



ACT
Government

Chief Minister, Treasury and
Economic Development

Freedom of Information Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

FOI Reference: CMTEDDFOI 2018-0134

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents and schedule	Published
4. Additional information identified	Yes/No
5. Fees	Waived
6. Processing time (in working days)	20
7. Decision made by Ombudsman	N/A
8. Additional information identified by Ombudsman	N/A
9. Decision made by ACAT	N/A
10. Additional information identified by ACAT	N/A

From: [REDACTED]
To: [CMTEDD FOI](#)
Subject: Revised freedom of information request [REDACTED]
Date: Tuesday, 5 June 2018 10:35:47 AM
Attachments: [image002.png](#)
[image003.png](#)

Hi Matt,

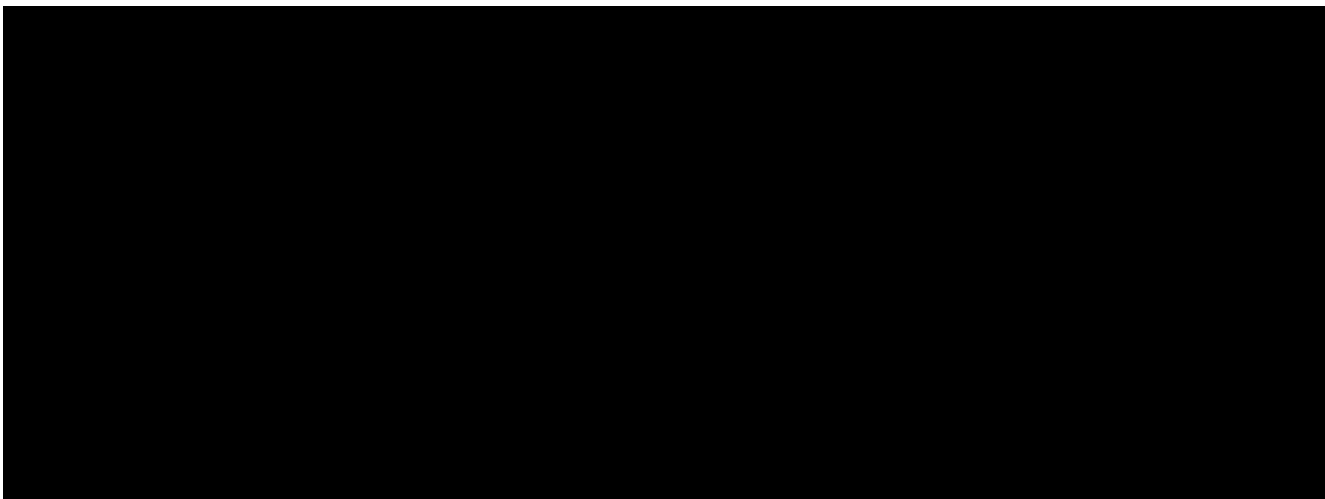
As discussed, please see below my revised FOI request concerning the ACT Government's Shared Services. Please note that I have expanded my timeframe to two years now that I seek a far smaller number of documents:

Under the ACT Freedom of Information Act 2016 (the FOI Act) I request all investigation reports relating to the unlawful or improper use of ICT resources by any ACT Government employee between June 5 2016 and June 5 2018. I seek employment information about the person who committed the misconduct, such as the relevant directorate and position, but accept that personal details such as names will be redacted due to privacy restrictions. I also seek the URL of the websites investigated in these cases, as well as the outcome of the investigation and what, if any, disciplinary action was taken. I seek for the documents to state whether the prohibited material was reported to the Australian Federal Police, with specification of the nature of that material if possible. My request also includes investigation reports relating to the sending of offensive, humiliating or intimidating messages within the ACT Government. In these cases, I seek for the message content to not be redacted as this is necessary to provide context.

If my request results in proposed charges due to the vast volume of documents and time it involves, I request a full reduction of fees as the information is in the public's interest. Canberra taxpayers fund the salaries and budget allocated to the work of ACT Government employees and therefore deserve to know if – and how much of – their taxpayer dollars are being spent on the access and browsing of inappropriate and/or illegal material in the workplace. I also request this remission on the grounds that the release of the information will inform community debate and improve government accountability and transparency. [REDACTED]

[REDACTED] I also note the onus rests with the agency to prove why any information should not be released under the Act and I request the agency provide evidence in support of any assumptions or assertions used to justify non-disclosure.

Regards,







ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI 2018-0134

[REDACTED]

via email: [REDACTED]

Dear [REDACTED]

FREEDOM OF INFORMATION REQUEST

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD), in which you sought access to:

- All documents relating to the unlawful or improper use of ICT resources by any ACT Government employee between January 1 2017 and May 29 2018;
- URL addresses that were blocked as recorded by Shared Services, as well as those which triggered a warning screen for an attempted breach of ACT Government policy;
- for the documents to state whether the prohibited material refers to child pornography and was therefore reported to the Australian Federal Police;
- documents relating to the investigation of cases where the person proceeded to view the inappropriate or prohibited site despite the warning, as stored in a security log.;
- incidents of offensive, humiliating or intimidating messages reported by an ACT Government employee to supervisors; and
- cases that sparked investigations, I seek the investigation reports that detail the relevant disciplinary action taken.

On 5 June 2018, following a telephone conversation to discuss the broad nature of the scope, you refined the scope to:

- All investigation reports relating to the unlawful or improper use of ICT resources by any ACT Government employee between June 5 2016 and June 5 2018;
- employment information about the person who committed the misconduct, such as the relevant directorate and position;
- the URL of the websites investigated in these cases, as well as the outcome of the investigation and what, if any, disciplinary action was taken;
- whether the prohibited material was reported to the Australian Federal Police, with specification of the nature of that material if possible; and
- investigation reports relating to the sending of offensive, humiliating or intimidating messages within the ACT Government.

Authority

I am an Information Officer appointed by the Director-General of CMTEDD under section 18 of the Act to deal with access applications made under Part 5 of the Act.

Timeframes

In accordance with section 40 of the Act, CMTEDD is required to provide a decision on your access application by 4 July 2018.

Decision on access

Searches were completed for relevant documents and 7 cases were identified that fall within the scope of your request.

I have decided to grant partial access to 5 cases and withhold from release 2 cases in full in accordance with Schedule 1.14(a) of the Act as investigations into these matters is ongoing. The information redacted in the other cases I consider to be information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act or is outside of the scope of your request. Due to specific workplace sensitivities some cases are redacted more heavily than others, however the principles in section 6(e) and section 9 of the Act have been applied.

I have included as Attachment A to this decision the schedule of relevant documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

My access decisions are detailed further in the following statement of reasons and the documents released to you are provided as Attachment B to this letter.

In accordance with section 54(2) of the Act a statement of reasons outlining my decision is below.

Statement of Reasons

In reaching my access decision, I have taken the following into account:

- the Act;
- the content of the documents that fall within the scope of your request;
- your views on the public interest in disclosing the government information; and
- the *Human Rights Act 2004*.

Exemption claimed

My reasons for deciding not to grant access to the identified documents and components of these documents are as follows:

Contrary to the public interest information under schedule 1 of the Act

Case number 1 and case number 2 are currently subject to an ongoing investigation. I consider that release of these reports at this time could reasonably be expected to prejudice the investigation of a contravention or possible contravention of the law in accordance with Schedule 1.14(a) of the Act. I am satisfied that releasing this information

prior to completion of the investigation could impact the outcome of the investigation and impact the individuals involved in these matters. For this reason I have decided to withhold all documents relevant to these investigations from release.

Public Interest

The Act has a presumption in favour of disclosure. As a decision maker I am required to decide where, on balance, public interests lies. As part of this process I must consider factors favouring disclosure and non-disclosure.

In *Hogan v Hinch* (2011) 243 CLR 506, [31] French CJ stated that when 'used in a statute, the term [public interest] derives its content from "the subject matter and the scope and purpose" of the enactment in which it appears'. Section 17(1) of the Act sets out the test, to be applied to determine whether disclosure of information would be contrary to the public interest. These factors are found in subsection 17(2) and Schedule 2 of the Act.

Taking into consideration the information contained in the documents found to be within the scope of your request, I have identified that the following public interest factors are relevant to determine if release of the information contained within these documents is within the 'public interest'.

Factors favouring disclosure (Schedule 2 section 2.1)

(a) *disclosure of the information could reasonably be expected to do any of the following:*

- (vi) *reveal or substantiate that an agency or public official has engaged in misconduct or negligent, improper or unlawful conduct or has acted maliciously or in bad faith;*

Factors favouring non-disclosure (Schedule 2 section 2.2)

(a) *disclosure of the information could reasonably be expected to do any of the following:*

- (ii) *prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004;*
- (xii) *prejudice an agency's ability to obtain confidential information;*
- (xv) *prejudice the management function of an agency or the conduct of industrial relations by an agency;*

Having considered the factors identified as relevant in this matter, I consider that release of information contained in these documents may reveal or substantiate that an agency or public official has engaged in misconduct or negligent, improper or unlawful conduct or has acted maliciously or in bad faith. The information contained in the investigation reports was compiled by the Professional Standards Unit (PSU) and takes into the alleged misconduct and the evidence that substantiates these claims. The release of this information allows the public to understand the types of misconduct that have occurred, the processes undertaken by the PSU to investigate each of the allegations and the outcomes of each allegation. The release of this information will demonstrate the work that is undertaken to ensure that members of the ACT Public Service uphold the requirements of the *Public Sector Management Act 1994* during their employment.

However, when considering this finding against the factor favouring non-disclosure, I am satisfied that the protection of an individual's right to privacy, especially in the course of assisting in a misconduct investigation is a significant factor as the parties involved have provided their personal information for the purposes of meeting obligations under relevant legislation or in their duties as an ACT Government employee which, in my opinion, outweighs the benefit which may be derived from releasing the personal information of the individual's involved in this matter.

Personal information is defined by the *Information Privacy Act 2014* as "information or an opinion about an identified individual, or an individual who is reasonably identifiable (i) whether the information or opinion is true or not; and (ii) whether the information or opinion is recorded in a material form or not." I am satisfied that information which allows for an individual to be identified is personal information. Having reviewed the documents within the scope of the request, I note that details such as staff members' names, employment levels, personal accounts of events, the dates, times and locations they occurred and their comments and opinions about other staff members, if released could allow for the individuals involved to be identified. I consider that disclosing such information would cause significant intrusion into privacy of these individuals which would impact their rights under the *Human Rights Act 2004*. Given the sensitive nature of the information, I have given significant weight to this factor.

In making this decision, I have also considered the right to privacy for ACT Government Officials named in the investigation and related correspondence. I am satisfied that the names, signatures, and contact information of government employees at the Senior Executive Level should be released as these staff members were acting in their official capacity and the personal information being released is done so in relation to these individuals exercising their delegations in a work related capacity. I do not consider the release of this information is unreasonable or could prejudice their right to privacy. ACT Government employees below this level have been removed where it has been requested this is done.

The release of identified documents also contain information which could prejudice the Directorate's ability to obtain confidential information. Staff members should be able to freely raise sensitive concerns and seek advice from the Human Resources (HR) teams, particularly in the situation involving improper conduct. Witnesses to events should be able to give advice to the HR teams without any concerns. It is expected by all parties involved that this kind of information is treated in a confidential manner and should only be disclosed on a need-to-know basis. I consider that there is a strong public interest in the HR teams being able to consult with staff members and obtain frank and honest advice to allow them to fully address these matters. The release of information is likely to make staff reluctant to raise similar concerns or give advice in the future. Consequently, the release of this information could prejudice the ability of the HR business areas to receive sensitive concerns and address the issues effectively. For these reasons, I have attributed quite significant weight to both factors.

Having applied the test outlined in section 17 of the Act and deciding that release of personal information contained in the documents is not in the public interest to release, I

have chosen to redact this specific information in accordance with section 50(2). Noting the pro-disclosure intent of the Act, I am satisfied that redacting only the information that I believe is not in the public interest to release will ensure the intent of the Act is met and will provide you with access to the majority of the information held by CMTEDD within the scope of your request.

Accordingly, I have decided that folios 1-13, 16-41, 44-58, 60-75, 77-90 and 92-108 of the identified documents are entirely composed of, or contain information that I consider, on balance, to be contrary to the public interest to disclose under the test set out in section 17 of the Act or are out of scope.

Additional Information

None of the cases involved child pornography. Case 2 has been referred to the Australian Federal Police for investigation. Cases 5 and 6, the employee subject to investigation resigned from the ACT Public Service before a final determination was given.

Charges

Pursuant to *Freedom of Information (Fees) Determination 2017 (No 2)* processing charges would normally be applicable for this request because the total number folio's to be released to you is well above the charging threshold of 50 pages however, in this instance, I have chosen to waive fees associated with your access application in accordance with section 107(2)(b) of the Act.

Online publishing – Disclosure Log

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents released to you in response to your access application will be published in the CMTEDD disclosure log after 9 July 2018. Your personal contact details will not be published.

You may view CMTEDD disclosure log at:

<https://www.cmtedd.act.gov.au/functions/foi/disclosure-log>.

Ombudsman Review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in CMTEDD disclosure log, or a longer period allowed by the Ombudsman.

If you wish to request a review of my decision you may write to the Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

Via email: actfoi@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) Review

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal
Level 4, 1 Moore St
GPO Box 370
Canberra City ACT 2601
Telephone: (02) 6207 1740
<http://www.acat.act.gov.au/>

Should you have any queries in relation to your request please contact me by telephone on 6207 7754 or email CMTEDDFOI@act.gov.au

Yours sincerely,



Daniel Riley
Information Officer
Information Access Team
Chief Minister, Treasury and Economic Development Directorate

4 July 2018



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

NAME	WHAT ARE THE PARAMETERS OF THE REQUEST	Reference NO.
	<p>All investigation reports relating to the unlawful or improper use of ICT resources by any ACT Government employee between June 5 2016 and June 5 2018. I seek employment information about the person who committed the misconduct, such as the relevant directorate and position. I also seek the URL of the websites investigated in these cases, as well as the outcome of the investigation and what, if any, disciplinary action was taken. I seek for the documents to state whether the prohibited material was reported to the Australian Federal Police, with specification of the nature of that material if possible. My request also includes investigation reports relating to the sending of offensive, humiliating or intimidating messages within the ACT Government.</p>	CMTEDDFOI2018-0134

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	N/A	Case 1	N/A	Exempt	Sch 1 s1.14 (a)	No
2	N/A	Case 2	27-Apr-2018	Exempt	Sch 1 s1.14 (a)	No
3	1-14	Case 3	20-Dec-2017	Partial release	Sch 2 s2.2 (a)(ii) Sch 2 s2.2 (a)(xii) Sch 2 s2.2 (a)(xv) Out of Scope	Yes
	15	Case Separator page				Yes
4	16-42	Case 4	17-July-2017	Partial release	Sch 2 s2.2 (a)(ii) Sch 2 s2.2 (a)(xii) Sch 2 s2.2 (a)(xv) Out of Scope	Yes
	43	Case Separator page				Yes
5	44-58	Case 5	09-Mar-2017	Partial release	Sch 2 s2.2 (a)(ii) Sch 2 s2.2 (a)(xii) Sch 2 s2.2 (a)(xv) Out of Scope	Yes
	59	Case Separator page				Yes

6	60-90	Case 6	Jan-2018	Partial release	Sch 2 s2.2 (a)(ii) Sch 2 s2.2 (a)(xii) Sch 2 s2.2 (a)(xv) Out of Scope	Yes
	91	Case Separator page				Yes
7	92-109	Case 7	16-Jun-2017	Partial release	Sch 2 s2.2 (a)(ii) Sch 2 s2.2 (a)(xii) Sch 2 s2.2 (a)(xv) Out of Scope	Yes
Total No of Docs						
7						



ACT
Government

Chief Minister, Treasury and
Economic Development

Investigation Report

Sch 2 s2(a)(ii)

Vehicle Inspector

**Chief Minister, Treasury and Economic
Development Directorate**

Case Reference: 2017/61

Prepared by:

Sch 2 s2(a)(ii)

Professional Standards Unit

20 December 2017



ACT
Government

Chief Minister, Treasury and
Economic Development

Mr Josh Rynehart
Director, Customer Coordination
CMTEDD

Dear Mr Rynehart

Investigation Report regarding allegations of possible misconduct by Sch 2 s2(a)(ii)

Background

On 21 September 2017, Sch 2 s2(a)(ii) was notified in writing by Mr Craig Simmons, Director, Community, Business and Transport Regulation of the investigation (Attachment 1). The preliminary allegation identified and notified to Sch 2 s2(a)(ii) was:

That you have engaged in inappropriate behaviour. I can advise that the allegations relate to the misuse of the Rego.ACT data base for non-work related purposes on Wednesday 20 September 2017.

Investigative process

On 22 September 2017, the matter was referred to the Professional Standards Unit for investigation (Attachment 2).

This investigation was conducted in accordance with the provisions of the ACTPS Infrastructure Services Enterprise Agreement 2013-2017 under which Sch 2 s2(a)(ii) is employed.

On 27 September 2017 Sch 2 s2(a)(ii) responded to Mr Simmons notice of disciplinary investigation via email (Attachment 3). Mr Simmons responded to Sch 2 s2(a)(ii) on 5 October 2017, and while considering Sch 2 s2(a)(ii) response, decided Sch 2 s2(a)(ii) was to remain suspended with pay for the duration of the investigation (Attachment 4).

