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General Report

Section 48 - Independent Commissioner Against Corruption Act 2017

Michael Riches
Independent Commissioner Against Corruption

Office of the
Independent
Commissioner
Against
Corruption



Letter of Transmittal

The Honourable Ngaree Ah Kit MLA
Speaker
Legislative Assembly of the Northern Territory

Dear Speaker

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

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

Yours sincerely

A handwritten signature in blue ink, consisting of a stylized 'M' followed by a long horizontal stroke that ends in a small hook.

Michael Riches
Independent Commissioner Against Corruption

30 November 2021

Introduction

Section 48 of the *Independent Commissioner Against Corruption Act 2017* (ICAC Act) permits me to make a general report addressing matters of the kind contemplated in section 48(1).

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

I have decided to make this report to the Speaker of the Legislative Assembly so that the Parliament, public officers and the public can be apprised of its content.

I commenced my appointment as Commissioner on 6 July 2021. I thought it would be in the public interest, before the year ends, to make a report addressing some of my early observations, both in respect of my office and public integrity generally, and to identify publicly my approach and my priorities for 2022.

My first five months in the role have been particularly busy. I have endeavoured to acquaint myself with the processes in Northern Territory public administration and the processes within my own office. I have met with a range of individuals in Darwin, Alice Springs and Tennant Creek. I have given a number of presentations and have established working relationships with some of my key stakeholders.

Much of my time has been spent looking inward, as I assessed the current capacity and capability of my office and established a range of new processes which align with my approach to the role.

The office

I am fortunate to have a strong complement of staff to assist me in the performance of my statutory functions. My team is motivated and enthusiastic about our role in public integrity.

Since commencing I have instituted a number of changes to our internal operations and I have issued new staff guidelines in accordance with section 129 of the ICAC Act. I have published those guidelines on the ICAC website. Those guidelines set out the six core principles that will underpin the activities of my staff and me:

- Integrity
- Independence
- Public Interest
- Fairness
- Courage
- Accountability

We have also commenced a program of further education and training to upskill staff.

As is to be expected, there has been some turnover of staff since I commenced. I thank past staff for their contribution to the office and wish them well in their future endeavours.

I acknowledge that this office has, in the past, been the subject of criticism. I will not offer a view as to whether some or all of those criticisms have been fair. An organisation such as this will always cause controversy and will always be the subject of scrutiny. Criticism, whether fair or unfair, is inevitable.

Suffice to say as a team we have learned a great deal from past challenges and we are focussed on getting on with the job.

Investigations

I have already stated publically that my investigations will focus on the most serious allegations of improper conduct. That is what the ICAC Act says my focus should be.

Allegations of corrupt conduct and serious anti-democratic conduct are my primary interest. But that does not mean that I will not investigate other forms of improper conduct, like misconduct or unsatisfactory conduct. As a general rule I will only investigate misconduct or unsatisfactory conduct where:

1. the alleged misconduct or unsatisfactory conduct arises from the same matter that is the subject of a corrupt conduct or anti-democratic conduct investigation; or
2. the matter is such that it warrants the use of the resources and powers given to my office and me. That might arise by reason of the seniority of a person or persons suspected to have engaged in wrongdoing, the harm to the Northern Territory arising from the alleged conduct, or where the matter suggests systemic conduct that ought to be investigated by me.

The decision to commence an investigation is based upon a consideration of the public interest, taking into account considerations specified in Schedule 1 of the ICAC Act. Active investigations are constantly reviewed to ensure their continuation remains in the public interest.

Audits or reviews

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

In conducting an audit or review of this kind, I can use many of the investigative powers given under the ICAC Act.

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

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

I intend to conduct audits or reviews frequently, as I see them as a critical tool to improving public integrity.

Prevention

I firmly believe that prevention is better than cure. Serious improper conduct can have a devastating impact upon individuals, public bodies and the public. It can result in significant economic harm to the Territory, can adversely impact upon trust in an agency, and can adversely affect the mental health of those who have to pick up the pieces. Investigations into improper conduct can be expensive and time consuming. While an investigation may ultimately make a person accountable for their actions, it is most unlikely that all of the harm caused by improper conduct will be remedied.

