of Corporate and Information Services to provide functionality for Special Measures applicants to upload the documents mentioned above in the eRecruit system under new non-mandatory fields titled 'Special Measures Statutory Declaration' and 'Certificate of Aboriginality'. This will allow for searches to be conducted on attachment 'type' making an audit on COAs possible moving forward.

Annexure 1: Natural Justice Letter to Mr BROWN



Ashley Brown

Via email: [REDACTED]

**Office of the Independent
Commissioner Against Corruption (NT)**
Level 7, 9 Cavenagh Street
DARWIN CITY NT 0800

Postal address
GPO Box 3750
DARWIN NT 0801

T 08 8999 4015
E Kenneth.fleming@icac.nt.gov.au

Dear Sir

Re: Investigation Report – Tentative Findings

Subject of the matters I raise in this letter, it is my tentative intention to prepare a Report pursuant to section 50 of the *Independent Commissioner Against Corruption Act 2017* in respect of alleged improper conduct by you.

Before I finalise such an Investigation Report, by section 50(2) I have an obligation to give you a reasonable opportunity to respond to any adverse material in such a report.

I note that you came to the examination before me on 7 April 2020 without legal representation, and that was your informed choice. Please be aware that you are entitled to seek legal assistance in the matters I am dealing with in this letter.

Please find attached the draft report I have prepared in respect of the matter which I have been investigating involving possible improper conduct by you.

The statements in the draft report are tentative findings only on my part.

I will not make concluded findings in respect of your conduct until you have been given a reasonable opportunity to respond to the adverse material set out in the draft report, and I have considered your response.

That adverse material consists of admissions by yourself under oath, two statutory declarations and a short unsworn statement. A transcript of the evidence you gave before me on 7 April 2020 and the statutory declarations and statement from three witnesses are available for your inspection and consideration during the working hours of, and at the Office of, the Independent Commissioner Against Corruption.

Given the fact that the tentative findings are based upon your sworn evidence and only two other statutory declarations and an unsworn short statement, I consider that a reasonable time for your response to the tentative adverse findings is by 4.00 pm Friday 18 September 2020.

If you think otherwise please advise me as soon as possible.

In the event that I do not hear from you in that time I will conclude my report.

Yours sincerely

A handwritten signature in black ink, appearing to read 'KFleming', is written over a light blue circular stamp.

Kenneth Fleming QC
Independent Commissioner Against Corruption

04 September 2020

www.icac.nt.gov.au

Annexure 2: Natural Justice Response

Response received 10.17 am 7 September 2020

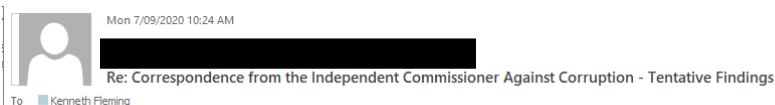


Sir,
What do you want me to say?

Ashley

On Mon, 7 Sep 2020 at 9:14 am, Kenneth Fleming <kenneth.fleming@icac.nt.gov.au> wrote:

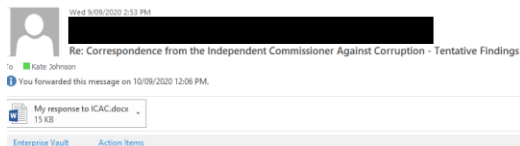
Response received 10.24 am 7 September 2020



Sir,
I cannot remember a thing due to the medication I'm taking and the brain cancer I suffered. I can barely remember the hearing or what I said. I have memory loss from the surgery. I also have suffered 10% of my brain function as well.
All I can say is I take your information the only thing I cannot remember is saying anything about the NSW Police it would have all been Qld Police not NSW.
Sorry about this, I am officially declared as being a boy retard due to the brain loss. Anything I did prior to now was done whilst I suffered brain dis function from the cancer and cysts on my brain. This was fresh at the hearing.
So sorry.
Regards

Ashley

Response received 2.53 pm 9 September 2020



Hi Kate, Thanks for sending those through. I have attached my reply if they need anything further please let me know. Sorry it is short but I cannot remember much through my brain injury.

Regards,

Ash

The word document attachment contained the following response from Mr BROWN:

Ashley Brown response to correspondence from ICAC.

I am not able to remember much as my memory has depleted by 15% after the surgery I have in March 2020. I will try and do the best I can, however regardless of having a lawyer or doing this myself I cannot remember much from the interview I had. I have already sent two email back in return which will make up part of this letter.

The first thing I can remember is the commissioner quoted something about my claiming something about the NSW Police. This is factually incorrect; it was the Qld Police Service I was referring to. Without having the tapes to rely on, I doubt I mentioned the NSW Police in

this conversation and would have said the Qld Police Service. This has been mentioned on several occasions making this transcript incorrect or in the language of the prosecutor and sir, a lie. I am not sure if this is a lie by the commissioner or a way of putting me off the matter, however it is incorrect. I can see this is like the incorrect things I may have said during the matter, however I did not have the benefit of using a transcript to go off.

There is also another mention regarding things in the letter for my employment. As stated to the commissioner there is nothing I could have done about that, the letter was written by a third person and I did not get the letter to proof read, I just got the letter of acceptance and it was already sent.

The fact of this entire matter is based around the Certificate of Aboriginality. Yes, I made the certificate up however, it does not take away from the fact that I am an Aboriginal person and have identified that way for over 30 years. Yes, I found out from my Grandmother and that is the way it was done back in the 70's and 80's, there was no real tracing of history or family trees. You accepted what you were told, and I have lived my life as an Aboriginal person since then. I have always identified since then, been given funding for courses and sports from the Australian Government since then and back then there was no such thing as a Certificate of Aboriginality. I did try and get a certificate, however and what was left out of this matter was the amount of times and people I tried to get on from and who. In the end I was frustrated by the constant refusal of getting one as shown in the evidence I decided to make my own one up. I have not heard of another certificate being given to OCPE and investigated, mine appears to be the only one.