Information in relation to this matter was provided by:

Person	Position	Relevance to Investigation	Information source	Attachment
Sch 2 s2(a)(ii)	Witness Supervisor	Witness	Statement dated: 31 October 2017	5
	Witness	Witness	Statement dated: 23 November 2017	6
	Witness	Witness	Email dated 17 October 2017 and Rego.ACT Audit Report dated 20	7

Sch 2 s2(a)(ii)	Witness	September 2017 Email dated: 14 November 2017 and Quarterly Review of access dated: 13 October 2015	8
	Witness	Briefing Paper dated: 15 November 2017 and Rego.ACT audit report	9
	Witness	File Notes dated: 31 October 2017 13 November 2017 15 November 2017	10 11 12

Other Documents/Evidence

Description	Attachment
Notes of meeting conversation between Sch 2 s2(a)(ii) and Sch 2 s2(a)(ii) dated 20 September 2017.	13
All in Government email re Privacy Obligations dated 2 February 2016.	14
Acceptable Use Policy Version 2.5, 23 January 2017.	15
ACT RTA Standard Terms of Access to RTA Information and systems, including information for Delegates and users – Version 2.0 – January 2017.	16
Position Description – Sch 2 s2(a)(ii)	17

On 1 December 2017, **Sch 2 s2(a)(ii)** was informed via email of the procedure in providing an admission statement under Section H7.4 of the Enterprise Agreement (Attachment 18).

On 6 December 2017, **Sch 2 s2(a)(ii)** was notified in writing of the following final allegations, particularised with the relevant information obtained, and was offered an opportunity to respond at interview or provide an admission statement (Attachment 19).

Allegation 1.

On Wednesday 20 September 2017, at the Access Canberra Motor Vehicle Inspection Station, Hume, you accessed the drivers licence details and vehicle registration information belonging to **Sch 2 s2(a)(ii)** on the Rego.ACT system, which was outside your duties as a Vehicle Inspector.

Allegation 2.

Out of Scope

On 12 December 2017 Sch 2 s2(a)(ii) attended Nara Centre, 1 Consitution Avenue, Canberra City with a support person and provided a signed admission statement (Attachment 20).

Allegation 1:

On Wednesday 20 September 2017, at the Access Canberra Motor Vehicle Inspection Station, Hume, Sch 2 s2(a)(ii) accessed the drivers licence details and vehicle registration information belonging to Sch 2 s2(a)(ii) on the Rego.ACT system, which was outside his duties as a Vehicle Inspector.

Allegation 2:

Out of Scope

Summary of Evidence

The following facts are drawn from information contained in signed statements, documents, and audit report obtained from relevant parties.

Sch 2 s2(a)(ii)

Sch 2 s2(a)(ii) is employed as Sch 2 s2(a)(ii) for the Motor Vehicle Inspection Station at Hume. He has held this position for the past Sch 2 s2(a)(ii) years. His role includes the supervision of Sch 2 s2(a)(ii) in the workplace.

Sch 2 s2(a)(ii) stated on the morning of Wednesday 20 September 2017 about 9.15am he noticed Sch 2 s2(a)(ii) using the computer and saw the Rego.ACT database open. At this time there were no cars in the test station. Sch 2 s2(a)(ii) stood behind Sch 2 s2(a)(ii) and saw him retrieving information and talking on the phone. When Sch 2 s2(a)(ii) moved away from the computer Sch 2 s2(a)(ii) recorded licence, registration and personal details of Sch 2 s2(a)(ii) on a piece of paper. When Sch 2 s2(a)(ii) returned to the computer he was still talking on the phone. Sch 2 s2(a)(ii) stated that when he finished his phone call he saw Sch 2 s2(a)(ii) log out of the Rego.ACT database. Sch 2 s2(a)(ii) further stated he did not give Sch 2 s2(a)(ii) permission to look up the information.

Sch 2 s2(a)(ii) stated about 10.20am he spoke to Sch 2 s2(a)(ii) with Sch 2 s2(a)(ii) present. When questioned about access to the Rego.ACT database and reminding him of his Deed of Confidentiality, Sch 2 s2(a)(ii) admitted he had looked up a friend's details regarding demerit points. Sch 2 s2(a)(ii) stated, "You are not allowed to do that." Sch 2 s2(a)(ii) said something like, "Yes, I fucked up and I should not have done it. A lot of people have done it. It's another thing against me."

Out of Scope

Sch 2 s2(a)(ii)

Sch 2 s2(a)(ii) is a member of the public and the owner of a Sch 2 s2(a)(ii) He has known Sch 2 s2(a)(ii) since 1989 and **Out of Scope**

Sch 2 s2(a)(ii) stated he had received Sch 2 s2(a)(ii) that had been issued on his work van. He wanted to pay the fines but had lost the reminder notice. Sch 2 s2(a)(ii) stated he contacted Access Canberra who advised there were no outstanding fines. He further stated he was concerned the fines may affect the demerit points and his licence, and sometime in September or October 2017 he rang Sch 2 s2(a)(ii) to air his frustration. He said something like, "I've tried Access Canberra. Is it possible to check my points to see if the fines have affected my points?"

Sch 2 s2(a)(ii) further stated,

I do not know if it was the same day or the next day, but within that week Sch 2 s2(a)(ii) rang me. I presumed Sch 2 s2(a)(ii) was at work because he said something like, "While I'm here I can check if you want?" I gave Sch 2 s2(a)(ii) my registration number, Sch 2 s2(a)(ii) and my licence number, ACT licence Sch 2 s2(a)(ii) Sch 2 s2(a)(ii) then said something like, Sch 2 s2(a)(ii) Sch 2 s2(a)(ii)

Rego.ACT Audit Report titled 'Audit Report based on defect 20217'

On 17 October 2017 Sch 2 s2(a)(ii) provided 'Rego.ACT Audit Report' dated 20 September 2017 relating to an audit of Sch 2 s2(a)(ii) access to the Rego.ACT database on this date. This report was created by Sch 2 s2(a)(ii) Business Information Manager, Access Canberra.

Sch 2 s2(a)(ii)

Sch 2 s2(a)(ii) is the Senior Manager, Transport Solutions & Enforcement, Access Canberra. She provided a copy of and information relating to the Rego.ACT Audit Report regarding Sch 2 s2(a)(ii) access to the Rego.ACT database on 20 September 2017.

In her email dated 17 October 2017 Sch 2 s2(a)(ii) advised that Sch 2 s2(a)(ii) Rego.ACT system user identity was Sch 2 s2(a)(ii) and that he logged onto the Rego.ACT system on 20 September 2017 at 08:48:44 on machine name 336320L located at the Motor Vehicle Inspection Station at Hume. Sch 2 s2(a)(ii) stated user, Sch 2 s2(a)(ii) conducted a registration check on Sch 2 s2(a)(ii) at 9:41:16 on 20 September 2017 for legitimate work purposes.

Sch 2 s2(a)(ii) further advised,

Rego.ACT is the ACT Government's database containing highly confidential licence and registration information which, when accessed, facilitates the issuing of licences and establishments of motor vehicle registrations and to establish Infringement Notice Management Plans. Access to this information is confidential and client's privacy are protected. A client's record holds personal information which includes infringements, licence history and licence and registration details, address, contact details etc.

In her email dated 14 November 2017 Sch 2 s2(a)(ii) provided a copy of a letter headed 'Review of User Access to Rego.ACT Information – 1st Quarter 2015/16'. Sch 2 s2(a)(ii) advised the contents of this letter are raised at team meetings to remind staff they are accountable for every access recorded against their user ID. This letter was provided to Sch 2 s2(a)(ii) from the test station Manager in November 2015 as proof that staff members received the information.

Sch 2 s2(a)(ii)

Sch 2 s2(a)(ii) is employed as the Business Auditor, Road Transport Authority, CMTEED and she provided an interpretation of 'Audit Report based on defect 20217' dated 20 September 2017 produced by Sch 2 s2(a)(ii) Business Information Manager.

Sch 2 s2(a)(ii) stated,

At 9:15:33 Sch 2 s2(a)(ii) searched ACT Licence 2041812.

Sch 2 s2(a)(ii) would have seen the clients name, licence expiry date, licence number, type of licence, address, visual acuity and medical condition. There are a further 2 tabs on the bottom of this screen, they are:

- History tab which shows the history of licence transactions such as licence issue dates, licence renewal dates, infringements paid where demerit points applied and licence suspensions or cancellations.
- Demerit Points tab shows the total demerit points currently accrued on the licence

The client record associated with this licence is CRN Sch 2 s2(a)(ii)

At 9:21:28am Sch 2 s2(a)(ii) searched ACT registered vehicle Sch 2 s2(a)(ii)

Sch 2 s2(a)(ii) would have seen the vehicle details such as plate number, VRN, VIN, engine number, make, model, body type, colour and manufacture month/year.

There are a further 7 tabs at the bottom of the screen, they are:

- Specification tab shows motive power, cylinders, vehicle mass, engine capacity, seating, tare weight, usage e.g. business or private use, compliance plate and transmission.
- Conditions tab shows any code or condition.
- Profile tab shows registration period, third party insurance (TPI) provider and the registration status.
- Inspection tab shows inspection certificate information.
- History tab shows the history of transactions for this vehicle such as establish registration, periods of registration, dishonour and dishonour payments, suspensions and change of garaging address.
- Operator tab shows the nominated operator, client name, suburb and client concessions. There is also a view tab in this screen if he clicked on this view tab Sch 2 s2(a)(ii) would have seen the organisation name, CAN, CRN and physical address. At the bottom of this screen there are 4 tabs, if Sch 2 s2(a)(ii) clicked on these screens he would have seen telephone number, in the history tab he would have seen note for files, dishonour payments, change of address and establish client. The client associated with this registration is CRN Sch 2 s2(a)(ii)

Sch 2 s2(a)(ii)

In her capacity as Manager Operations, Transport Licencing, Access Canberra Sch 2 s2(a)(ii) provided the following information regarding the use of the Rego.ACT database:

Staff undergo induction training which includes training around privacy of information and during this induction the staff member signs the declaration to abide by the PSM regarding the use of personal information. Apart from this there is no other training provided regarding responsibilities for use of database information. There is no refresher type training routinely provided. The only time additional training would occur would be if refresher training was requested.

Sch 2 s2(a)(ii) explained she was the manager of the Vehicle Inspection Station up until 2016 and no requests for refresher training had been made up until then. She further explained there is a quarterly letter sent to the inspection station which requires the section to confirm staff entitlement to have access to the database. This letter was not a reminder to staff about usage.

Sch 2 s2(a)(ii) also advised:

*Induction training for use of Rego.ACT database for **Sch 2 s2(a)(ii)** would have occurred in **Sch 2 s2(a)(ii)** (when **Sch 2 s2(a)(ii)** commenced employment in VIS) and he would have signed a deed of confidentiality during that induction training. However, these records are generally kept for 7 years, so they would no longer have records of someone who completed the induction training in **Sch 2 s2(a)(ii)**.*

Sch 2 s2(a)(ii) advised the search entry at 8:49:05 and 8:49:07am on the 'Audit Report based on defect 20217' dated 20 September 2017 was work related.

ACT RTA Standard Terms of Access to RTA Information and systems, including information for Delegates and users – Version 2.0 – January 2017.

This document outlines the current Standard Terms of Access under which employees using the Roads Transport Authority information and systems are bound when they sign their Deed of Confidentiality. The Standard Terms of Access that relate to deeds signed in 2004 were unable to be obtained.

Section 2.1 of the current document states,

By completing and signing a Deed of Confidentiality the User undertakes:

Not to access, use, modify, disclose or retain any RTA information of the Authority he or she has acquired through the performance of his/her duties of employment with the Recipient, except for the purpose of fulfilling those duties of employment.

Acceptable Use Policy – Version 2.5, 23 January 2017.

This policy applies to all permanent, temporary and casual ACT Government employees and non-government staff including contractors, consultants and work experience students.

The policy states under 'Access to ICT Resources',

Use ACT Government ICT resources only for the purpose for you are authorised. Do not attempt to access any ICT resource including data or programs that you do not have authorisation or explicit consent to access.

The policy also states,

- *do not make improper use of the property of the Territory,*
- *do not disclose, without lawful authority, information acquired by or from any document to which you have access as a consequence of employment.*
- *use personal information only for the purpose for which it has been provided,*
- *Never disclose personal information to unauthorized recipients.*

All in Government email dated 2 February 2016: ACTPS Employee Privacy Obligations

On 2 February 2016 an 'All in Government' email was sent by Ms Bronwen Overton-Clarke reminding all staff of their privacy obligations. The email specifically stated;

It is NOT acceptable to use ICT systems to satisfy your curiosity, to look up something for a friend or to find out information about friends or relatives for example. This also relates to accessing any information about yourself.

Position Description – Sch 2 s2(a)(ii)

In his role as Vehicle Inspector, Sch 2 s2(a)(ii) responsibilities include:

- *Conduct vehicle roadworthy inspections on the roadside, in car parks and the vehicle inspection station.*
- *Conduct vehicle identification checks to ensure that stolen and re-birthed vehicles are not registered in the ACT.*
- *Monitor heavy vehicle movements to ensure roadworthiness and compliance with the National Heavy Vehicle Law and Regulation.*
- *Issue certificates of inspection, defect and infringement notices in accordance with relevant road transport legislation.*
- *Collect evidence, prepare offence reports, formal statements and appear in court to give evidence as required.*
- *Work within the ACTPS Code of Conduct and ACTPS values of respect, integrity, collaboration and innovation, and model behaviour consistent with the ACTPS Respect Equity and Diversity framework.*

Email dated 27 September 2017 – Sch 2 s2(a)(ii)

On 27 September 2017 Sch 2 s2(a)(ii) provided a response to the initial allegations provided to him by Mr Simmons stating that he did receive a phone call from a friend of 25 years who asked him to check his demerit points as he was on hold for some time with Access Canberra. Sch 2 s2(a)(ii) explained as this was a routine of his job he complied with the request without a second thought. He also admitted that it didn't cross his mind that it was considered misuse of the database or that he was breaching the Privacy Act.

Sch 2 s2(a)(ii) further stated that he was up front and honest when questioned by his supervisor and only then realised how serious the matter was. Sch 2 s2(a)(ii) stated how deeply he regretted his actions and expressed his sincere apology for this error in judgement. He asked for forgiveness and stated it would never happen again. Sch 2 s2(a)(ii) advised he had never misused the Rego.ACT database in his Sch 2 s2 years. At the time he wasn't thinking straight and as the request came from a friend he proceeded to do the check.

Sch 2 s2(a)(ii) – Admission Statement

Sch 2 s2(a)(ii) is employed as a Vehicle Inspector at the Access Canberra Motor Vehicle Inspection Station, Hume. He has been in this role for nearly Sch 2 s2 years.

In his admission statement Sch 2 s2(a)(ii) stated on Tuesday 19 September 2017 he received a telephone call from Sch 2 s2(a)(ii) who told him he had received a letter about a fine. Sch 2 s2(a)(ii) asked Sch 2 s2(a)(ii) if he could check to see how many points he had on his licence regarding this fine. Sch 2 s2(a)(ii) replied, "I'm not at work. I can see if I can check for you tomorrow."

Sch 2 s2(a)(ii) stated in the morning of Wednesday 20 September 2017 while at work he telephoned Sch 2 s2(a)(ii) and asked for his registration details. While on the telephone, Sch 2 s2(a)(ii) checked the history to see if there were any fines recorded to the vehicle. Sch 2 s2(a)(ii) told Sch 2 s2(a)(ii) "There were no fines recorded, everything should be OK." Sch 2 s2(a)(ii) thought that he also checked Sch 2 s2(a)(ii) drivers licence for his current status points [REDACTED]

Sch 2 s2(a)(ii) stated he met with Sch 2 s2(a)(ii) on 20 September 2017 at which time he admitted he had checked a friend's licence details as the friend had been unable to make contact with Access Canberra to check for himself.

Sch 2 s2(a)(ii) stated he is authorised to use the Rego.ACT database to access vehicle registration, drivers licence information and similar information from other jurisdictions. He further stated that when doing his job he sometimes needs to cross reference drivers licence details with vehicle owners, which proves the identity of the person bringing the vehicle in. This mainly happens when he is intending to issue a defect notice or a fine if the vehicle is unregistered.

Sch 2 s2(a)(ii) explained in Sch 2 s2(a)(ii) when he commenced work in the Vehicle Inspection Station he remembered seeing a video about the Privacy Act and that he was not allowed to release or look up people's details if it was not work related. He stated he did not remember signing anything at that time. He recalls receiving an email reminding him about not giving out personal information to a third party.

Sch 2 s2(a)(ii) agreed he had improperly used a Territory resource, including information when he accessed Sch 2 s2(a)(ii) drivers licence and vehicle registration information and accepted that this was misconduct.

Out of Scope

Sch 2 s2(a)(ii) fully admitted that what he had done was wrong. He was remorseful and feels his action are an embarrassment to himself and his family. Sch 2 s2(a)(ii) asked for forgiveness and ensured this will never happen again.

Analysis

Sch 2 s2(a)(ii) made full admissions on three occasions that on the morning of Wednesday 20 September 2017 he accessed the drivers licence details and vehicle registration information of Sch 2 s2(a)(ii) on the Rego.ACT database. Out of Scope

Out of Scope

Sch 2 s2(a)(ii) confirmed his driver's licence number was Sch 2 s2(a)(ii) and his registration details were Sch 2 s2(a)(ii). The access to the licence information and registration detail would have provided personal details relating to Sch 2 s2(a)(ii). Both the driver's licence number and the registration number were identified in the Rego.ACT database audit report as being accessed by user Sch 2 s2(a)(ii) on the morning of 20 September 2017. The user Sch 2 s2(a)(ii) was confirmed as Sch 2 s2(a)(ii) by Sch 2 s2(a)(ii).