That is why I think the best anti-corruption agencies are those that balance their investigative efforts with their preventative efforts. It is important that we play our part in assisting public bodies to prevent improper conduct and, when it does occur, to address it.

Parliament has recognised the importance of prevention. One of my statutory functions is:

to prevent, detect and respond to improper conduct by:

- (i) developing and delivering education and training; and*
- (ii) auditing or reviewing practices, policies or procedures of public bodies and public officers; and*
- (iii) developing and delivering advice, reports, information and recommendations; and*
- (iv) referring matters to a referral entity for investigation or further investigation, disciplinary action or prosecution; and*
- (v) making public comment.¹*

I will talk more about our prevention activities later.

Communicating Information

I think it is in the public interest that I share with the Parliament, and the public, as much information as is appropriate about the operations of my office. While there are good reasons to keep certain activities confidential, there is no reason to operate in total secrecy. Indeed, to do so is counter-productive and will only lead to misunderstanding and misinformation.

To that end I intend to present to Parliament, on a six monthly basis, a general report outlining my observations of integrity in public administration, matters relevant to the operations of my office, and other matters that I think are in the public interest to comment upon (to the extent that I am empowered to do so under the ICAC Act).

The bi-annual reports will be supplemented by other Parliamentary reports that I will produce from time to time to address, in more detail, matters which I think the Parliament, and the public, should be aware.

There are, and will continue to be, matters for which I will not offer public comment. They include current investigations and matters pertaining to my office prior to my commencement.

The appropriate starting point is to share information about reports made to my office.

¹ *Independent Commissioner Against Corruption Act 2017*, section 18(1)(c).

Reports to the ICAC

Since this office commenced in November 2018, it has received 1,155 reports, comprising 1,362 allegations.

Reports and allegations

Year	Reports	Allegations
2018/2019 (part-year)	260	267
2019/2020	382	445
2020/2021	372	495
2021/2022 (part-year)	141	155

The following are the five public bodies against which the most allegations have been made (in order from highest to lowest):

1. Northern Territory Police, Fire and Emergency Services
2. Department of Health
3. Department of the Attorney-General and Justice
4. Department of Infrastructure, Planning and Logistics
5. Department of Education.

In due course I will write to the Chief Executive Officers of those agencies, and others, to outline in more detail matters that have been raised about their agencies. I emphasise that the making of a report does not prove that impropriety has occurred. Nevertheless, it is important that agencies understand the general nature of matters about which reports are being made.

Reports to the ICAC involve a range of allegations. By far the most common allegations centre upon failures to manage conflicts of interest, particularly in respect of tenders, procurements and recruitments.

Alleged inappropriate exercise of official functions, and misuse of public resources, also figure prominently.

In a later report I will to explain in more detail the nature of reports received.

I emphasise that reports to the office are not our only information source. Information reported in the media, or information provided by community sources, are also carefully scrutinised and may give rise to further activity.

Investigations

I may commence an investigation where I have knowledge of information that, if true, would tend to show that improper conduct has occurred, is occurring or is at risk of occurring.

I have already stated publicly that my investigations will focus upon matters that I consider to be serious.

I am presently conducting 11 investigations in respect of alleged improper conduct. Some of those investigations were commenced by my predecessor and I have decided that it is in the public interest that I continue with those investigations. Other investigations have been commenced since I took office.

I do not intend to reveal any further information about those active investigations.

Reviews

As I have already indicated, I may audit or review the practices, policies or procedures of a public body or public officer to identify whether improper conduct has occurred, is occurring or is at risk of occurring.

I am presently conducting a review of the practices, policies and procedures of the Batchelor Institute of Indigenous Tertiary Education and I intend to commence a review of another public body before Christmas.

Referrals and oversight

The ICAC Act provides that I may impose directions upon a public body to whom I have referred a matter. Those directions can include a direction to report back to me as to the action taken on the referral.

If I am not satisfied, or I am otherwise concerned about the manner in which a body has dealt with a referral, I may make a report to the relevant Minister. If, after a report to the relevant Minister, I am still not satisfied, I may prepare a report to be tabled in the Legislative Assembly.

