

OFFICE OF THE INDEPENDENT COMMISSIONER AGAINST CORRUPTION (NT)

Operation Apollo – improper conduct in recruitment

28 February 2025

Section 55 of the *Independent Commissioner Against Corruption Act 2017* empowers the ICAC to make a public statement. I have been appointed as a Delegate of the ICAC and am satisfied that it is in the public interest that I make this statement.

Following an investigation I have made a finding that a senior executive public officer engaged in improper conduct, namely unsatisfactory conduct, relating to the mismanagement of a conflict of interest. I found that the conduct involved negligence and incompetence. The conduct did result in a substantial detriment to the public interest and was also an inappropriate use of public resources in the recruitment process.

I have made two recommendations which address the improper conduct risk in recruitment and which the public body has accepted.

Publication of identity

I have not identified the individual involved. I have made that decision because of the statutory constraints on the publication of evidence obtained under compulsion. In this case I conducted examinations of the public officer and others. I have placed heavy reliance upon the evidence obtained during those examinations in order to make my finding. Because I required each individual to answer questions asked of them at their examination, the ICAC Act prohibits me from publishing that evidence.

In my view, it would be unfair to publicly name, or otherwise identify, an individual as having engaged in unsatisfactory conduct in circumstances where I cannot also explain the evidence, or at least some of the evidence, that supported my conclusion. That is particularly the case where the compulsorily acquired evidence figured prominently in my considerations.

Further, section 55(4)(c) prohibits the naming or identification of a person in relation to a matter that amounts to unsatisfactory conduct.

Investigation

In early 2024, the senior executive public officer (the public officer) was a panel member for the recruitment to a senior position within their department. The public officer was a long-time friend of the candidate and there was sufficient evidence given during the compulsory examinations from which I formed the view that there was a close and current relationship between the public officer and the candidate.

The public officer had also provided their previous job application to the candidate, prior to the candidate applying for the position. The public officer did not provide their previous job application to the other candidates. The provision of the previous job application was a matter that should have been disclosed to the other panel members.

The public officer verbally declared to the other panel members that there was a friendship, however did not provide any particulars of the extent of the relationship. The public officer also acted as a referee for the candidate in the recruitment process. One of the other panel members acted as a second referee. Given the particular circumstances of this matter, the public officer

failed to manage the conflict of interest and ought to have recused themselves from the recruitment process.

Whilst it may not be improper per se, to act as a referee as well as a panel member, nevertheless doing so has the potential to cause conflicts of interest and can lead to perceptions of bias in the recruitment process. That is so when a panel member provides a positive reference for one candidate and not others.

I make this public statement as I believe there are a number of lessons to be learnt from this investigation, in particular the need to proactively manage a conflict of interest and have in place rigorous guidelines for such management that is specific to recruitment panels.

As the former South Australian Commissioner Against Corruption (SA ICAC) observed in a paper published in 2021:¹

The power to recruit someone to a public position, with a salary and other benefits the position confers, is a duty not to be underestimated.

When recruitments and other appointments are undermined by nepotism, favouritism or cronyism, the public loses confidence in the integrity of those doing the recruiting. The merit and calibre of those appointments, and ultimately the quality of government services, can also come under question.

In the same publication the then SA ICAC also made the observation that while public officers have the obligation to identify their conflicts of interest, it is not solely a decision for the public officer whether a conflict of interest arises. It is not enough for a public officer to regard themselves as not being influenced by their personal interest. A public officer has a conflict of interest when a fair and reasonable person could perceive them as having one.

If a reasonable and fair-minded observer might perceive that a public officer's personal interests could be favoured by exercising their duties and responsibilities, then a conflict of interest exists. Perception is an important consideration when identifying conflicts of interest and the reasonable person test should always be considered when seeking to identify the existence of conflicts of interest.

In light of the statutory obligations I have, I cannot and do not intend to comment any further as to the particulars of this investigation.

Patricia Kelly SC

Delegate of the Independent Commissioner Against Corruption

¹ Identify, Disclose and Manage, Conflicts of Interest in Public Administration. Independent Commissioner Against Corruption South Australia.