Both the access **Out of Scope** of this confidential information was outside the scope of Sch 2 s2(a)(ii) duties as a Vehicle Inspector as this access **Out of Scope** was not work related. Although Sch 2 s2(a)(ii) had been informed and was reminded of his responsibilities regarding the access and disclosure of personal information, these were not in the forefront of his mind when engaging in this recent conduct.

As the Delegate you may wish to consider that Sch 2 s2(a)(ii) did admit to the conduct at the first opportunity, has expressed remorse, apologised for his actions and declared it would not happen again. Sch 2 s2(a)(ii) also accepts his actions were misconduct.

Conclusion - Allegation 1

On the basis of the information provided, there is sufficient evidence to conclude, on the balance of probabilities that on Wednesday 20 September 2017, at the Access Canberra Motor Vehicle Inspection Station, Hume, Sch 2 s2(a)(ii) accessed the drivers licence details and vehicle registration information belonging to Sch 2 s2(a)(ii) on the Rego.ACT system, which was outside his duties as a Vehicle Inspector.

This finding is based on an analysis by the investigator of the relevant evidence obtained and the admissions made by the respondent. It is not a determination that misconduct has or has not occurred, which is a decision for you, as the delegate, to make.

In determining whether this behaviour constitutes misconduct (as defined in clause H6.5 of the *ACT Public Sector Infrastructure Services Enterprise Agreement 2013-2017*), you may wish to consider whether Sch 2 s2(a)(ii) failed in his obligations under Section 9 of the *Public Sector Management Act 1994*, in particular:

(2) A public servant must not –

(c) improperly use a Territory resource, including information, accessed through the public servant's job.

Conclusion – Allegation 2

Out of Scope

Out of Scope

Other Considerations

The following information is not relevant to determine whether the alleged behaviour occurred and whether the behaviour amounts to misconduct, however it may assist you in determining an appropriate sanction if misconduct is found to have occurred.

Out of Scope

Recommendations

It is recommended that, as the delegate, you:

- a) review this report, along with the accompanying evidence, to determine on the balance of probabilities whether misconduct has occurred;
- b) if misconduct is found, determine an appropriate sanction in accordance with the *ACT Public Sector Infrastructure Services Enterprise Agreement 2013-2017*; and
- c) notify Sch 2 s2(a)(ii) of the outcome.

Sch 2 s2(a)(ii)

Professional Standards Unit

20 December 2017

Sch 2 s2(a)(ii)

Professional Standards Unit

20 December 2017

Attachments to report:

1. Letter to [Sch 2 s2(a)(ii)] re notice of investigation, dated 21 September 2017.
2. Investigation referral, dated 22 September 2017.
3. Response email from [Sch 2 s2(a)(ii)] dated 27 September 2017.
4. Letter to [Sch 2 s2(a)(ii)] re Response to Notice of Disciplinary Investigation dated 5 October 2017.
5. Signed statement – [Sch 2 s2(a)(ii)] dated 31 October 2017.
6. Signed statement – [Sch 2 s2(a)(ii)] dated 23 November 2017.
7. Email from [Sch 2 s2(a)(ii)] attaching Rego.ACT database audit report dated 17 October 2017.
8. Email from [Sch 2 s2(a)(ii)] attaching Review of User Access to Rego.ACT Information dated 14 November 2017.
9. Briefing Paper re Rego.ACT Audit Report – [Sch 2 s2(a)(ii)] dated 15 November 2017.
10. File note – [Sch 2 s2(a)(ii)] dated 31 October 2017.
11. File note – [Sch 2 s2(a)(ii)] dated 13 November 2017.
12. File note – [Sch 2 s2(a)(ii)] dated 15 November 2017.
13. Notes of meeting conversation between [Sch 2 s2(a)(ii)] and [Sch 2 s2(a)(ii)] dated 20 September 2017.
14. All in Government email re Privacy Obligations dated 2 February 2016.
15. Acceptable Use Policy Version 2.5 dated 23 January 2017.
16. ACT RTA Standard Terms of Access to RTA Information and systems, including information for Delegates and users – Version 2.0 – January 2017.
17. Position Description – [Sch 2 s2(a)(ii)]
18. Email to [Sch 2 s2(a)(ii)] re procedure for admission statement dated 1 December 2017.
19. Letter to [Sch 2 s2(a)(ii)] re final allegations and opportunity to respond dated 6 December 2017.
20. Signed admission statement – [Sch 2 s2(a)(ii)] dated 12 December 2017.



ACT
Government

Chief Minister, Treasury and
Economic Development

UNCLASSIFIED
Sensitive: Personal

Sch 2 s2(a)(ii)

Dear Sch 2 s2(a)(ii)

Notice of Disciplinary Action

I wrote to you on 28 February 2018 and advised you of my findings in relation to allegations of misconduct against you. I also advised you of the proposed disciplinary action and the reasons for my decision in that regard.

You were invited to provide a written submission to me in relation to my findings and the proposed disciplinary action. I received a response from you on 6 March 2018 in which you accepted my proposed findings and sanction. As such, I will implement the proposed findings and sanction from my abovementioned letter.

As per Clause H10.1 (b) of the *ACT Public Sector Infrastructure Services Enterprise Agreement 2013-2017* (the Agreement), I am issuing you with a financial penalty. The penalty will be a reduction in your incremental level from a Sch 2 s2(a)(ii) to Sch 2 s2(a)(ii) for a twelve month period, effective from Wednesday 14 March 2018. Following the twelve month period, you will advance to the Sch 2 s2(a)(ii) Sch 2 s2(a)(ii) increment and further increment advancement payments annually after that, noting any periods of leave taken that do not count towards service may defer payment date.

In addition to the above sanction, you will return to your role on 14 March 2018 and are to arrange with your manager, the undertaking of privacy and confidentiality training.

Right of Appeal

Section J of the Agreement provides you with information on your right for appeal. You have the right to appeal a decision to take disciplinary action. I have attached a copy of Section J for your information.

To lodge an application for appeal:

Via email to: ACTPS_Appeals@act.gov.au (preferred) OR

Hand Deliver to: Appeals Coordinator (ext. 78317)

Level 5, Canberra Nara Centre

Corner Constitution Avenue and London Circuit

In accordance with the disposal schedules under the *Territory Records Act 2002*, records of investigations of misconduct allegations which are found substantiated will be retained for a minimum of five years.

Sensitive: Personal
UNCLASSIFIED

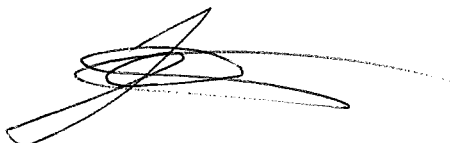
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The Employee Assistance Program (EAP) is available to provide confidential and professional counselling to you and members of your family throughout this process. You may access this service by phoning any of the below EAP providers;

- Assure – 1800 808 374
- Converge International – 1300 687 327
- Davidson-Trahaire Corpsych – 1300 360 364
- PeopleSense – 1300 307 912

If you require clarification or additional information in relation to this letter please contact Christopher Watkins, HR Advisor, CMTEDD People and Capability on 6207 8796.

Yours sincerely



Josh Rynehart
Director
Customer Coordination
Chief Minister, Treasury and Economic Development Directorate

Delegate

8 March 2018



ACT
Government

Chief Minister, Treasury and
Economic Development

Investigation Report

Sch 2 s2(a)(ii)

Sch 2 s2(a)

Community Services Directorate

Case Reference: 2017-5

Prepared by:

Sch 2 s2(a)(ii)

Professional Standards Unit

17 July 2017



ACT
Government

Chief Minister, Treasury and
Economic Development

Bernadette Mitcherson
Deputy Director-General
Community Services Directorate

Dear Bernadette

Investigation Report regarding allegations of possible misconduct by Sch 2 s2(a)(ii)

Background

On [REDACTED] 2017, an Adult Content Report (Community Services) dated [REDACTED] 2017 (Attachment 1) was provided to the Community Services Directorate (CSD) by Shared Services ICT Security. The report identified Sch 2 s2(a)(ii) as making multiple attempts to access 'Adult Content' material using ACT Government equipment. Initial analysis of the reported websites by CSD Employee Relations indicated they were of a pornographic nature.

A preliminary assessment was conducted and on [REDACTED] 2017, Sch 2 s2(a)(ii) was informed in writing by you of the investigation and your decision to suspend him from duty with pay (Attachment 2). The preliminary allegations identified and notified to Sch 2 s2(a)(ii) were:

- Between the period of [REDACTED] 2017 and [REDACTED] 2017, in your role as [REDACTED] you acted unprofessionally when you attempted, on multiple occasions using your act.gov profile, to access pornographic web sites, including but not limited to the following:
 - www.femangles.com;
 - www.freexcafe.com;
 - www.freshnudes.net; and
 - www.female-anatomy-for-artist.com
- You attempted to access pornographic web sites during work time using ACT Government equipment.

Investigative process

On [REDACTED] 2017, the matter was referred to the Professional Standards Unit for investigation (Attachment 3). The scope of the investigation was extended to incorporate the period [REDACTED] 2016 to [REDACTED] 2017.

This investigation was conducted in accordance with the provisions of the [REDACTED] under which Sch 2 s2(a)(ii) is employed.

Amendments to the *Public Sector Management Act 1994*, which came into effect from the 1 September 2016, included changes to Section 9. Because the examples of the alleged behaviour are dated prior to and after 1 September 2016 both the pre-amended and current versions of Section 9 are applied in this investigation.

The revised version of the ACT Government Acceptable use of ICT Resources Policy came into effect on 23 January 2017. Because the examples of the alleged behaviour are dated prior to and after 23 January 2017 both the previous (2.4) and current (2.5) versions of the Acceptable use Policy are applied in this investigation.

No additional witnesses were identified. Information in relation to this matter was provided by:

Person	Role	Information source	Attachment
Sch 2 s2(a)(ii)		Analytical Report SEC-IST039- dated Feb 2017 including attachments:	4
		SEC-IST039 Site List (electronic)	4a
		SEC-IST039 Images (electronic)	4b
		Witness statement and attachments: Adult Content Report-dated 29 Jan 17, and Analytical Report SEC-IST039 dated Feb 2017	5

During the investigation the image URL links detailed in ICT Investigation Report SEC-IST039 Site List were accessed and their content verified. There were 706 images, the vast majority portraying naked females in pose positions or females clothed in swimwear or lingerie. There were no images depicting sexual intercourse.

Images 1, 2, 7, 190 and 696 were not included in the allegations as they were not considered inappropriate or prohibited material as classified by the Acceptable Use of ICT Resources policy. Image 1 was a Facebook icon, image 2 was a love heart, image 7 was of binoculars and leaves, image 190 was a book and coffee cup, and image 696 was of several sketches of faces.

Image 699, allegedly accessed on [redacted] 2016 or [redacted] 2016, was not included in the allegations due to the disparity with the date. The image was of a clothed female tennis player.

Image 701, allegedly accessed on [redacted] 2016, was not included in the allegations as the image was unable to be accessed from the Site List link or otherwise on non-government equipment.

The remaining images were arranged by investigators to correspond with the relevant allegations. Documents titled 'Images Allegation 1 to 5' and 'images Allegation 6' contains a schedule of images as they relate to each allegation (electronic Attachments 6 and 7).

On [redacted] 2017, Sch 2 s2(a)(ii) was notified in writing of the following final allegations, particularised with the relevant information obtained, and was offered an opportunity to respond (Attachment 8).

1. On [redacted] 2016, while employed by the Community Services Directorate as a [redacted] you accessed prohibited adult content images on the internet using your ACT Government user account and ACT Government equipment.

Further particulars:

The Uniform Resource Locators (URL's) of the images accessed are:

<http://d3dytsf4vrjn5x.cloudfront.net/18614/300x250/7316d5a88e5a514e4adbac0e2a3f46db.jpg>

<http://d3dytsf4vrjn5x.cloudfront.net/21824/300x250/bf03f148758d91a43f9ed3ee44af0e1d.jpg>

<http://cdn.boreburn.com/wp-content/uploads/20151201120315/illusion-entre-jambe-chienne-Copy-2.jpg>

2. On [REDACTED] 2016, while employed by the Community Services Directorate as a [REDACTED] you accessed prohibited adult content images on the internet using your ACT Government user account and ACT Government equipment.

Further particulars:

The URL's of the images accessed are:

http://cdn-jarvis-fun.9cache.com/media/photo/prGo79eqG_360w_v1.jpg

<https://i.ytimg.com/vi/tKa5v9iYxaY/maxresdefault.jpg>

<http://d3dytsf4vrjn5x.cloudfront.net/57614/300x250/4b5a47e66d0761dec88cf3e2b0b2f736.jpg>

<http://i1.wp.com/viral.readysethealth.com/wp-content/uploads/2016/06/35.jpg>

3. On [REDACTED] 2016, while employed by the Community Services Directorate as a [REDACTED] you accessed prohibited adult content images on the internet using your ACT Government user account and ACT Government equipment.

Further particulars:

The URL's of the images accessed are:

http://cdn-s3.si.com/s3fs-public/styles/si_gallery_slide/public/2013/06/elle6.jpg

http://cdn-s3.si.com/s3fs-public/styles/si_gallery_slide/public/2013/06/elle9.jpg

http://cdn-s3.si.com/s3fs-public/styles/si_gallery_slide/public/2013/06/elle2.jpg

http://cdn-s3.si.com/s3fs-public/styles/si_gallery_slide/public/2013/06/elle4.jpg

http://cdn-s3.si.com/s3fs-public/styles/si_gallery_slide/public/2013/06/upton.jpg

http://cdn-s3.si.com/s3fs-public/styles/si_gallery_slide/public/2013/06/055493591.jpg

http://cdn-s3.si.com/s3fs-public/styles/si_tile_image_2x/public/swimsuit/web/kate-upton/2014/kate-upton-2014-photo-sports-illustrated-1385209844.jpg

http://cdn-s3.si.com/s3fs-public/styles/si_gallery_slide/public/2013/06/ireland4.jpg

http://cdn-s3.si.com/s3fs-public/styles/si_gallery_slide/public/2013/06/brinkley2.jpg

http://cdn-s3.si.com/s3fs-public/styles/si_gallery_slide/public/2013/06/bar4.jpg

<http://www.secretitaly.it/wp-content/uploads/image-1.1-Calzedonia-summer-collection.jpg>

https://cdn.fstoppers.com/media/2015/03/model_outdoor_bikini_swim07_0.jpg

<https://assets.rbl.ms/5899338/980x.jpg>

4. On [REDACTED] 2016, while employed by the Community Services Directorate as a [REDACTED] you accessed prohibited adult content images on the internet using your ACT Government user account and ACT Government equipment.

Further particulars:

The URL's of the images accessed are:

http://www.livemodelbooks.com/images/models/jenni051/jenni051_23.jpg

http://www.livemodelbooks.com/images/models/jenni051/jenni051_24.jpg

http://www.livemodelbooks.com/images/models/jenni051/jenni051_02.jpg

http://www.livemodelbooks.com/images/models/jenni051/jenni051_03.jpg

5. On [REDACTED] 2016, while employed by the Community Services Directorate as a [REDACTED] you accessed a prohibited adult content image on the internet using your ACT Government user account and ACT Government equipment.

Further particulars:

The URL of the image accessed is:

http://thumbs.imagekind.com/3770255_650/parallel-chair_art.jpg

6. On [REDACTED] 2017, while employed by the Community Services Directorate as a [REDACTED] you accessed prohibited adult content images on the internet using your ACT Government user account and ACT Government equipment.

Further particulars:

The URL's of the images accessed are included at Attachment 8, Appendix 1.

7. On [REDACTED] 2017, while employed by the Community Services Directorate as a [REDACTED] you accessed or attempted to access prohibited adult content websites using your ACT Government user account and ACT Government equipment.

Further particulars:

The websites accessed or attempted to be accessed are:

www.female-anatomy-for-artist.com

www.femangels.com

www.freexcafe.com

www.freshnudes.net

[REDACTED] Sch 2 s2(a)(ii) was interviewed on [REDACTED] 2017 and was later provided with a transcript of the interview (Attachment 9). On 6 June 2017, [REDACTED] Sch 2 s2(a)(ii) provided Investigators with a receipt verifying the transcript as a true and accurate account of the interview (Attachment 9a).

On [REDACTED] 2017 [REDACTED] Sch 2 s2(a)(ii) was provided with an opportunity to respond to additional information in relation to Allegation 1 (Attachment 10). On [REDACTED] 2 s2(a)(ii) provided a response to the additional information relating to Allegation 1 (Attachment 10a).

Summary of Common Evidence:

This section records information and evidence contained in signed statements, documents and in Sch 2 s2(a)(ii) response that is relevant across all allegations. Evidence specific to each allegation is recorded with the relevant allegation.

Adult Content Report (Community Services) dated [redacted] 2017

The Adult Content Report published on [redacted] 2017 covers dates from [redacted] 2017 to [redacted] 2017. Within the report it was noted that Sch 2 s2(a)(ii) accessed material classified as 'Adult Content' on [redacted] 2017.

Sch 2 s2(a)(ii) Deputy Manager, ICT Security Forensics and Penetration Testing

Sch 2 s2(a)(ii) is a Senior ICT Security Analyst for the ACT Government and is a certified computer examiner.