Since this office commenced 119 matters have been referred to another body for action. Of those referrals, 87 included a requirement to report back.

At present, I have oversight of 22 matters that have been referred to other public bodies.

In 2022 I propose to prepare a report to the Legislative Assembly addressing some issues and themes that I have identified as to the manner in which public bodies address allegations of improper conduct.

Prevention and Engagement

We are finalising the redevelopment of the ICAC website which, I hope, will be more user friendly and accessible. The ICAC website is the primary resource for obtaining information about my office and for reporting improper conduct.

We remain focussed on expanding our training and education resources. Over the coming two months I will train and approve a number of my staff to deliver sessions about my office and integrity in public administration, in order to maximise our reach. In addition to face-to-face education we are developing online resources. We recently conducted an online forum addressing corruption red flags and work is underway to develop an online *Introduction to the ICAC* module for the government mandatory training program. Work is also underway to develop education resources on conflicts of interest, integrity in leadership and ethical decision making.

Pending COVID-19 restrictions, we will expand our regional and remote engagement and we will disseminate culturally appropriate resources to support that engagement.

Importantly, we will develop our ability to analyse the information we hold in an effort to identify trends, issues and themes of relevance to public integrity. I intend to communicate with public bodies

about those trends, issues and themes, in order to assist those bodies to proactively combat potential impropriety. That strategic intelligence activity is critical to our prevention efforts.

The legislation

The ICAC Act came into operation on 30 November 2018. Prior to my appointment the Chief Minister announced a review of the ICAC Act, to be completed by Mr Greg Shanahan, former Chief Executive Officer of the Department of the Attorney-General and Justice.

I met with Mr Shanahan on 22 July 2021, shortly after my appointment. I provided him with a written submission on 17 August 2021. I have provided a copy of that submission to the Parliamentary Standing Committee on the ICAC, the Chief Minister and the Leader of the Opposition.

On 31 August 2021 I again met with Mr Shanahan, after having had an opportunity to read a draft version of his report. I raised several matters, including some new issues that had come to my attention.

I have not seen Mr Shanahan's final report but I look forward to further opportunities to contribute my observations to proposals for legislative change.

Observations

I turn now to some observations of public integrity in the Northern Territory.

Northern Territory public administration operates in a tight fiscal environment and, as such, every public dollar counts. It is important that public resources are used wisely. Everyone suffers when public resources are misused.

Integrity in public administration is fundamental to an effective government. Working as a public officer is, and should be seen to be, a great privilege. Collectively we are entrusted to manage public money. With that privilege comes significant responsibility. Public officers who do not wish to act in the public interest, or who do not wish to be accountable for their actions, should find alternative employment.

Integrity in Leadership

Those in public administration who hold senior positions carry a heavy burden. Not only must they act with integrity, but they must ensure they create an environment of accountability, respect and excellence.

Leaders set the tone from the top. Their behaviour matters.

The starting point must be to lead by example. Whether leaders be elected, appointed or employed, it is incumbent upon each and every leader to demonstrate the highest standards of integrity and to always act in the public interest. So, too, must leaders ensure that those within their sphere of responsibility model the behaviours expected in public administration, and be ready and willing to act upon behaviours that fall short of expectation.

A positive workplace culture plays an important role in the prevention of improper conduct. Those organisations where ethical behaviour is actively encouraged and supported are less likely to face risks of wrongdoing than those in which a disregard for rules and a lack of consequences for poor behaviour exists.

Indeed, the importance of workplace culture to minimising improper conduct is expressly recognised in the ICAC Act.

Section 8(2) provides that a public body will engage in conduct where:

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

In other words, I could find that an individual engaged in improper conduct and, in light of deficiencies in corporate culture, that the public body also engaged in improper conduct.

Public sector leaders carry the responsibility for the culture of their organisation.

Recruitment and Promotion

Appropriate recruitment is essential to the integrity, effectiveness and efficiency of a public body. Public officers drive the culture of an organisation and poor behaviour or performance can have a significant detrimental impact upon its effectiveness. Ensuring the right people are recruited to a position is important.