I was asked if I have been discriminated against since this matter, well I have been about 100 times including one by an employee at Licensing NT. I complained to this organisation on several occasions and each occasion was turned down that it would investigate the matter. Overall, I was turned down seven times by this organisation over a two-year period.

There is a statement there regarding my statutory declaration and submitting an old one form. Well the reason for this I explained to OCPE in an email that was not presented by the prosecutor. I wrote to the Commissioner and told them I was not submitting a new form until it was correctly edited. The form had Aboriginal and Torres Strait Islander on it, and this is incorrect as also stated by the Australian Government, but still allowed here in the NT. Once the form is corrected, I will sign it and OCPE advising them of this and nothing was done about it.

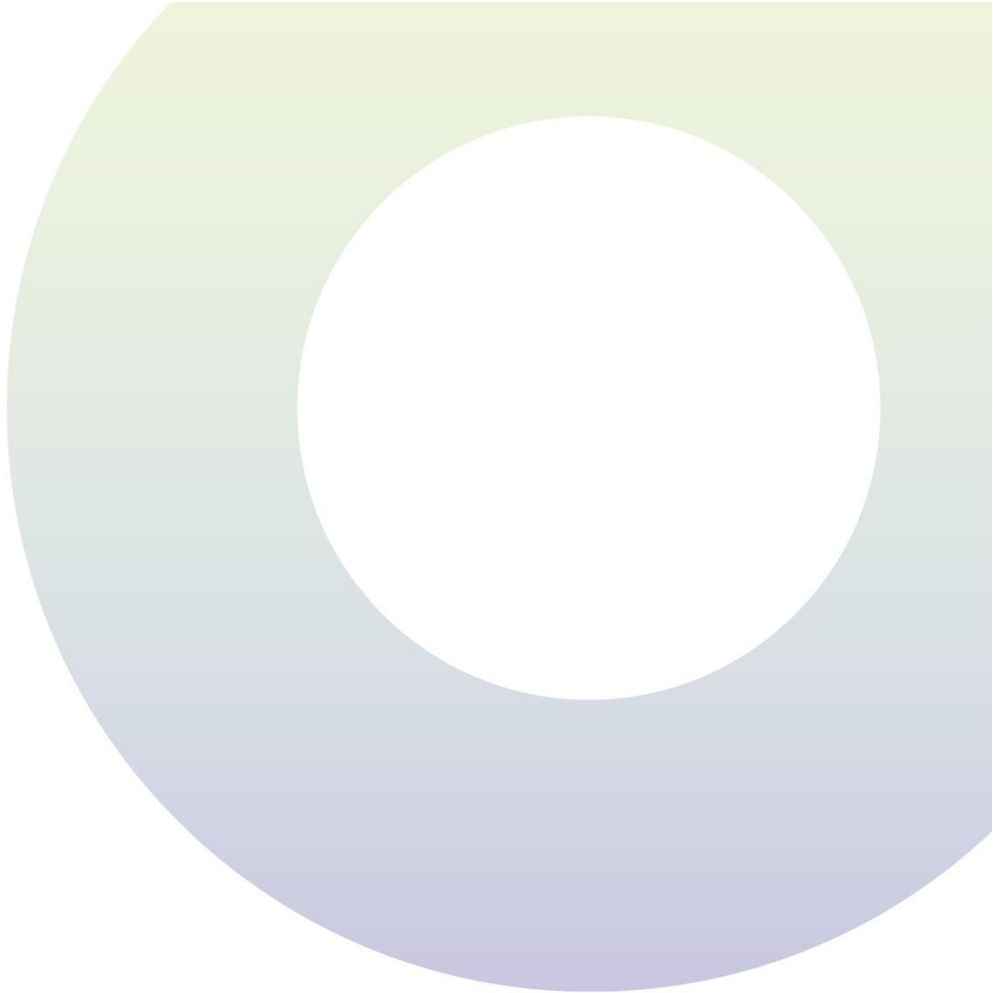
Identifying myself as Aboriginal. I have completed the Statutory Declaration which I also presented to several Organisations in QLD and was accepted and verified by them as true and correct. However, this organisation has failed to have this verified.

This shows that out of all of the jobs I was qualified for I was only successfully in this position and one before it, where they did not ask for a CoA and took my Statutory Declaration as the truth. That was a special measures position with Department of Housing. This has been left out of the transcript as well.

I have resigned my position as Site and Security Manager from the Royal Darwin Hospital after this hearing, which I was gutted for having to do. It has taken me over 4 months to try and get over this which I am still utterly disappointed for having to resign that position.

Being Aboriginal had nothing with the gaining of the position, I still had to win the position or like other jobs I would have just been passed over. Obviously, the panel saw that I had skills during the interview to win the position. I am now suffering from depression as well as my head issues. Saying I won the position because of special measures is totally wrong, if they did not want me it is not hard to pass me over and put someone else in the position, as this has been done to me on other occasions.

Overall, I falsely did the CoA because I was sick of not being recognised as an Aboriginal Person by this Government, the only one in Australia who has not accepted my statutory declaration on its own. I did this because I wanted to be recognised by this Government and a statutory declaration was not sufficient. I did not try and deceive anyone because I know I am an Aboriginal person, my parents know I am Aboriginal, my brother and sister accept me as Aboriginal, as do my friends and family.



Contact the ICAC

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Office of the
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Commissioner
Against
Corruption