In [redacted] 2017, as a result of a request from CSD Employee Relations, Sch 2 s2(a)(ii) conducted an investigation of ACT Government network account 'ACTGOV\Sch 2 s2(a)(ii)' for the period [redacted] 2016 to [redacted] 2017. The findings of the investigation were detailed in ICT Report referenced, SEC-IST039, and revealed:

- The web report revealed hits to websites categorised as adult content, however it could not be proven whether the user actually viewed any content on these websites or not.
- Multiple attempts to obtain a digital forensic copy of the computer were made, however each failed, due to the computer going offline, or to sleep. At this stage, the computer has not been forensically examined.
- A review of all JPEG files (image files) accessed by the user account was conducted. This revealed access to multiple pornographic materials.
- It was confirmed that the user account would have been able to access these images, as they were not categorised as adult content.

The Investigation Report, SEC-IST039 included copies of a large number of pornographic images and corresponding URL links accessed by Sch 2 s2(a)(ii)

Summary of access to URL's and attempted access to websites

DATE	LOCATION	# URL LINKS/WEBSITES
[redacted] 2016	[redacted]	3 images
[redacted] 2016	[redacted]	4 images
[redacted] 2016	[redacted]	13 images
[redacted] 2016	[redacted]	4 images
[redacted] 2016	[redacted]	1 image
[redacted] 2017	[redacted]	673 images & 4 websites

ACT Government Acceptable Use of ICT Resources Policy - Version 2.4 & 2.5

These policies apply to all permanent, temporary and casual ACT Government employees and non government staff including contractors, consultants and work experience students.

Within the ACT Government Acceptable Use of ICT Resources Policy Version 2.4, It states under prohibited use, that 'staff must not create, send or access information that could damage the ACT Government's reputation', or 'be reasonably found to be offensive, obscene, threatening, abusive or defamatory' including pornography and other offensive material. Prohibited material includes adult

content and swimsuit/lingerie models and classifies inappropriate material as that found on sites that feature adult content. *'Staff must not create, send, access, download or store inappropriate or prohibited material using ACT Government ICT resources unless it is part of their official duty to do so.'* Staff must obtain prior written approval from a supervisor and Shared Services ICT Security if they have an official need to access material that would normally be prohibited under the policy (Attachment 11).

The ACT Government Acceptable Use Policy Version 2.5 came into effect on 23 January 2017. The policy states under improper activities, that staff are not permitted *'to create, communicate, access, download or store inappropriate or prohibited material using ACT Government ICT resources unless it is part of your official duty to do so.'* The policy further states *'Inappropriate material includes information that could damage the ACT Government's reputation, or 'be reasonably found to be offensive, obscene, threatening, abusive or defamatory.'* Inappropriate or prohibited material includes text, graphics, video or other material of a sexual nature (including pornography and other adult material such as swimsuit or lingerie modelling) (Attachment 12).

Acceptable Use of ICT Resources Policy Form – Sch 2 s2(a)(ii)

On [REDACTED] 2014, upon commencing employment with the ACTPS, [REDACTED] signed the ACT Government Acceptable Use of ICT Resources Policy. When signing this form [REDACTED] acknowledged that he had read and understood the Whole of Government Acceptable Use of ICT Resources Policy, agreed to abide by the requirements for access and the use of the resources and that the signed acceptance was valid for the period of employment with the ACT Government (Attachment 13).

'All Staff Community Services Directorate' email dated 25 February 2016

On 25 February 2016, a CSD all staff email was sent by Ms Murray, Director, People Management reminding staff of their responsibilities in regard to acceptable use of ICT resources and of a zero tolerance by CSD to access of adult content at work (Attachment 14).

[REDACTED]

On [REDACTED] 2017, investigators attended [REDACTED] and confirmed computer asset #300919 located within the [REDACTED] between [REDACTED]. It was established that the content displayed on the computer screen was obstructed from external view by translucent roller blind window coverings. A series of photographs of this location were taken by the Investigator (Attachment 15).

During the site visit [REDACTED] [REDACTED] advised:

-
-
-
-
-
-



Sch 2 s2(a)(ii) provided Sch 2 s2(a)(ii) (Attachment 16). The Sch 2 s2(a)(ii) indicates Sch 2 s2(a)(ii) was in attendance at Sch 2 s2(a)(ii) on:

- Sch 2 s2(a)(ii) 2016
- Sch 2 s2(a)(ii) 2016
- Sch 2 s2(a)(ii) 2016
- Sch 2 s2(a)(ii) 2016

Site Visit: Sch 2 s2(a)(ii)

On Sch 2 s2(a)(ii) 2017, Investigators attended Sch 2 s2(a)(ii) and confirmed computer asset #301692 located within the office area of Sch 2 s2(a)(ii). A view of the content displayed on the computer screen was considered possible from outdoor areas when the venetian blinds were in an open position. In its current position, the computer screen was not visible from the internal window however; the computer's previous position (approximately 4 weeks prior) may have allowed the screen to be visible from the internal window. A series of photographs were taken by the Investigator (Attachment 17).

During the site visit Sch 2 s2(a)(ii) advised:

- Sch 2 s2(a)(ii) is a

Sch 2 s2(a)(ii)

During the site visit Sch 2 s2(a)(ii) provided a signed copy of the Sch 2 s2(a)(ii) by Sch 2 s2(a)(ii) between Sch 2 s2(a)(ii) 2016 and Sch 2 s2(a)(ii) 2017' (Attachment 18). Sch 2 s2(a)(ii) later provided details of Sch 2 s2(a)(ii) work for Sch 2 s2(a)(ii) 2016 and advised that Sch 2 s2(a)(ii) were registered as being Sch 2 s2(a)(ii) on this day (Attachment 19). These records indicate Sch 2 s2(a)(ii) was in attendance at Sch 2 s2(a)(ii) on:

- Sch 2 s2(a)(ii) 2016
- Sch 2 s2(a)(ii) 2016
- Sch 2 s2(a)(ii) 2017

Sch 2 s2(a)(ii)

During his interview Sch 2 s2(a)(ii) stated he was a Sch 2 s2(a)(ii) employed at Sch 2 s2(a)(ii) within the CSD. His duties include providing direct contact and interaction with Sch 2 s2(a)(ii) of Sch 2 s2(a)(ii) and Sch 2 s2(a)(ii) Sch 2 s2(a)(ii) Sch 2 s2(a)(ii) employment involves Sch 2 s2(a)(ii) both locations. Sch 2 s2(a)(ii) requires a computer at work to conduct administrative duties including accessing of emails and the CSD Intranet the Sch 2 s2(a)(ii) database system. Sch 2 s2(a)(ii) has been employed in this role since Sch 2 s2(a)(ii)

While responding to each allegation separately during the interview, [Sch 2 s2(a)(ii)] also expressed responses in terms of the whole collection of images and websites. He stated his responses to Allegation 1 were "basically exactly the same" as for all the other allegations, and his answers detailed at Allegation 1 could be applied to the remaining allegations.

[Sch 2 s2(a)(ii)] stated he accessed images by doing a search in the search engine but could not remember which search engine he used. He stated he would have searched for "models", "female models, and "nude pictures of females." He stated he would type "Nude models, or something like that" into the search engine. [Sch 2 s2(a)(ii)] explained that for most of the searches he conducted a large number of images would display on the screen and he did not generally click on a specific image, stating "I may have. I couldn't say for sure that I wouldn't have, but I may have."

[Sch 2 s2(a)(ii)] further explained that sometimes after typing in a search, a "prohibited" message would "come up... you'd get a message saying this is prohibited material... and the ... ACT Gov logo." [Sch 2 s2(a)(ii)] further explained that upon receiving this message he would, "just do another search."

[Sch 2 s2(a)(ii)] stated when he searched for images;

it was probably about sort of like [redacted] both ... at [redacted] and also out at [redacted] ... I'd probably search for sort of half an hour and look at a few pictures and things, or go on and watch a movie, or something like that... I wasn't sort of doing it [redacted]. Because... if ..., [redacted]. you wanted to get a few things done because you're, ... like filing and get a few other things out the road and ... get the [redacted]. So you're sort of doing that sort of stuff as well.

[Sch 2 s2(a)(ii)] explained;

I do a lot of drawings and pencil sketches, and things like that ... So I sort of ... use it for that purpose as well. But - but not purely for that reason.... I mean, I was using it also for, you know, looking at as well.

[Sch 2 s2(a)(ii)] was asked to provide the reason for "looking at" the images. He replied;

it's just like watching - reading a Playboy or a - or Zoo Magazine or something like that, you know.... Because it certainly is not, you know, hard core porn. I don't particularly like hard core porn. But I mean, I certainly don't now, because I'm out of it. I don't even - I don't even consider it now,... that's how I explained it to my wife...

When asked what he would classify the images as, [Sch 2 s2(a)(ii)] replied, "It was - it's not hard pornography, soft pornography.... But soft pornography.. as I said to you before reading - you know, I'm looking for stuff like, you know, what you'd see in Penthouse, you know."

[Sch 2 s2(a)(ii)] explained he is an artist but the images he searched was "probably very minimal.... probably a tenth of it" for artistic purposes. The majority of them were viewed for sexual purpose.

When asked if he searched for images while on [redacted] with somebody else, [Sch 2 s2(a)(ii)] stated, "I didn't do any of those searches [redacted] with anybody else." When asked if anyone from outside the room could see the screen, [Sch 2 s2(a)(ii)] replied;

No... Because [redacted] and I was the only one in the [redacted] and the [redacted]

██████████ But that would - it wouldn't be able to pick it up, I'm pretty - pretty certain about that."

Sch 2 s2(a)(ii) stated he was "half aware" of the restrictions to internet usage and acceptable content under the ACT Government Acceptable Use of ICT Policy. He explained, "Sch 2 s2(a)(ii) I should have been really fully aware... It was really pretty dumb really." When asked how he would classify his usage under the policy in relation to the images, Sch 2 s2(a)(ii) replied, "Well, I breached it, the policy, most definitely."

Sch 2 s2(a)(ii) did not remember seeing the "All Staff" email from Ms Murray but did not dispute that he did receive it. Sch 2 s2(a)(ii) also acknowledged he signed the Acceptable Use of ICT Resources Policy form during his induction and stated that during the induction course "they went through it but not to any great detail."

Allegations 1 to 6

As Allegations 1 to 6 relate to accessing images, the respective evidence for each allegation is recorded sequentially and a collective analysis is recorded after Allegation 6. As Allegation 7 relates to the attempted access of websites, it is assessed separately in this report.

Allegation 1:

On ██████████ 2016, while employed by the Community Services Directorate as a ██████████ Sch 2 s2(a)(ii) accessed prohibited adult content images on the internet using his ACT Government user account and ACT Government equipment.

Further particulars:

The Uniform Resource Locators (URL's) of the images accessed are:

<http://d3dytsf4vrjn5x.cloudfront.net/18614/300x250/7316d5a88e5a514e4adbac0e2a3f46db.jpg>

<http://d3dytsf4vrjn5x.cloudfront.net/21824/300x250/bf03f148758d91a43f9ed3ee44af0e1d.jpg>

<http://cdn.boreburn.com/wp-content/uploads/20151201120315/illusion-entre-jambe-chienne-Copy-2.jpg>

Summary of Evidence:

In addition to the common evidence detailed earlier in the report the following facts are drawn from information contained in signed statements and documents obtained from relevant parties.

Sch 2 s2(a)(ii)

Further to the investigation report (SEC-IST039) Sch 2 s2(a)(ii) stated he reviewed all JPEG images that Sch 2 s2(a)(ii) accessed and logged all JPEG URLs that contained adult content. He further stated that

Sch 2 s2(a)(ii)

Accessed adult content on URLs 'cloudfront.net' and 'cdn.boreburn.com' and appeared to access this on ██████████ 2016 sometime between ██████████ The logs showed the computer's IP address as allocated to ██████████

[Initial ICT information indicated this computer was located at [REDACTED].

There were several images identified as being accessed on this day and these images can be viewed in electronic Attachment 6.

[REDACTED] **Attendance Records**

Sch 2 s2(a)(ii) attendance records indicate he worked [REDACTED] on [REDACTED] 2016.

Sch 2 s2(a)(ii)

In response to Allegation 1, and after being shown the respective images, Sch 2 s2(a)(ii) stated, "Yes, I can't remember the exact images but that - that would be right." When asked if he recognised any of the images Sch 2 s2(a)(ii) stated, "I don't know." When asked whether they were the type of images he was looking at Sch 2 s2(a)(ii) further explained, "Absolutely, yes." When asked how these pictures came up when they did not seem particularly related to the other images, Sch 2 s2(a)(ii) stated "No, I think I purposely would have searched for something...you know, 'female anatomy' or - or 'female models' or 'nude models'"

Sch 2 s2(a)(ii) could not remember what [REDACTED] was working on this day, however stated,

[REDACTED] Plus there's people coming in and out [REDACTED]

When asked if Sch 2 s2(a)(ii) was in the presence of anyone when viewing this content he stated, "I was on my own." Sch 2 s2(a)(ii) [REDACTED]

[Due to a number of inconsistencies arising during the interview relating to [REDACTED] and location, further enquiries later confirmed Sch 2 s2(a)(ii) [REDACTED] at [REDACTED] not [REDACTED] as inferred during his interview. This new information was sent to Sch 2 s2(a)(ii) to provide him an opportunity to revise his response to Allegation 1 if he wished to do so.]

On 4 July 2017, Sch 2 s2(a)(ii) provided additional information in response to Allegation 1 via email. Sch 2 s2(a)(ii) stated;

The revised allegation states that on the [REDACTED] 2016 it has later been established that I was at [REDACTED] on the [REDACTED] How would I remember?! It was bloody 18 months ago! You have the records, so it must be right! You say [REDACTED] that day. That possibly is correct! You state that I accessed adult images [REDACTED] that day. You have the records so it must be correct.

In my defence, I would NOT have accessed any of the images while any of the [REDACTED] were [REDACTED]

The office at [REDACTED]

[REDACTED]

Allegation 2:

On [REDACTED] 2016, while employed by the Community Services Directorate as a [REDACTED] [REDACTED] you accessed prohibited adult content images on the internet using your ACT Government user account and ACT Government equipment.

Further particulars:

The URL's of the images accessed are:

http://cdn-jarvis-fun.9cache.com/media/photo/prGo79eqG_360w_v1.jpg

<https://i.ytimg.com/vi/tKa5v9iYxaY/maxresdefault.jpg>

<http://d3dytsf4vrjn5x.cloudfront.net/57614/300x250/4b5a47e66d0761dec88cf3e2b0b2f736.jpg>

<http://i1.wp.com/viral.readysethealth.com/wp-content/uploads/2016/06/35.jpg>

Summary of Evidence:

In addition to the common evidence detailed earlier in the report the following facts are drawn from information contained in signed statements and documents obtained from relevant parties.

Sch 2 s2(a)(ii)

Further to the investigation report (SEC-IST039) Sch 2 s2(a)(ii) stated he reviewed all JPEG images that Sch 2 s2(a)(ii) accessed and logged all JPEG URLs that contained adult content. He further stated that Sch 2 s2(a)(ii)

Accessed adult content on URLs 'cdn-jarvis-fun.9cache.com', 'i.ytimg.com' and 'd3dytsf4vrjn5x.cloudfront.net' and appeared to access this on [REDACTED] 2016. The computer asset used for the access was #300919, which is recorded as being located at [REDACTED]

There were several images identified as being accessed on this and these images can be viewed in electronic Attachment 6.

[REDACTED] Attendance Records

Sch 2 s2(a)(ii) attendance records indicate he worked [REDACTED] 2016 [REDACTED] 2016 at [REDACTED]

Sch 2 s2(a)(ii)

In response to Allegation 2, and after being shown the respective images, Sch 2 s2(a)(ii) stated,

"... I think that Sch 2 s2(a)(ii) pointed to image 697 of a male person) just come up inadvertently, you know... I don't know [why] that come up, because a whole heap of pictures come up when you do a search and ... so some of it's pretty ... like random really..."

When referring to the other images (698, 700 & 706) relating to Allegation 2, [redacted] ^{Sch 2 s2(a)(ii)} stated,

That would have been the Olympics and I think that was maybe a similar thing..., ...I've looked at a few sites of funny incidents - well, sexy incident at the ... Olympics... Something along those lines.... so it will come up with images, you know, the volley ball, women volley ball players, stuff like that...

2016 Summer Olympics

The 2016 Summer Olympics were held in Rio de Janeiro, Brazil from 5 August 2016 to 21 August 2016.

Allegation 3:

On [redacted] 2016, while employed by the Community Services Directorate as a [redacted] you accessed prohibited adult content images on the internet using your ACT Government user account and ACT Government equipment.