It is equally important that progression within public administration is based upon merit.

In my view one of the best ways to erode morale and destroy a positive workplace culture is to engage or promote people for reasons other than merit. Perceptions of nepotism and favouritism can be extremely damaging to a workplace environment.

To that end recruitment and promotion processes must be conducted, and must be seen to be conducted, with integrity.

In 2021 the Commissioner for Public Employment conducted a survey of Northern Territory Government employees (People Matter Survey). Survey respondents were asked the extent to which they agreed with the following statement:

Recruitment and promotion decisions in my workplace are based on merit.

Only 47% of all respondents agreed with that statement. That ought to be a concern for all public sector leaders. The level of positive responses varied between agencies. At the lowest end only 20% of respondents in the Northern Territory Police Fire and Emergency Services agreed with the statement, while 57% disagreed. At the highest end 92% of respondents in the Aboriginal Areas Protection Authority agreed and no-one from that agency disagreed.

Survey responses for individual agencies can be downloaded from the website of the Commissioner for Public Employment.

While a survey can only measure perception, rather than truth, for many people perception is reality. Agencies in which there is a widespread perception that recruitment or promotions are not based upon merit are likely to suffer with poor morale and poor workplace culture.

It is incumbent upon every public sector leader to ensure that recruitment and promotions are conducted with integrity and that decisions are based upon merit.

Screening

Effective screening is an important tool in recruitment or promotions. Ensuring that an applicant in fact possesses the qualifications and experience that is asserted in an application is important, as is appropriate integrity screening, such as national police clearance checks. There are many examples around Australia of persons who have gained employment in public administration through false pretences. Public officers who sit on recruitment panels must be alive to the importance of verifying claims of qualifications and experience that are relevant to the recruitment or promotion decision.

In 2022 I will prepare a separate report for Parliament addressing recruitment and promotion issues in more detail.

Procurement and contract management

Procurement involves the discretionary spending of public money. It is universally regarded as one of the highest risk activities in public administration. A great number of examples of corruption or other serious impropriety have their roots in procurement processes. It follows that procurement is an activity that should be the subject of particular safeguards.

Those safeguards must be multifaceted. They should be designed to ensure the best value for money, that the expenditure is in the public interest and that impropriety in respect of procurement decisions can be detected.

Of course, that does not mean that procurement decisions ought to be so bogged down by administrative processes so as to create significant inefficiency. It is a matter of balance. But it must always be remembered that procurement in public administration involves the expenditure of public money. I do not accept that safeguards should give way completely to business efficiency. Public money must be treated with respect. As such, there must always be in place safeguards that are commensurate with the nature of the procurement.

Oversight must not end when a procurement decision has been made. Ensuring that goods or services have been delivered, carefully scrutinising the rationale for contract variations, and ensuring timeframes are met, must also occur.

In 2022 I will report more about my observations of procurement and contract management safeguards in the Northern Territory.

Grants

Northern Territory and local governments expend millions of dollars each year on grant funding.

The Northern Territory Government Grants Directory² lists around 150 unique grants, scholarships and other financial support for businesses, associations and individuals (although many listed grants have closed or are not presently available).

² <https://nt.gov.au/community/grants-and-volunteers/grants/grants-directory>.

No doubt many more grants are offered through local councils across the Territory.

Grants are used to stimulate the economy, support new businesses and initiatives, deliver community services and promote investment. The COVID-19 pandemic is a recent example of the importance of Government grants to enable individuals, and businesses, to survive adverse economic conditions. In that regard grants can offer significant public value.

But grant programs can create risks of impropriety, both in respect of the selection of grant recipients and the delivery of agreed outcomes by grant recipients.

While not wishing to comment on particular examples, it is not difficult to identify occasions, in this jurisdiction and elsewhere, where significant anomalies have been identified in respect of the issue of grants, and the use grant money.

Accordingly, allegations of impropriety in respect of grants will be a particular interest of mine in 2022.

Lobbying

Lobbying of government officials in an effort to influence public decision-making is an accepted and common activity in western democracies. Whether directly, or through paid or unpaid third parties, individuals or groups with an interest in the outcome of public decisions may wish to access, inform and influence those who make the decisions.

