

# East Arnhem Regional Council Supplementary Submission on the Northern Territory Independent Commission against Corruption - Draft Legislation July 2017

The East Arnhem Regional Council (EARC) made a submission to the Northern Territory (NT) Anti-Corruption Integrity and Misconduct Commission Inquiry on the establishment of an independent anti-corruption body in the NT in February 2016. EARC welcomes the further opportunity to make a supplementary submission with reference to the draft legislation (Bill) – *“A Bill for an Act to establish an Independent Commissioner Against Corruption, to provide for the protection of whistleblowers, to repeal the Public Interest Disclosure Act, and for related purposes”*.

This supplementary submission draws on the conclusion and recommendations presented in EARC’s original submission which were as follows:-

## **Conclusion**

*When considering the introduction of an NT ICAC the financial ability of the Local Government that maybe the subject of a complaint of misconduct or corrupt conduct should be taken into account. The financial ability could be related to the Local Governments position on the ABS Socio-Economic Indexes for Areas (SEIFA) or some other rating that ensures that the Council can meet the associated costs of a “referred” complaint.*

*Malicious action that could be taken by a disgruntled employee, rate payer or community member does not receive protection under the Act and assistance is given to Councils in some form so that the costs of an independent investigation are covered. Again some form of rating can be applied as previously mentioned.*

## **Recommendations**

- 1. Financial assistance is provided for any “referred” complaints and associated independent investigations to those Councils identified by ABS, SEIFA, Local Government Area (LGA) Index of Relative Socio-economic Disadvantage within the relevant Census period.***
- 2. Financial assistance is provided for any “referred” complaints where the independent investigation findings indicate that the complaint was malicious. This will assist in taking action against the complainant to recover costs for those***

***Councils identified by ABS, SEIFA, Local Government Area (LGA) Index of Relative Socio-economic Disadvantage within the relevant Census period.***

- 3. *That employees and Councillors are protected from intentional malicious and defamatory action by not allowing the complainant any privilege of protection under the Act.***

**Clarification**

With reference to the Bill and EARC's Recommendations we note the following:-

**Part 2. Section 16. Functions (2)(b) (p.19)** which states *"the ICAC should refer all other matters that may involve improper conduct to another entity, unless there is a good reason for the ICAC to deal with the matter."*

**Section 16. Functions (3)** states *"Without limiting subsection (2)(b), it is a good reason for the ICAC not to refer a matter to another entity if referring the matter:*

*(a) may adversely affect the performance or future performance of the ICAC's functions;  
or*

*(b) may reveal the identity of a protected person.*

EARC proposes that there is a third clause (b or c) which states:-

**(b or c) may adversely affect the performance or future performance of the other entity particularly a public body.**

This additional clause may take into consideration the ability of the other "entity", particularly a public body, being able to meet the costs of any such referral due to the particular expertise and experience the referral may require. The Table on page 22 of the Bill (**Division 4 Referrals 23(2)**) identifies a public body as a "Referral entity".

It is appreciated that **s24** states that *"The ICAC may consult a referral entity in deciding whether to make a referral to the entity"*. This consultation would hopefully lead to a clear and concise understanding of the requirements and possible costs that could be incurred by the entity in such a referral.

Further to the above **s36(1)** states that *"The ICAC may conduct an investigation as a joint investigation with a referral entity in relation to a matter, whether or not the ICAC has referred the matter to the entity under Division 4"*. This clause identifies that "joint

investigations” are possible and in turn a “joint” approach will assist in reducing the impacts on the public body.

However, it is believed that to strengthen the understanding that a referred matter could lead to negative human resource and/or financial impacts that the inclusion of the proposed clause above be made. That is **Section 16. Functions** would appear something like:-

- (3) Without limiting subsection (2)(b), it is a good reason for the ICAC not to refer a matter to another entity if referring the matter:
  - (a) may adversely affect the performance or future performance of the ICAC’s functions; or
  - (b) *may adversely affect the performance or future performance of the other entity particularly a public body.***
  - (c) may reveal the identity of a protected person.

#### **Recommendation**

**That Part 2. S16(3) of the Bill include the clause (or words to this effect):-**

**“may adversely affect the performance or future performance of the other entity particularly a public body”.**