Further particulars:

The URL's of the images accessed are:

http://cdn-s3.si.com/s3fs-public/styles/si_gallery_slide/public/2013/06/elle6.jpg

http://cdn-s3.si.com/s3fs-public/styles/si_gallery_slide/public/2013/06/elle9.jpg

http://cdn-s3.si.com/s3fs-public/styles/si_gallery_slide/public/2013/06/elle2.jpg

http://cdn-s3.si.com/s3fs-public/styles/si_gallery_slide/public/2013/06/elle4.jpg

http://cdn-s3.si.com/s3fs-public/styles/si_gallery_slide/public/2013/06/upton.jpg

http://cdn-s3.si.com/s3fs-public/styles/si_gallery_slide/public/2013/06/055493591.jpg

http://cdn-s3.si.com/s3fs-public/styles/si_tile_image_2x/public/swimsuit/web/kate-upton/2014/kate-upton-2014-photo-sports-illustrated-1385209844.jpg

http://cdn-s3.si.com/s3fs-public/styles/si_gallery_slide/public/2013/06/ireland4.jpg

http://cdn-s3.si.com/s3fs-public/styles/si_gallery_slide/public/2013/06/brinkley2.jpg

http://cdn-s3.si.com/s3fs-public/styles/si_gallery_slide/public/2013/06/bar4.jpg

<http://www.secretitaly.it/wp-content/uploads/image-1.1-Calzedonia-summer-collection.jpg>

https://cdn.fstoppers.com/media/2015/03/model_outdoor_bikini_swim07_0.jpg

<https://assets.rbl.ms/5899338/980x.jpg>

Summary of Evidence:

In addition to the common evidence detailed earlier in the report the following facts are drawn from information contained in signed statements and documents obtained from relevant parties.

Sch 2 s2(a)(ii)

Further to the investigation report (SEC-IST039) Sch 2 s2(a)(ii) stated he reviewed all JPEG images that Sch 2 s2(a)(ii) accessed and logged all JPEG URLs that contained adult content. He further stated that Sch 2 s2(a)(ii)

Accessed adult content on URLs 's3.si.com', 'www.secretitaly.it', 'cdn.fstoppers.com' and 'assets.rbl.ms' and appeared to access this on [REDACTED] 2016. The computer asset used for the access was #300919, which is recorded as being located at [REDACTED]

Sch 2 s2(a)(ii) explained that, "The site 'si.com' is the Sports Illustrated website. It contains sporting information and is not specifically adult content. This is why access was allowed."

There were several images identified as being accessed on this day and these images can be viewed in electronic Attachment 6.

Attendance Records

Sch 2 s2(a)(ii) indicates he worked [REDACTED] 2016 [REDACTED] 2016 and [REDACTED] 2016 at [REDACTED]

Sch 2 s2(a)(ii)

In response to Allegation 3, and after being shown the respective images, Sch 2 s2(a)(ii) stated, "I obviously did a search there for poster girls or something along those lines.... Swimwear probably ... 'Women in bikinis' or something like that I probably would have searched for."

Sch 2 s2(a)(ii) could not remember whether he was working at [REDACTED] on this day.

Allegation 4:

On [REDACTED] 2016, while employed by the Community Services Directorate as a [REDACTED] you accessed prohibited adult content images on the internet using your ACT Government user account and ACT Government equipment.

Further particulars:

The URL's of the images accessed are:

http://www.livemodelbooks.com/images/models/jenni051/jenni051_23.jpg

http://www.livemodelbooks.com/images/models/jenni051/jenni051_24.jpg

http://www.livemodelbooks.com/images/models/jenni051/jenni051_02.jpg

http://www.livemodelbooks.com/images/models/jenni051/jenni051_03.jpg

Summary of Evidence:

In addition to the common evidence detailed earlier in the report the following facts are drawn from information contained in signed statements and documents obtained from relevant parties.

Sch 2 s2(a)(ii)

Further to the investigation report (SEC-IST039) Sch 2 s2(a)(ii) stated he reviewed all JPEG images that Sch 2 s2(a)(ii) accessed and logged all JPEG URLs that contained adult content. He further stated that Sch 2 s2(a)(ii)

Accessed adult content on URLs 'livemodelbooks' and appeared to access this on [REDACTED] 2016. The computer asset used for the access was #301692, which is recorded as being located at [REDACTED]

Images

The URLs 'livemodelbooks' relate to images 679 to 682, and were unable to be accessed from the ICT Report SEC-IST039 Site List link and therefore no images were provided in Sch 2 s2(a)(ii) report. A search of the livemodelbooks.com website on the Google search engine by Investigators on a private device displayed an image named, 'jenni051', which matches the URLs listed on the Site List. This image of 'jenni051' portrayed a naked female in a seated pose position and is consistent with the definition of prohibited and inappropriate material under the ACT Government Acceptable Use of ICT Resources Policy, versions 2.4 and 2.5.

Attendance Records

Sch 2 s2(a)(ii) attendance records indicate he worked a [REDACTED]

Sch 2 s2(a)(ii)

In response to Allegation 4, and being asked if he could recall accessing the images Sch 2 s2(a)(ii) replied, "Probably." Sch 2 s2(a)(ii) stated 'livemodelbooks' sounded "vaguely" familiar to him and he may have been searching for inspiration for sketching, "I can't remember but it seems to be." Sch 2 s2(a)(ii) further explained that he did not sketch at work, only at home. He is a self taught pencil sketcher and draws mainly people, buildings, and faces more than bodies.

Allegation 5:

On [REDACTED] [REDACTED] 2016, while employed by the Community Services Directorate as a [REDACTED] you accessed a prohibited adult content image on the internet using your ACT Government user account and ACT Government equipment.

Further particulars:

The URL of the image accessed is:

http://thumbs.imagekind.com/3770255_650/parallel-chair_art.jpg

Summary of Evidence:

In addition to the common evidence detailed earlier in the report the following facts are drawn from information contained in signed statements and documents obtained from relevant parties.

Sch 2 s2(a)(ii)

Further to the investigation report (SEC-IST039) Sch 2 s2(a)(ii) stated he reviewed all JPEG images that Sch 2 s2(a)(ii) accessed and logged all JPEG URLs that contained adult content. He further stated that Sch 2 s2(a)(ii)

Accessed adult content on URL 'thumbs.imagekind.com' and appeared to access this on [REDACTED] 2016. The computer asset used for the access was #300919, which is recorded as being located at [REDACTED]

There was one image identified as being accessed on this day and this image can be viewed in electronic Attachment 6.

[REDACTED] Attendance Records

Sch 2 s2(a)(ii) attendance records indicate he worked [REDACTED] 2016 at [REDACTED]

Sch 2 s2(a)(ii)

In response to Allegation 5, and after being shown the respective image, Sch 2 s2(a)(ii) stated,

Yes, when I come to think of it I - I did a few searches under "Art", "Models Art". That was probably for ... pencil sketches and stuff like that, I would say... But maybe not. But I can't remember it exactly, but that would probably - probably be for sketching also... As I say... my main - that wasn't my prime motivator with these incidences.

Allegation 6:

On [REDACTED] 2017, while employed by the Community Services Directorate as a [REDACTED] you accessed prohibited adult content images on the internet using your ACT Government user account and ACT Government equipment.

Further particulars:

The URL's of the images accessed are included at Appendix 1.

Summary of Evidence:

In addition to the common evidence detailed earlier in the report the following facts are drawn from information contained in signed statements and documents obtained from relevant parties.

Sch 2 s2(a)(ii)

Further to the investigation report (SEC-IST039) Sch 2 s2(a)(ii) stated he reviewed all JPEG images that Sch 2 s2(a)(ii) accessed and logged all JPEG URLs that contained adult content. He further stated that Sch 2 s2(a)(ii)

Accessed adult content on URLs '123rf.com' and 'artmodeltips.com' and appeared to access this on [REDACTED] 2017. The computer asset used for the access was #301692, which is [REDACTED]

Sch 2 s2(a)(ii) explained that, "the site, '123rf.com' was accessible as it was an image hosting website. It hosts a wide variety of images from landscapes, to adult content. This is why access was allowed."

Sch 2 s2(a)(ii) was unable to determine what searches were conducted by [REDACTED] to obtain access, as this website "uses secure transmissions and therefore all searches are encrypted." Sch 2 s2(a)(ii) also stated "The site 'artmodeltips.com' was classified as 'entertainment'. It contains tips about modelling, and is not specifically adult content. This is why access was allowed."

There were a large number of images identified as being accessed on this day and these images can be viewed in electronic Attachment 7.

[REDACTED] Attendance Records

Sch 2 s2(a)(ii) attendance records indicate he worked a [REDACTED] [REDACTED] 2017 at [REDACTED]

Sch 2 s2(a)(ii)

In response to Allegation 6, and after being shown the respective images, [REDACTED] stated, "I remember that more, because that was [REDACTED].. Yes, I - I remember it." [REDACTED] explained, "I did a search of some form... maybe "Models Art", "Nude Models... heaps of pictures in each. I might have done a few searches... But heaps of pictures come up in each search." [REDACTED] indicated he "scroll [sic] through" the images rather than clicking on each image individually.

In response to how long he was searching for on this occasion, [REDACTED] explained,

It could have been that - [REDACTED] I could have been maybe on it for a couple of hours maybe... Because that's particularly boring [REDACTED]... And all my jobs had been done, you know, and all that sort of stuff. It would probably be - probably was about [REDACTED] or something like that.

When asked about the possibility of others being able to view the images on the computer screen, [REDACTED] stated, "Definitely not there. Definitely not there, no." [REDACTED] explained there was one [REDACTED]

Analysis – Allegations 1 to 6

Although [REDACTED] was unable to recognise, and did not recall viewing, the specific images detailed in Allegation 1, he did however indicate they were of the same type of images he viewed. [REDACTED] stated he could not recall the [REDACTED] location worked on the [REDACTED] 2016, however acknowledged that [REDACTED] and ICT records must be correct. [REDACTED] also acknowledged that ICT records of his access to these images between [REDACTED] on this day must be correct.

[REDACTED] recognised the images detailed in Allegation 2. On this occasion he acknowledged viewing sites referring to funny or sexy incidents at the Olympics. [REDACTED] reference to the Olympics is consistent with the 2016 Summer Olympics being held from 5 August 2016 to 21 August 2016. [REDACTED] stated that sometimes random pictures would also come up and referred to the naked male model in image 697.

Sch 2 s2(a)(ii) stated he searched for the images detailed in Allegation 3 by using words like, "poster girls", "swimwear" or "women in bikinis." Sch 2 s2(a)(ii) could not recall at which location he worked on this day.

In response to Allegation 4, Sch 2 s2(a)(ii) stated he was vaguely familiar with the website and he may have been searching on this occasion for artistic purposes. He stated he probably accessed the images of 'jenni051'.

Sch 2 s2(a)(ii) was unable to recognise with certainty the specific image relating to Allegation 5. He considered he had searched this image for sketching related purpose, however acknowledged that this was not his prime motivation in conducting these searches as a whole.

Sch 2 s2(a)(ii) recalled searching for and viewing the large collection of images as detailed in Allegation 6. He accessed these images using search words similar to, "Models Art" and "Nude Models." Sch 2 s2(a)(ii) recalled spending approximately 2 hours searching through these images while being on [redacted]. He stated that after he has completed the duties he has, he gets bored.

[redacted] provided by [redacted] and [redacted] confirm the date of the [redacted] worked by Sch 2 s2(a)(ii) as detailed in Allegations 1 to 6. The dates and locations of when and where the images were accessed by Sch 2 s2(a)(ii) have been confirmed by the ICT evidence provided by [redacted]. Sch 2 s2(a)(ii) On all occasions, with the exception of [redacted] 2016 (Allegation 1) Sch 2 s2(a)(ii) was working [redacted] either at [redacted] or [redacted].

During his interview [redacted] admitted he had searched and viewed the images mainly for sexual purposes and to a lesser degree for artistic purposes. He did this to fill in time while working [redacted]. By his own description Sch 2 s2(a)(ii) referred to the content of the images collectively as "soft pornography" and equated the images to what is found in Penthouse magazines.

At times when searching the Internet, Sch 2 s2(a)(ii) received an ACT Government message on the computer screen advising the content he had searched for was "prohibited material." This message did not discourage Sch 2 s2(a)(ii) and admitted he knowingly continued to search for inappropriate or prohibited material.

Sch 2 s2(a)(ii) admitted he was 'half aware' of the internet restrictions and acknowledged his responsibilities in relation to Acceptable Use of ICT Resources policy. Sch 2 s2(a)(ii) also agreed signing the Acceptable Use of ICT Resources Policy form on [redacted] 2014 and although he does not remember seeing the 'all staff' email reminder from Ms Murray about prohibited use of ICT resources on 25 February 2016, he did not dispute he received it. Sch 2 s2(a)(ii) acknowledged his usage as described in the allegations was in breach of the ICT policy.

Sch 2 s2(a)(ii) was certain he did not access these images while [redacted] were active in the [redacted] and would not have shared the images with any [redacted]. Although viewing of the computer screen at [redacted] was possible from internal and external positions, no information has been received that a [redacted] viewed the images on any occasion. It is noted from the evidence that [redacted].

The ACT Government computer used by Sch 2 s2(a)(ii) to access the images at [redacted] is inside the duty point room. Viewing of the computer screen in this location was considered unlikely from adjoining rooms, and Sch 2 s2(a)(ii) was adamant that he was alone in the duty point room and no other persons or [redacted] were present or viewed the images. Sch 2 s2(a)(ii) provided information that [redacted]. The [redacted] provided by [redacted] show Sch 2 s2(a)(ii) as [redacted] on [redacted] on each

occasion. The ICT reports identified [Sch 2 s2(a)(ii)] as accessing the images between [redacted] 2016 and [redacted] 2017.

The 699 images accessed by [Sch 2 s2(a)(ii)] between [redacted] 2016 and [redacted] 2017 depict naked and partially naked females and women in swimsuits and lingerie, (including one naked male model) which is defined in the ACT Government Acceptable Use of ICT Resources Policies Versions 2.4 and 2.5 as prohibited material. The policies further state the use of ACT Government ICT resources to access prohibited material is not permitted. It is considered each access to each individual image is a breach of the ACT Government ICT Acceptable Use Policy.

From the ICT evidence and by his own admissions, it is determined that [Sch 2 s2(a)(ii)] did use ACT Government ICT resources in his role of [redacted] to access prohibited material as defined in the ACT Government Acceptable Use of ICT Resource Policy 2.4 and 2.5 on each occasion detailed in Allegations 1 to 6.

Conclusion: Allegations 1 and 2

On the basis of the information provided, there is sufficient evidence to conclude, on the balance of probabilities that on [redacted] 2016 and [redacted] 2016, while employed by the Community Services Directorate as a [redacted] [Sch 2 s2(a)(ii)] accessed 7 prohibited adult content images using his ACT Government user account and ACT Government equipment.

This finding is based on an analysis by the investigator of the relevant evidence obtained. It is not a determination that misconduct has or has not occurred, which is a decision for you, as the delegate, to make.

In determining whether this behaviour constitutes misconduct (as defined in clause H6.5 of the [redacted] [redacted], you may wish to consider whether [Sch 2 s2(a)(ii)] failed in his obligations * under Section 9 of the *Public Sector Management Act 1994*, in particular:

A public employee shall, in performing his or her duties:

- i) comply with any lawful and reasonable direction given by a person having authority to give the direction, and
- o) not make improper use of the property of the Territory

(*Each access to each individual prohibited image constitutes a breach of Section 9 of the *Public Sector Management Act 1994*)

Conclusion: Allegations 3 to 6

On the basis of the information provided, there is sufficient evidence to conclude, on the balance of probabilities that between [redacted] 2016 and [redacted] 2017, while employed by the Community Services Directorate as a [redacted] [Sch 2 s2(a)(ii)] accessed 692 prohibited adult content images using his ACT Government user account and ACT Government equipment.

This finding is based on an analysis by the investigator of the relevant evidence obtained. It is not a determination that misconduct has or has not occurred, which is a decision for you, as the delegate, to make.

In determining whether this behaviour constitutes misconduct (as defined in clause H6.5 of the [redacted] Sch 2 s2(a)(ii) failed in his obligations * under Section 9 of the *Public Sector Management Act 1994*, in particular:

In determining whether this behaviour constitutes misconduct (as defined in clause H6.5 of the [redacted] Sch 2 s2(a)(ii) failed in his obligations under Section 9 of the *Public Sector Management Act 1994*, in particular:

(1) A public servant must –

(c) when acting in connection with the public servant’s job—

(ii) comply with any lawful and reasonable direction given by a person with the authority to give the direction.

(2) A public servant must not -

(c) improperly use a Territory resource, including information, accessed through the public servant’s job.

(* Each access to each individual prohibited image constitutes a breach of Section 9 of the *Public Sector Management Act 1994*)

Allegation 7:

On [redacted] 2017, while employed by the Community Services Directorate as a [redacted] you accessed or attempted to access prohibited adult content websites using your ACT Government user account and ACT Government equipment.

Further particulars:

The websites accessed or attempted to be accessed are:

www.female-anatomy-for-artist.com

www.femangels.com

www.freexcafe.com

www.freshnudes.net

Summary of Evidence

In addition to the common evidence detailed earlier in the report the following facts are drawn from information contained in signed statements and documents obtained from relevant parties.

Sch 2 s2(a)(ii)

Further to Investigation Report SEC-IST039, Sch 2 s2(a)(ii) determined that Sch 2 s2(a)(ii) attempted to access the following websites on [redacted] 2017 on computer asset #301692 at [redacted]

- www.female-anatomy-for-artist.com
- www.femangels.com
- www.freexcafe.com
- www.freshnudes.net

Sch 2 s2(a)(ii) explained a review of the machine readable logs for Sch 2 s2(a)(ii) account revealed that he:

Attempted access to multiple websites categorised as Adult Content. This access was 'attempted' as the size column shows a minute amount of traffic to each site. This suggests that the site was 'attempted' to be accessed but did not load, due to content filters, or, the site not loading any images and possibly just the website's header, or that the site was attempting to show an advertisement hosted on another webpage.