But such activities create real risks of corrupt conduct.

Unequal access to decision makers, public policy being determined on the basis of promises of political or personal benefit, and lack of transparency around lobbying activities, are significant risks to integrity in all levels of government.

Such are the risks that every jurisdiction in Australia, except the Northern Territory, has in place a regime to regulate the conduct and activities of lobbyists.

In June 2021 my predecessor recommended the introduction of a lobbying regime in the Northern Territory.

As an anti-corruption measure, I think such regulation is critical. I encourage the introduction of a lobbying regime.

Engagement with the private sector

I have been told on more than one occasion that since the ICAC commenced in the Northern Territory there has been a great deal of fear surrounding engagement with private enterprise. I do not know the extent to which that fear is real, or the basis for the fear, but I thought it appropriate that I deal with the issue.

It is both appropriate and necessary for all levels of government to engage with private industry. Whether that engagement be through industry regulation, government support for private enterprise, public/private partnerships or contracting service providers for government work, there is a continuing need for the government, and the private sector, to work together. I support that.

What I expect, and what I think the public would expect, is that such engagement be in the public interest. Contractors should expect that there will be a level playing field when bidding for work. Grant applicants should expect that all applications will be assessed on merit.

Public officers have nothing to fear from me in engaging with private enterprise, provided they make decisions objectively and in the public interest, and do not place themselves in a position where they could be improperly influenced, or be seen to be improperly influenced, in respect of their responsibilities. That is of course a matter of judgement to be exercised by every public officer. The receipt of gifts or benefits in particular are matters that public officers ought to carefully consider.

Keeping good records of the reasons for decisions is an important part of good decision making. The act of recording reasons for the making of a decision forces the decision maker to turn his or her mind to the precise reasons for the decision. That process itself can support ethical decision making.

Protecting whistleblowers

Part 6 of the ICAC Act contains provisions designed to protect those who make reports of improper conduct to certain entities, such as my office.

Encouraging people to come forward and report impropriety is not without difficulty. There appear to be two primary barriers to reporting:

1. fear of personal repercussions; and
2. a lack of confidence that any action will be taken.

I add that, at least in the Northern Territory, I suspect that a lack of understanding of mandatory reporting obligations, or a misunderstanding of those obligations, is probably another barrier. That is something I will attempt to address in 2022.

Those who do report ought to be protected. The responsibility for protecting whistleblowers rests with public bodies. I am empowered to oversee the manner in which public bodies provide those protections, but the responsibility rests with them.

Quite simply, people are far less likely to come forward with information about wrongdoing if they do not feel that they will be protected from retaliation.

In the recent *People Matter Survey*, public officers were asked whether they agreed with the following statement:

I am confident I would be protected from reprisal for reporting improper conduct.

Fifty eight percent of respondents to the survey either agreed or strongly agreed, while 21% were neutral. Of concern, 21% of respondents disagreed.

Combatting the perception of risk associated with reporting is important, as is ensuring that public officers who do report are not subject to retaliation.

Likewise, ensuring that reports are appropriately considered and, where necessary, further action is taken, is also important.

Respondents to the recent *People Matter Survey* were asked whether they agreed with the following statement:

I am confident that if I reported improper conduct in my organisation, it would be investigated in a thorough and objective manner.

Fifty-five percent of respondents either agreed or strongly agreed, while 25% were neutral. Twenty percent of respondents disagreed.

Of course it can be challenging to combat perceptions of inaction. That is so because there may be good reason not to take action on a report. It may also be that privacy considerations do not permit the reporter to be advised of any action that has been taken. Even if action is taken, it may be perceived that the action is insufficient in light of the gravity of the behaviour. While it can be difficult to address these challenges, clear and timely communication with a reporter is key, as is the existence and adherence to a clearly defined process for the assessment and management of reports of improper conduct.

I intend to work with public bodies over the coming year to:

1. increase knowledge about reporting obligations;
2. support agencies to minimise the risks of retaliation against those who do report; and
3. ensure proper processes are in place to deal with reports of improper conduct.



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