Sch 2 s2(a)(ii) also reported that:

There was a small amount of traffic to the website 'www.femangels.com'. Upon review of the logs, and further research, it was determined that the user did go to the 'FemAngels' website on the [REDACTED] 2017, however none of the adult images loaded. The only image there would have been is the website's banner.

However, Sch 2 s2(a)(ii) indicated that he could not locate any confirmed access to these websites.

In his statement, Sch 2 s2(a)(ii) explained that the report dated [REDACTED] 2017 lists each user along with headings which identify the list 'number' of the sites, the 'site name', the 'category' of the site, the number of 'hits' to the site, and the 'size' of the data accessed from that site. He noted the report identified that all sites listed were classified as 'Adult Content'. He also noted that "10 hits does not equal 10 attempts to access the site – when you access 'www.news.com.au' it logs multiple hits against 'news.com.au' but also logs hits against any sites that it collects data from to load that page."

The Websites

During the investigation the websites specified in Allegation 7 were viewed by Investigators and their content was considered as being consistent with the definition of pornography in the English Oxford Living Dictionary,

Printed or visual material containing the explicit description or display of sexual organs or activity, intended to stimulate sexual excitement.

[REDACTED] Attendance Records

Sch 2 s2(a)(ii) attendance records indicate he worked [REDACTED] 2017.

Sch 2 s2(a)(ii)

In response to Allegation 7, Sch 2 s2(a)(ii) stated,

Well, certainly, and you know, I can remember probably anatomy for an artist, probably doing a search on that. I can't remember 'femangels' and 'freexcafe'. Fresh nudes maybe. I just can't remember the other two, but I mean, I probably - you know, it's probably right, you know, but yes.

When asked if he typed any of these specific addresses into the browser to go to that particular website, Sch 2 s2(a)(ii) replied that he "probably did" for the 'female anatomy for artists' website. However, Sch 2 s2(a)(ii) later stated he only typed in word searches and not specific addresses.

He further explained about the other websites he could not recall by stating,

... when you do searches there might be other links there. You know how you - like you do a search and you get a whole heap of different subjects come up on a - on a page.... what I generally do, right, is if a - if a - if it comes up as a block I'll just back page and go and click on the next one.... And then most of them you can see. If they get blocked again you go back a page and then click on the next one. That's probably what they are, you know.

Sch 2 s2(a)(ii) was asked what content he expected to obtain from these searches and he responded, "I think just nude women in poses with a - you know, yes, so that's all I can say."

When asked if he received the 'blocked' messages on his screen during searches Sch 2 s2(a)(ii) replied, "I can't precisely - you know. You know, I think for the most of my searches I probably got a few blocks and I'll just do another search, you know. So chances are probably - I probably did but, I mean, I can't remember".

When asked why he continued searching after receiving the 'blocked' message, Sch 2 s2(a)(ii) responded, "It's...just for the purpose of browsing ..." When asked if the 'blocked' message deterred him from continuing to search, Sch 2 s2(a)(ii) responded,

No, it didn't. I have to be honest there. Maybe a couple of times it did, I - 'I'm sick of this', I'll move on to something else or listen to a bit of music or something but more times - more often than not it didn't stop me.

Analysis

It is established from Sch 2 s2(a)(ii) that he performed Sch 2 s2(a)(ii) 2017 at Sch 2 s2(a)(ii). The date and location of the attempted internet access relating to the above mentioned websites was confirmed by Sch 2 s2(a)(ii).

Sch 2 s2(a)(ii) evidence shows there was attempted access to the four websites categorised as adult content. This access was considered 'attempted' due to the minute amount of traffic to each site which suggests the websites did not load. Sch 2 s2(a)(ii) evidence shows that Sch 2 s2(a)(ii) did go to the 'femangels' website, however only the website banner would have loaded and no access was confirmed.

During his interview, Sch 2 s2(a)(ii) stated he was less familiar with 'freshnudes.net' and was not familiar at all with 'freexcafe.com' or 'femangels.com'. Sch 2 s2(a)(ii) further stated he was somewhat familiar with the website 'female-anatomy-for-artist.com,' having probably searched those terms and that he "probably did" type in the specific address for this website. However, Sch 2 s2(a)(ii) later stated he only typed in word searches and not specific website addresses. His explanation for obtaining access to the websites was through a system of 'clicking' on numerous links that subsequently may or may not have been blocked.

Sch 2 s2(a)(ii) internet browsing procedure of 'word searches' and 'clicking' on links resulted in the named websites containing pornographic images being recorded in the Adult Content Report of Sch 2 s2(a)(ii) 2017. Sch 2 s2(a)(ii) actions in searching for adult content images have resulted in attempted access to prohibited material as described in the ACT Government Acceptable Use Policy Version 2.5. This policy states prohibited material includes 'pornography and other adult material such as swimsuit or lingerie modelling.'

As stated earlier in the report, Sch 2 s2(a)(ii) continued to search the internet for adult content images even after receiving the ACT Government "prohibited material" message on his screen.

Sch 2 s2(a)(ii) acknowledged his internet responsibilities and the restrictions of internet use when he signed the Acceptable Use of ICT Resources policy form on [REDACTED] 2014 and did not dispute he received the 'all staff' email reminder from [REDACTED] about prohibited use of ICT resources on 25 February 2016.

The four websites identified above were sites containing images of naked and partially naked women which are considered consistent with the definition of pornography. Pornography is defined in the ACT Government Use Policy Version 2.5 as prohibited material. The policy further states the use of ACT Government ICT resources to access prohibited material is not permitted. It is considered that each of the attempted access to the 'femangels', 'female anatomy for artist', 'freecafe' and 'freshnudes' websites is a breach of the ACT Government ICT Acceptable Use Policy.

From the ICT evidence and by his own admissions, it is determined Sch 2 s2(a)(ii) did use ACT Government ICT resources in his role of [REDACTED] to attempt access to prohibited material as defined in the Acceptable Use Policy Version 2.5.

Conclusion

On the basis of the information provided, there is sufficient evidence to conclude, on the balance of probabilities that on [REDACTED] 2017, while employed by the Community Services Directorate as a [REDACTED] Sch 2 s2(a)(ii) accessed or attempted to access prohibited adult content websites using his ACT Government user account and ACT Government equipment.

This finding is based on an analysis by the investigator of the relevant evidence obtained. It is not a determination that misconduct has or has not occurred, which is a decision for you, as the delegate, to make.

In determining whether this behaviour constitutes misconduct (as defined in clause H6.5 of the [REDACTED] you may wish to consider whether Sch 2 s2(a)(ii) failed in his obligations* under Section 9 of the *Public Sector Management Act 1994*, in particular:

(1) A public servant must –

(c) when acting in connection with the public servant's job—

(ii) comply with any lawful and reasonable direction given by a person with the authority to give the direction.

(2) A public servant must not –

(c) improperly use a Territory resource, including information, accessed through the public servant's job;

(* Each access to each individual prohibited website constitutes a breach of Section 9 of the *Public Sector Management Act 1994*)

Other Considerations

Out of Scope

Sch 2 s2(a)(ii) stated he would accept the outcome of the investigation.

Recommendations

It is recommended that, as the delegate, you:

- a) review this report, along with the accompanying evidence, to determine on the balance of probabilities whether misconduct has occurred;
- b) if misconduct is found, determine an appropriate sanction in accordance with the [REDACTED] and [REDACTED];
- c) notify Sch 2 s2(a)(ii) of the outcome.

Sch 2 s2(a)(ii)

Professional Standards Unit

[REDACTED] 2017

Sch 2 s2(a)(ii)

Professional Standards Unit

[REDACTED] 2017

Attachments to report:

1. Adult Content Report (Community Services) dated [REDACTED] 2017.
2. Letter to [REDACTED] Sch 2 s2(a)(ii) re Notification of Misconduct Allegation and Suspension with Pay, dated [REDACTED] 2017.
3. Investigation referral, dated [REDACTED] 2017.
4. ICT Security Analytical Report SEC-IST039- dated [REDACTED] 2017.
- 4a. (electronic) SEC-IST039 Site List
- 4b. (electronic) SEC-IST039 Images
5. Signed statement – [REDACTED] Sch 2 s2(a)(ii)
6. (electronic) Images Allegation 1-5 document.
7. (electronic) Images Allegation 6 document.
8. Letter to [REDACTED] Sch 2 s2(a)(ii) re final allegations and opportunity to respond, dated [REDACTED] 2017.
9. Respondent interview transcript – [REDACTED] Sch 2 s2(a)(ii) dated [REDACTED] 2017.
- 9a. Receipt of Copy of Transcript – [REDACTED] Sch 2 s2(a)(ii) dated [REDACTED] 2017.
10. Letter to [REDACTED] Sch 2 s2(a)(ii) re additional information for Allegation 1 and opportunity to respond, dated [REDACTED] 2017.
- 10a. Response to additional information for Allegation 1 by [REDACTED] Sch 2 s2(a)(ii) dated [REDACTED] 2017.
11. Acceptable Use of ICT Resources Policy Version 2.4, November 2014.
12. Acceptable Use Policy Version 2.5 23 January 2017.
13. Acceptable Use of ICT Resources Policy – Signed by [REDACTED] Sch 2 s2(a)(ii) dated [REDACTED] 2014.
14. Email Ms Christine Murray, 'All Staff Community Services Directorate' dated 25 February 2016.
15. File Note: Site Visit [REDACTED] dated [REDACTED] 2017.
16. [REDACTED] for [REDACTED] Sch 2 s2(a)(ii) at [REDACTED] [REDACTED] 2016 to [REDACTED] 2017 and Activity Report for [REDACTED] 2016.
17. File Note: Site Visit [REDACTED] dated [REDACTED] 2017.
18. [REDACTED] at [REDACTED] by [REDACTED] Sch 2 s2(a)(ii) [REDACTED] 2016 to [REDACTED] 2017 – [REDACTED] Sch 2 s2(a)(ii) dated [REDACTED] Sch 2 s2(a)(ii) 2017.
19. [REDACTED] [REDACTED] 2016 and [REDACTED] 2016 – Emails [REDACTED] Sch 2 s2(a)(ii) [REDACTED] dated [REDACTED] and [REDACTED] 2017.



Sch 2 s2(a)(ii)

Dear Sch 2 s2(a)(ii)

Notice of Disciplinary Action

I wrote to you on [redacted] 2017 and informed you that following consideration of evidence collected by and reported on by the Chief Minister, Treasury and Economic Development Directorate, Professional Standards Unit (PSU), I found seven allegations of misconduct by you, proven.

I set out the reasons for my findings in that letter and advised you that I proposed to terminate your employment as a Sch 2 s2(a)(ii) within the Community Services Directorate.

My letter advised that you could provide me with a written response within fourteen calendar days addressing my preliminary findings of misconduct and proposed disciplinary action, and that any response you provided would be considered before a final decision was made.

I am aware that on [redacted] 2017, you e-mailed [redacted] Senior Manager Employee Relations and advised that you would not challenge the proposed disciplinary action contained in my letter of [redacted] 2017.

Findings

As I have been presented with no new evidence or mitigation to change my original decision, the findings of misconduct and proposed disciplinary action detailed in my letter of [redacted] 2017 remain extant.

Disciplinary Action

Your employment will be terminated in accordance with Clause H10 of the [redacted] (the Enterprise Agreement) from the date of this letter. You will be paid three weeks in lieu of notice in accordance with the *Fair Work Act 2009*.

Right of Appeal

The Enterprise Agreement does not provide a right of appeal against a decision to terminate your employment. Any appeal against termination of employment is by application to the Fair Work Commission in accordance with the *Fair Work Act 2009* (www.fwc.gov.au). This would be your sole right of review of my decision to terminate your employment. You may wish to seek independent advice.

Records Management

In accordance with the disposal schedules under the *Territory Records Act 2002*, records of investigations of misconduct allegations which are found proven must be retained for a minimum of five years.

Employee Assistance Program (EAP)

Should you require support in relation to this matter EAP provides employees and their family members with confidential and professional counselling and related services to assist in resolving work related or personal issues. The EAP, Converge International, can be contacted on 1300 687 327.

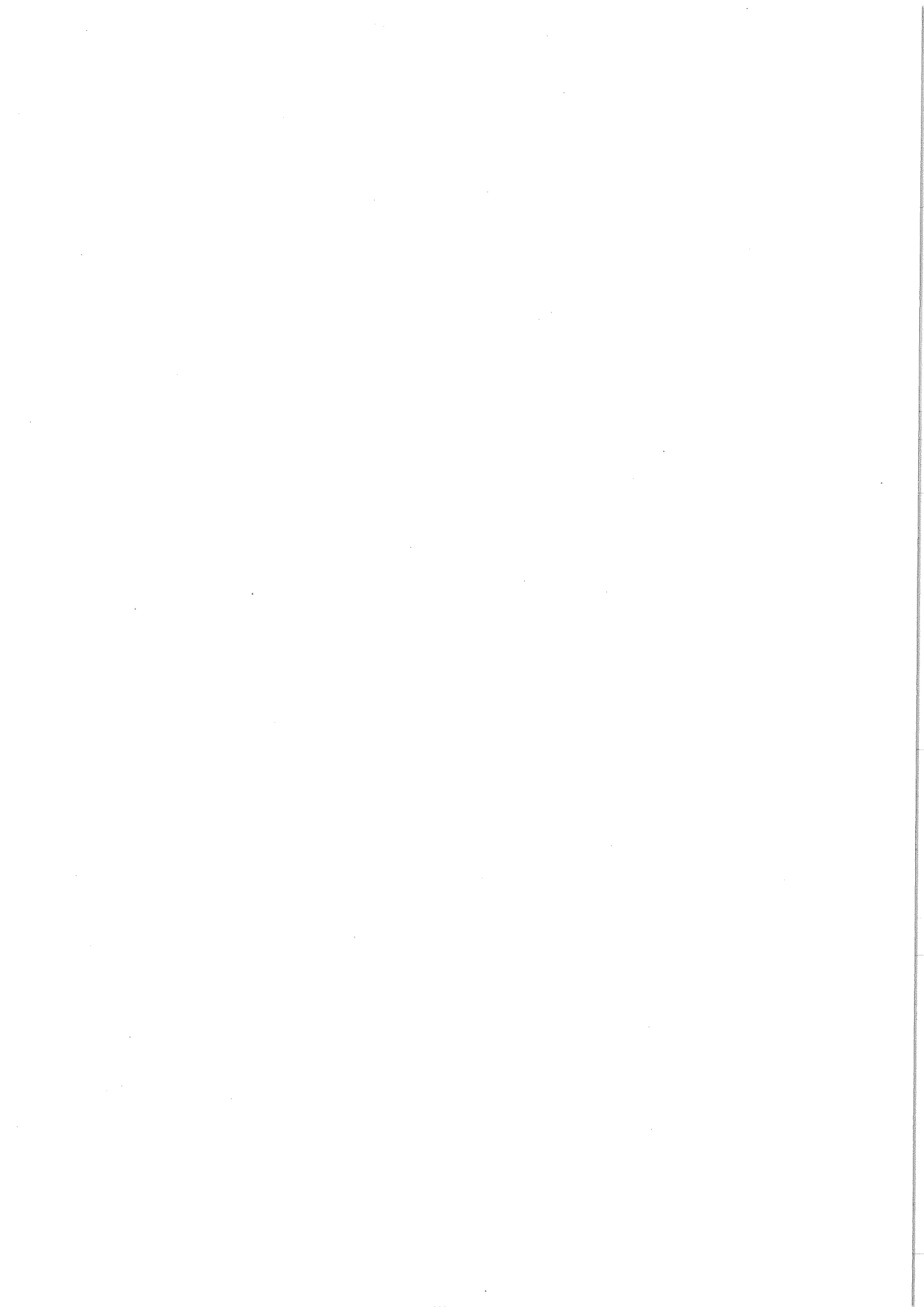
If you require clarification or additional information in relation to this letter please contact [REDACTED] Senior Manager Employee Relations, by email [REDACTED]@act.gov.au or by phone on [REDACTED]

Yours sincerely



Bernadette Mitcherson
Deputy Director General
Delegate of the Director-General

5 October 2017





ACT
Government

Chief Minister, Treasury and
Economic Development

Investigation Report

Sch 2 s2(a)(ii)

**Administrative Assistant
Chief Ministers, Treasury and Economic
Development Directorate**

Case Reference: 2016/78

Prepared by:

Sch 2 s2(a)(ii)

Professional Standards Unit

19 March 2017



ACT
Government

Chief Minister, Treasury and
Economic Development

Mr Kim Salisbury
Director, Revenue Management Division
CMTEDD

Dear Ms Goth

Investigation Report regarding allegations of possible misconduct by Sch 2 s2(a)(ii)

Background

Since 2015 Sch 2 s2(a)(ii) was counselled numerous times by several supervisors about her excessive use of the internet whilst at work. Due to a further report from Sch 2 s2(a)(ii) supervisor about her continued excessive internet use, the senior manager, Sch 2 s2(a)(ii) sought a report from Shared Services Information and Communication Technology (SSICT) security to ascertain the usage by Sch 2 s2(a)(ii). This report was provided on 28 September 2016. The findings in the report showed an excessive use of sites not aligned to Sch 2 s2(a)(ii) work.

On 14 October 2016 Sch 2 s2(a)(ii) spoke to Sch 2 s2(a)(ii) and advised Sch 2 s2(a)(ii) she should stop using so much data and that her use of the internet was not in line with the acceptable use of ICT policy. Sch 2 s2(a)(ii) accepted this and advised that she realised it was a lot but was not aware she should not be radio streaming. Sch 2 s2(a)(ii) advised Sch 2 s2(a)(ii) she would stop the excessive use.

Later the same month Sch 2 s2(a)(ii) received information from Sch 2 s2(a)(ii) supervisor that she had continued to spend a lot of time looking up non work internet sites so the matter was referred to CMTEDD HR.

During December 2016, Sch 2 s2(a)(ii) was notified in writing by Ms Kathy Goth, Director, Revenue Management Division of the investigation (Attachment 1). The preliminary allegations identified and notified to Sch 2 s2(a)(ii) were:

1. *Inappropriate use of Government resources (Internet), and*
2. **Out of Scope**

Investigative process

On 16 December 2016, the matter was referred to the Professional Standards Unit (PSU) for investigation (Attachment 2).

This investigation was conducted in accordance with the provisions of *ACT Administrative and Related Classification Enterprise Agreement 2013 – 2017* under which Sch 2 s2(a)(ii) is employed.

Amendments to the *Public Sector Management Act 1994*, which operated from the 1 September 2016, include changes to Section 9. Both the pre-amended and current versions of Section 9 are applied in this investigation because the allegations are dated prior to and after 1 September 2016.

Relevant witnesses were identified and interviewed. Information in relation to this matter was provided by:

Person	Role	Information source	Attachment
Sch 2 s2(a)(ii)		Statement dated 16 January 2017	3
		Statement dated 12 January 2017	4
		Statement dated 11 January 2017	5
		Email dated 1 February 2017	6
		Statement (Unsigned)	7

Other Documents/Evidence

Description	Attachment
Acceptable use of ICT Resources Policy – Signed by Sch 2 s2(a)(ii)	8
Acceptable use of Information Technology Resources Policy.	9
Internet Usage report Published on 28 September 2016.	10
Internet Usage report dated 17 November 2016.	11

On 19 January 2017, Sch 2 s2(a)(ii) received in writing the following final allegations, particularised with the relevant information obtained, and was offered an opportunity to respond (Attachment 12):

1. *During the period 6 July – 22 September 2016 you inappropriately and excessively used Government resources (Internet) to live stream music, enter chat rooms and accessed websites unrelated to official business contrary to the ACT Acceptable Use of Information Technology Resources Policy.*
2. *During the period 27 September - 11 November 2016 you inappropriately and excessively used Government resources (Internet) to live stream music enter chat rooms and accessed websites unrelated to official business contrary to the ACT Acceptable Use of Information Technology Resources Policy.*

3. **Out of Scope**

Sch 2 s2(a)(ii) was interviewed on 20 January 2017 and was provided with a disk of the recording.

On 6 February 2017, Sch 2 s2(a)(ii) emailed investigators accepting the transcript copy as a true reflection of the interview conducted in January 2017 (Attachment 13).

Allegation 1:

During the period 6 July – 22 September 2016 Sch 2 s2(a)(ii) inappropriately and excessively used Government resources (Internet) to live stream music, enter chat rooms and accessed websites unrelated to official business contrary to the ACT Acceptable Use of Information Technology Resources Policy.

Summary of Evidence

The following facts are drawn from information contained in signed statements and documents, obtained from relevant parties.

Sch 2 s2(a)(ii)

Sch 2 s2(a)(ii) is an Administration Services Officer Sch 2 s2(a)(ii) within the Sch 2 s2(a)(ii) at Sch 2 s2(a)(ii). She has held this position for Sch 2 s2(a)(ii) years.

Sch 2 s2(a)(ii) stated between February 2015 and February 2016 she was Sch 2 s2(a)(ii) supervisor of the Sch 2 s2(a)(ii). Sch 2 s2(a)(ii) was acting in the position as Sch 2 s2(a)(ii) the nominal occupant of the position, Sch 2 s2(a)(ii). As the acting supervisor her duties included assigning jobs, overseeing the production of reports and the general administration of the team. Sch 2 s2(a)(ii) stated one of the members in the team was Sch 2 s2(a)(ii). Sch 2 s2(a)(ii) has known Sch 2 s2(a)(ii) since May 2015.

Whilst Sch 2 s2(a)(ii) was the acting supervisor it was brought to her attention by other members within the team that Sch 2 s2(a)(ii) was 'always' on the internet.

As a result of the issues raised, Sch 2 s2(a)(ii) observed Sch 2 s2(a)(ii) using the work internet to look at shopping sites, hotmail and chat sites. This behaviour resulted in her work being of a poor standard.

On 27 October 2016 Sch 2 s2(a)(ii) spoke with Sch 2 s2(a)(ii) about these issues. At the time Sch 2 s2(a)(ii) acknowledged her issues and she agreed to try and minimise her internet usage. Out of Scope

Out of Scope

In February 2016 Sch 2 s2(a)(ii) provided a handover to Sch 2 s2(a)(ii) when she returned to work. This included the issues with Sch 2 s2(a)(ii) and that she had been spoken to by other supervisors about her excessive internet usage and that there had been no improvement.

On 20 May 2016 Sch 2 s2(a)(ii) provided a file note to Sch 2 s2(a)(ii) detailing the issues that had been raised with Sch 2 s2(a)(ii).

Sch 2 s2(a)(ii)

Ms Sch 2 s2(a)(ii) is an ASO^{SC} currently employed as the Supervisor, Sch 2 s2(a)(ii). Sch 2 s2(a)(ii) has held this position for Sch 2 s2(a)(ii) years.

Sch 2 s2(a)(ii) stated Sch 2 s2(a)(ii) is an employee whom she has known for three years both before becoming her supervisor and as her supervisor. Out of Scope

Out of Scope

These duties require Sch 2 s2(a)(ii) to have access to the internet through her work terminal.

Sch 2 s2(a)(ii) stated that within the work space staff have dual monitors and on occasions she has observed Sch 2 s2(a)(ii) on her computer looking at the internet sites on one monitor, whilst producing an email or letter on the second monitor. Sch 2 s2(a)(ii) identified that Sch 2 s2(a)(ii) was using the computer to look at online shopping; personal email, listening to music and streaming videos as well as 'general browsing' of the internet for which Sch 2 s2(a)(ii) cannot list the exact websites. This was identified as the quality and volume of work being produced by Sch 2 s2(a)(ii) was decreasing.

This matter increased more when Sch 2 s2(a)(ii) was on higher duties to an Sch 2 s2(a)(ii) position and when those higher duties came up for review Sch 2 s2(a)(ii) had to advise Sch 2 s2(a)(ii) senior manager about Sch 2 s2(a)(ii) behaviours and excessive internet usage, which resulted in Sch 2 s2(a)(ii) not having her higher duties extended.

File Note dated 6 May 2016

A file note dated 6 May 2016 records a meeting between Sch 2 s2(a)(ii) and Sch 2 s2(a)(ii) where her excessive use of her work computer for personal use being personal emails, online shopping and live streaming music was discussed.

Sch 2 s2(a)(ii)

Sch 2 s2(a)(ii) is a SOG^{Sch 2 s2(a)(ii)} currently working as the Senior Manager Operations Sch 2 s2(a)(ii). The position that he currently holds was created in Sch 2 s2(a)(ii).

The Sch 2 s2(a)(ii) is made up of six members and is currently supervised by Sch 2 s2(a)(ii). Although Sch 2 s2(a)(ii) has known Sch 2 s2(a)(ii) for six to seven years, he has only worked with her since April 2016. Sch 2 s2(a)(ii) is also a member of the team and Sch 2 s2(a)(ii) has known her for approximately four years.

When Sch 2 s2(a)(ii) took over as the operations manager he was approached by Sch 2 s2(a)(ii) who was acting as the supervisor of the team. Sch 2 s2(a)(ii) advised him that there had been an issue with Sch 2 s2(a)(ii) and her constant use of the internet, looking at videos and streaming the internet.

Sch 2 s2(a)(ii) advised him that due to Sch 2 s2(a)(ii) constant internet use there had been an issue with the quality of her work. As a result Sch 2 s2(a)(ii) asked Sch 2 s2(a)(ii) if there was any evidence that Sch 2 s2(a)(ii) had been spoken to about these issues. Sch 2 s2(a)(ii) produced a number of file notes detailing that Sch 2 s2(a)(ii) had been spoken to about the issues.

On a date he cannot recall, Sch 2 s2(a)(ii) stated he had a conversation with Sch 2 s2(a)(ii) about the issues raised by Sch 2 s2(a)(ii). Sch 2 s2(a)(ii) was open and suggested that she had been spoken to about these issues and claimed that she did not quite understand how to fix the issues. At the time of the conversation Sch 2 s2(a)(ii) was on higher duties as an Sch 2 s2(a)(ii). Sch 2 s2(a)(ii) advised Sch 2 s2(a)(ii) that he was going to terminate her higher duties as the behaviours that had been brought to his attention were not in line with what is expected from a member on higher duties.

Sch 2 s2(a)(ii) explained to Sch 2 s2(a)(ii) that her actions could lead to a code of conduct breach and Sch 2 s2(a)(ii) stated that she was aware of this and understood Sch 2 s2(a)(ii) concerns. Sch 2 s2(a)(ii) returned to her normal position as an Sch 2 s2(a)(ii).

On a date Sch 2 s2(a)(ii) could not recall he received an email from Sch 2 s2(a)(ii) indicating that Sch 2 s2(a)(ii) was on the internet. Sch 2 s2(a)(ii) walked over to where Sch 2 s2(a)(ii) was working and saw that she had what appeared to be a non work site open on her computer. Sch 2 s2(a)(ii) then called Sch 2 s2(a)(ii) into his office and told her that he had seen her with the site open on her work computer and that he had spoken to her before about this and her actions need to stop. Sch 2 s2(a)(ii) acknowledged this and returned to work.

Sch 2 s2(a)(ii) believed that Sch 2 s2(a)(ii) internet usage did not improve after the conversation and sought approval to have ICT conduct an internet usage report to identify Sch 2 s2(a)(ii) internet usage.

The ICT report showed that Sch 2 s2(a)(ii) was using excessive internet contrary to the ACT Governments Acceptable use of ICT Resources Policy. When Sch 2 s2(a)(ii) received the report it provided substantial information over a number of months broken into weeks detailing Sch 2 s2(a)(ii) internet usage. The report showed on face value that Sch 2 s2(a)(ii) was looking up sites that would not be considered appropriate for her current position. These sites include shopping sites, radio streaming and a number of chat sites that were not needed to be accessed for Sch 2 s2(a)(ii) position.

Sch 2 s2(a)(ii) stated he was provided information from ICT that the normal internet usage was between 150-200 Mb of downloads a week, where Sch 2 s2(a)(ii) averaged 1.5 to 2 GB a week.

Acceptable use of ICT Resources Policy - Sch 2 s2(a)(ii)

Sch 2 s2(a)(ii) signed an Acceptable use of ICT Resources Policy on the 24 October 2012 when she commenced with the ACTPS. When signing this form Sch 2 s2(a)(ii) has acknowledged that she had read and understood the Whole of Government Acceptable Use of ICT Resources Policy, agreed to abide by the requirements for access and the use of the resources and that the signed acceptance is valid for the period of employment with the ACT Government.

Sch 2 s2(a)(ii)

Sch 2 s2(a)(ii) is the Deputy Manager, [REDACTED]

Sch 2 s2(a)(ii) stated Sch 2 s2(a)(ii) Senior Manager, Sch 2 s2(a)(ii) CMTEDD requested an investigation into internet usage by Sch 2 s2(a)(ii) Sch 2 s2(a)(ii) requested an initial report detailing internet usage by Sch 2 s2(a)(ii) on the 23 September 2016 to ensure her internet usage was acceptable and reasonable as set out in whole of Government policies.

Sch 2 s2(a)(ii) stated the initial internet usage report for the dates 6 July to 22 September 2016 showed a very large amount of traffic (19 GB) downloaded by the account associated with Sch 2 s2(a)(ii) Based on the total amount of traffic, Sch 2 s2(a)(ii) downloaded an average of 1.6GB of data per week. A standard ACT Government staff member downloads approximately 150 MB per week.

When looking at a breakdown of Internet access by site, a large amount of the traffic (or downloads) across the entire time period of the report was generated by accessing the domain 1047.com.au. This domain is owned by Canberra radio station Mix 104.7. The large volume of hits on this domain indicates a large amount of access to the radio station website. This domain hosts the live stream (streaming media) for this radio station.

Sch 2 s2(a)(ii) concluded that the evidence within the report indicates that between 6 July and 22 September 2016, Sch 2 s2(a)(ii) downloaded approximately 4.6 GB from 1047.com.au and 2.4 GB from SCAW.com.au both radio sites. This may be considered an excessively large amount of Internet usage. A majority of this access was streaming radio from 1047.com.au.

Acceptable use of Information Technology Resources Policy

The policy applies to all permanent and temporary ACT Government employees and non government staff including contractors, consultants and work experience students. Within the policy it states that excessive web browsing unrelated to official business during work hours is prohibited. The term "excessive" is to be negotiated at local area between supervisors and staff.

The policy stipulates that you must not:

- Access online media streaming sites (eg radio, music and video broadcasts) unless they are work related;
- Create and post on personal blogs;
- Creating personal web pages or
- Conduct a private online business (including dealing on eBay or similar sites, or share trading).

ICT Internet Usage Report dated 28 September 2016

The internet report dated 28 September 2016 covers dates from 6 July to 22 September 2016. Within the report it was noted that Sch 2 s2(a)(ii) was accessing inappropriate and prohibited web sites including Skype, 104.7 live streaming, and entering chat rooms. It is further noted that for the 12 weeks of the report Sch 2 s2(a)(ii) used 19 GB of data averaging 1.6 GB of data a week. As reported by ICT security this is may be deemed excessive as the average employee usage is around 150 to 200 MB a week.

Sch 2 s2(a)(ii)

Sch 2 s2(a)(ii) is an Sch 2 s2(a)(ii) Administrative assistant within the Payroll Tax ACT Revenue Office. Sch 2 s2(a)(ii) has been in that position since 1 November 2012.

During her interview, Sch 2 s2(a)(ii) admitted that her internet usage was high and she was advised of that by Sch 2 s2(a)(ii). Sch 2 s2(a)(ii) stated she had endeavoured to fix the issue by decreasing her shopping and live streaming music through her work computer. However after that period her supervisors advised her that her internet usage was still excessively high.

Sch 2 s2(a)(ii) stated that she had been streaming 104.7 live through her computer and claimed that she was advised by her then manager, Sch 2 s2(a)(ii) that she was allowed to. Sch 2 s2(a)(ii) claimed that she asked Sch 2 s2(a)(ii) if she could listen to the radio through her computer and Sch 2 s2(a)(ii) said that she was able to. Sch 2 s2(a)(ii) further claimed she wasn't aware that listening to 104.7 would "chew so much data" and that it was not brought to her attention. Sch 2 s2(a)(ii) claimed "I just looked over the matter that it would be chewing through data, so that's why for the first few weeks her usage was excessively high".

Sch 2 s2(a)(ii) admitted that she had her personal email account open and that through her emails she was accessing shopping websites such as 'Iconic and White Fox Boutique'. Sch 2 s2(a)(ii) stated that she was aware of the ICT Acceptable Use of Information Technology Resource Policy and that when she

commenced work she signed the acknowledgement that she would abide by that policy. However, Sch 2 s2(a)(ii) claimed that she had never read the policy.

Sch 2 s2(a)(ii) did acknowledge that now that she was aware of the policy she understood that she was not complying with that policy when she was live streaming the radio station and looking at shopping sites.

When questioned about if she had been using Facebook Sch 2 s2(a)(ii) stated that when she visits some of the business websites on occasion she has been directed to their Facebook page. Sch 2 s2(a)(ii) further stated that she utilised an extra aspect of her personal email account which opens up a chat room for instant messaging and then this appears as if she has been accessing Skype. Sch 2 s2(a)(ii) further acknowledged that this was an inappropriate site and stated that she had stopped using it.

Sch 2 s2(a)(ii) further claimed that she could not recall being spoken to by other supervisors prior to her meetings with Sch 2 s2(a)(ii) about her excessive internet usage. Sch 2 s2(a)(ii) admitted that as a result of her actions her HDA was not extended past the 30 May 2016 completion date.

Sch 2 s2(a)(ii)

Sch 2 s2(a)(ii) is an SOG^{sen} Assistant Manager, Sch 2 s2(a)(ii) Sch 2 s2(a)(ii) was Sch 2 s2(a)(ii) senior supervisor between 29 August 2014 to 14 July 2016.

On 2 February 2017 Sch 2 s2(a)(ii) was contacted to enquire if he advised Sch 2 s2(a)(ii) that she was allowed to stream live music through her work computer. It was accepted by management that individuals could listen to radios at work or listen to music from their mobile phones and/or charge mobile phones via work station computers.

Sch 2 s2(a)(ii) confirmed that Sch 2 s2(a)(ii) did ask him if it was ok for her to listen to music from her phone whilst she worked. Sch 2 s2(a)(ii) said yes provided that it did not impair her duties. Sch 2 s2(a)(ii) could not recall any discussion about live streaming music via her work computer.

Furthermore, Sch 2 s2(a)(ii) stated given that senior management had already endorsed the practice of listening to music during work hours by other staff in the section at the time, he was not in a position to impose a different standard on Sch 2 s2(a)(ii)

Analysis

During her interview Sch 2 s2(a)(ii) admitted her internet usage was high. The ICT Report for the period 6 July to 22 September 2016 shows her total usage at 19 GB of data with an average of 1.6 GB of data a week.

It is therefore reasonable to consider her usage was excessive as the average use as indicated by ICT security is 150 to 200 MB per week. Sch 2 s2(a)(ii) also admitted that she did not read the ACT Acceptable Use of Information Technology Resources Policy when signing her paperwork to commence work with the ACT Government.

Sch 2 s2(a)(ii) claimed that her previous manager Sch 2 s2(a)(ii) said she could listen to the radio on her computer. However Sch 2 s2(a)(ii) stated that he told Sch 2 s2(a)(ii) she could listen to a radio or music from her mobile phone. Regardless of whether there was a misunderstanding between Sch 2 s2(a)(ii) and Sch 2 s2(a)(ii) had Sch 2 s2(a)(ii) read the ACT Acceptable Use of Information Technology Resources Policy she

would have been aware that live streaming music for personal use from her work computer was not allowed.

During the interview Sch 2 s2(a)(ii) claimed that she had not been spoken to previously by her supervisors about her internet usage. However, Sch 2 s2(a)(ii) and Sch 2 s2(a)(ii) provided evidence that she was spoken to about her excessive internet usage on 27 October 2015 and 26 May 2016.

By her own admissions Sch 2 s2(a)(ii) stated she accessed her personal emails on her work computer which provided links to shopping web sites. Sch 2 s2(a)(ii) also used chat rooms for instant messaging which is identified as Skype. In relation to live streaming a radio station Sch 2 s2(a)(ii) stated she was not aware this used so much data.

From the evidence it is determined that Sch 2 s2(a)(ii) did inappropriately and excessively use the internet to access chat rooms and live stream music on a ACT Government computer.

Conclusion

On the basis of the information provided, there is sufficient evidence to conclude, on the balance of probabilities that during the period 6 July – 22 September 2016 Sch 2 s2(a)(ii) inappropriately and excessively used Government resources (Internet) to live stream music, enter chat rooms and accessed websites unrelated to official business contrary to the ACT Acceptable Use of Information Technology Resources Policy.

This finding is based on an analysis by the investigator of the relevant evidence obtained. It is not a determination that misconduct has or has not occurred, which is a decision for you, as the delegate, to make.

In determining whether this behaviour constitutes misconduct (as defined in clause H6.5 of the ACT *Administrative and Related Classification Enterprise Agreement 2013 – 2017*), you may wish to consider whether Sch 2 s2(a)(ii) failed in her obligations under Section 9 of the *Public Sector Management Act 1994*, in particular:

A public employee shall, in performing his or her duties:

(o) not make improper use of the property of the Territory.

Allegation 2:

During the period 27 September - 11 November 2016 Sch 2 s2(a)(ii) inappropriately and excessively used Government resources (Internet) to live stream music enter chat rooms and accessed websites unrelated to official business contrary to the ACT Acceptable Use of Information Technology Resources Policy.

Summary of Evidence

The following facts are drawn from information contained in signed statements and documents, obtained from relevant parties.

Sch 2 s2(a)(ii)

In October 2016 Sch 2 s2(a)(ii) claimed that Sch 2 s2(a)(ii) told her other managers on the office floor had approached him about witnessing Sch 2 s2(a)(ii) excessive internet usage. As a result Sch 2 s2(a)(ii) spoke with Sch 2 s2(a)(ii) in the presence of Sch 2 s2(a)(ii). After that counselling session Sch 2 s2(a)(ii) can recall that Sch 2 s2(a)(ii) sent Sch 2 s2(a)(ii) an email detailing who had attended the meeting and what was discussed and the directions that were given during that meeting. Sch 2 s2(a)(ii) was carbon copied into the email.

Sch 2 s2(a)(ii) can recall that Sch 2 s2(a)(ii) gave Sch 2 s2(a)(ii) a direction which included that she was to stop the excessive use of the internet on the work computer. Sch 2 s2(a)(ii) stated Sch 2 s2(a)(ii) was very clear in the direction given to Sch 2 s2(a)(ii) and that Sch 2 s2(a)(ii) verbally acknowledged what Sch 2 s2(a)(ii) had said to her.

Sch 2 s2(a)(ii)

On 14 October 2016 Sch 2 s2(a)(ii) spoke with Sch 2 s2(a)(ii) again as it had been brought to his attention that Sch 2 s2(a)(ii) had still been seen on the internet instead of completing her work.

Sch 2 s2(a)(ii) stated that following the meeting with Sch 2 s2(a)(ii) where the internet report was put to her, Sch 2 s2(a)(ii) advised Sch 2 s2(a)(ii) that the issues were continuing with Sch 2 s2(a)(ii). As a result Sch 2 s2(a)(ii) requested a further report from ICT Security which covered another seven week period from 27 September to 11 November 2016. The second report indicated that Sch 2 s2(a)(ii) internet usage had not changed and there was one week where Sch 2 s2(a)(ii) used 3.8 GB of data, which he deemed was excessive.

On 14 October 2016 when Sch 2 s2(a)(ii) showed the report to Sch 2 s2(a)(ii) and asked for her views on it, Sch 2 s2(a)(ii) admitted there was an issue; their conversation covered a number of other behaviours as well. Sch 2 s2(a)(ii) acknowledged the issue and indicated that she would attempt to fix all issues raised. Although Sch 2 s2(a)(ii) acknowledged the issues she told Sch 2 s2(a)(ii) she was sceptical of the ICT report as she claimed that she had tried to modify her internet usage.

As a result of the second Internet report and Sch 2 s2(a)(ii) failure to decrease her internet usage he sought assistance from CMTEED HR.

ICT Internet Usage Report dated 17 November 2016

The internet data usage report dated 17 November 2016 covers the period from 27 September to 11 November 2016. Within the report it was noted that Sch 2 s2(a)(ii) was still accessing inappropriate web sites including Skype, 104.7 live streams, and entering chat rooms. It is further noted that for the 7 weeks of the report Sch 2 s2(a)(ii) used 11 GB of data averaging 1.6 GB of data a week. As reported by ICT security this was still deemed excessive as the average employee usage is around 150 to 200 Mb a week.

Sch 2 s2(a)(ii)

Sch 2 s2(a)(ii) stated Sch 2 s2(a)(ii) requested a second investigation into internet usage by Sch 2 s2(a)(ii). Sch 2 s2(a)(ii) requested the report detailing internet usage by Sch 2 s2(a)(ii) on the 16 November 2016 to ensure her internet usage was acceptable and reasonable as set out in whole of ACT Government policies.

Sch 2 s2(a)(ii) stated that the second internet usage report for the period from 27 September to 11 November 2016 shows a similarly large amount of downloads being 11 GB for the included time period. When compared with the previous report, the second report appears to show a change in user behaviour based on the sites accessed. While there is still a very large amount of internet access, a much smaller portion of this access is attributed to 1047.com.au and streaming radio hosted on this domain.

Sch 2 s2(a)(ii) stated this report shows a large amount of web access to the sites live.com (web based email/instant messaging), shopify.com (shopping), theiconic.com.au (shopping) and princesspolly.com (shopping).

Sch 2 s2(a)(ii) concluded that the evidence within the report indicates that between 27 September and 11 November 2016 there was still an excessively large amount of internet usage, however this was not in the category of streaming media but was in the categories of web mail and shopping.

Sch 2 s2(a)(ii)

Sch 2 s2(a)(ii) claimed that after she was given the first report by Sch 2 s2(a)(ii) that she stopped live streaming music and claimed that she was trying to decrease her internet usage. Sch 2 s2(a)(ii) could not explain why the second report indicated that her internet usage was still at the same level as the first report after 14 October 2016 when Sch 2 s2(a)(ii) spoke to her.

Sch 2 s2(a)(ii) further claimed that she was only using the internet either before work or during her lunch time break further confusing her why her usage was still high. Sch 2 s2(a)(ii) further highlighted that the second internet report started before she was spoken to by Sch 2 s2(a)(ii) and given the direction to decrease her internet usage.

Analysis

Sch 2 s2(a)(ii) acknowledged that her internet usage was still high however, could not explain why as she claimed she had decreased her usage. Sch 2 s2(a)(ii) claimed that she had only been accessing the internet either before work commenced or during her lunch hour.

Although reasonable internet usage at work is accepted, the total data used by Sch 2 s2(a)(ii) is deemed excessive no matter when she actually accessed the internet. The report shows that even after the 14 October 2016 Sch 2 s2(a)(ii) still continued to access inappropriate web sites including chat rooms, shopping sites and radio stations, using her work computer despite continued requests and directions from her managers to cease these actions. Sch 2 s2(a)(ii) claimed that once she was directed to cease accessing the sites she did. However, the information contained in the ICT report in relation to data usage and the sites accessed shows that this was not the case.

The report indicates that after the 14 October 2016 when Sch 2 s2(a)(ii) gave Sch 2 s2(a)(ii) the direction to decrease her internet usage and to stop live streaming music Sch 2 s2(a)(ii) continued using chat rooms and that on another occasion Sch 2 s2(a)(ii) has again accessed the radio station 104.7 through her work station.

Conclusion

On the basis of the information provided, there is sufficient evidence to conclude, on the balance of probabilities during the period 27 September - 11 November 2016 Sch 2 s2(a)(ii) inappropriately and excessively used Government resources (Internet) to live stream music enter chat rooms and

accessed websites unrelated to official business contrary to the ACT Acceptable Use of Information Technology Resources Policy.

This finding is based on an analysis by the investigator of the relevant evidence obtained. It is not a determination that misconduct has or has not occurred, which is a decision for you, as the delegate, to make.

In determining whether this behaviour constitutes misconduct (as defined in clause H6.5 of the *ACT Administrative and Related Classification Enterprise Agreement 2013 – 2017*), you may wish to consider whether **Sch 2 s2(a)(ii)** failed in her obligations under Section 9 of the *Public Sector Management Act 1994*, in particular:

(2) A public servant must not—

(c) improperly use the property of the territory.

Out of Scope

Out of Scope

Out of Scope

Recommendations

It is recommended that, as the delegate, you:

- a) review this report, along with the accompanying evidence, to determine on the balance of probabilities whether misconduct has occurred;
- b) if misconduct is found, determine an appropriate sanction in accordance with the *ACT Administrative and Related Classification Enterprise Agreement 2013 – 2017*; and
- c) notify **Sch 2 s2(a)(ii)** of the outcome.

Sch 2 s2(a)(ii)

Professional Standards Unit

09 March 2017

Sch 2 s2(a)(ii)

Professional Standards Unit

9 March 2017

Attachments to report:

1. Letter to **Sch 2 s2(a)(ii)** re notice of investigation, dated .December 2016.
2. Investigation referral, dated 16 December 2016.
3. Signed statement – **Sch 2 s2(a)(ii)** dated 16 January 2017.
4. Signed statement – **Sch 2 s2(a)(ii)** dated 12 January 2017.
5. Signed statement – **Sch 2 s2(a)(ii)** dated 11 January 2017.
6. Email **Sch 2 s2(a)(ii)** dated 6 February 2017.
7. Statement - **Sch 2 s2(a)(ii)** ICT Security
8. Acceptable use of ICT resource policy – Signed by **Sch 2 s2(a)(ii)**
9. Acceptable use of Information Technology Resources Policy.
10. Internet Usage report Published on 28 September 2016.
11. Internet Usage report Published on 17 November 2016..
12. Letter to **Sch 2 s2(a)(ii)** re final allegations and opportunity to respond, dated 19 January 2017.
13. Respondent interview transcript – **Sch 2 s2(a)(ii)** dated 20 January 2017.



ACT
Government

Chief Minister, Treasury and
Economic Development

Investigation Report

Sch 2 s2(a)(ii)
Sch 2 s2(a)(ii) Sch 2 s2(a)(ii)
Justice & Community Safety

Case Reference: 2017/76

Prepared by:

Sch 2 s2(a)(ii)

Professional Standards Unit

January 2018



ACT
Government

Chief Minister, Treasury and
Economic Development

Sch 2 s2(a)(ii)

Justice & Community Safety Directorate

Dear Sch 2 s2(a)(ii)

Report regarding allegations of possible misconduct by Sch 2 s2(a)(ii)

Background

Out of Scope

Sch 2 s2(a)(ii) stated that she and Sch 2 s2(a)(ii) had been exchanging emails for approximately one year. She stated that some of the emails were inappropriate. Sch 2 s2(a)(ii) provided copies of emails between Sch 2 s2(a)(ii) and herself from her ACT Government email account.

Out of Scope

Investigative process

On Sch 2 s2(a)(ii) 2017, Sch 2 s2(a)(ii) was notified in writing by you that the matter would be referred to the Professional Standards Unit for investigation (**Attachment 1**). The preliminary allegations identified and notified to Sch 2 s2(a)(ii) were:

1. *It is alleged that between Sch 2 s2(a)(ii) 2017 to Sch 2 s2(a)(ii) 2017 you improperly used the property of the Territory; namely using ACT Government emails to send personal messages of an inappropriate nature to Sch 2 s2(a)(ii) Sch 2 s2(a)(ii) Sch 2 s2(a)(ii) and*

2. **Sch 2 s2(a)(ii)**

Sch 2 s2(a)(ii) was further advised that an audit of his ACT Government email account would be conducted. A request to retrieve emails between Sch 2 s2(a)(ii) and Sch 2 s2(a)(ii) from Sch 2 s2(a)(ii) 2016 to present was submitted to Shared Services ICT Security by the People and Workplace Strategy unit of JACS (**Attachment 2**).

Sch 2 s2(a)(ii) was suspended from duty pending the outcome of the investigation.

On **Sch 2 s2(a)(ii)** 2017, the matter was referred to the Professional Standards Unit for investigation (Attachment 3).

Sch 2 s2(a)(ii) provided a written response (undated) to your letter of **Sch 2 s2(a)(ii)** 2017, in which he made admissions to the alleged behaviour and requested that you consider waiving the need for a full investigation (Attachment 4).

On **Sch 2 s2(a)(ii)** 2017 you wrote to **Sch 2 s2(a)(ii)** following your consideration of his request and informed him that you considered the matter serious enough to warrant investigation (Attachment 5). However, noting the admissions made by **Sch 2 s2(a)(ii)** you determined that the matter did not require a full investigation and that an admission statement would be taken from him by the PSU. This would ensure that you were aware of the full circumstances of the matter, including mitigating factors, and would provide **Sch 2 s2(a)(ii)** with an opportunity to respond to the allegations, in line with procedural fairness.

Clause **Sch 2 s2(a)(ii)** of the **Sch 2 s2(a)(ii)** (the Enterprise Agreement), under which **Sch 2 s2(a)(ii)** is employed, states:

Out of Scope

The email correspondence obtained through the audit conducted by Shared Services ICT Security was provided on **Sch 2 s2(a)(ii)** 2017 and a comprehensive analysis was conducted of both the emails provided through this audit and the emails provided by **Sch 2 s2(a)(ii)** (Attachment 6).

On **Sch 2 s2(a)(ii)** 2017 **Sch 2 s2(a)(ii)** was provided with the full particulars of the final allegations in writing (Attachment 7):

1. On **Sch 2 s2(a)(ii)** 2017 you improperly used the property of the Territory, namely using ACT Government emails to send personal messages of an inappropriate nature to **Sch 2 s2(a)(ii)** **Sch 2 s2(a)(ii)**
2. On **Sch 2 s2(a)(ii)** 2017 you improperly used the property of the Territory, namely using ACT Government emails to send personal messages of an inappropriate nature to **Sch 2 s2(a)(ii)** **Sch 2 s2(a)(ii)**
3. On **Sch 2 s2(a)(ii)** 2017 you improperly used the property of the Territory, namely using ACT Government emails to send personal messages of an inappropriate nature to **Sch 2 s2(a)(ii)** **Sch 2 s2(a)(ii)**
4. On **Sch 2 s2(a)(ii)** 2017 you improperly used the property of the Territory, namely using ACT Government emails to send personal messages of an inappropriate nature to **Sch 2 s2(a)(ii)** **Sch 2 s2(a)(ii)**

17. On [Sch 2 s2(a)(ii)] 2017 you improperly used the property of the Territory, namely using ACT Government emails to send personal messages of an inappropriate nature to [Sch 2 s2(a)(ii)] [Sch 2 s2(a)(ii)] [Sch 2 s2(a)(ii)]
18. On [Sch 2 s2(a)(ii)] 2017 you improperly used the property of the Territory, namely using ACT Government emails to send personal messages of an inappropriate nature to [Sch 2 s2(a)(ii)] [Sch 2 s2(a)(ii)] [Sch 2 s2(a)(ii)]
19. On [Sch 2 s2(a)(ii)] 2017 you improperly used the property of the Territory, namely the cameras at the [Sch 2 s2(a)(ii)] to watch a colleague, [Sch 2 s2(a)(ii)] [Sch 2 s2(a)(ii)] [Sch 2 s2(a)(ii)]
20. On [Sch 2 s2(a)(ii)] 2017 you improperly used the property of the Territory, namely the cameras at the [Sch 2 s2(a)(ii)] to watch a colleague, [Sch 2 s2(a)(ii)] [Sch 2 s2(a)(ii)] [Sch 2 s2(a)(ii)]
21. On [Sch 2 s2(a)(ii)] 2017 you improperly used the property of the Territory, namely the cameras at the [Sch 2 s2(a)(ii)] to watch a colleague, [Sch 2 s2(a)(ii)] [Sch 2 s2(a)(ii)] [Sch 2 s2(a)(ii)]

22. Out of Scope

[Sch 2 s2(a)(ii)] was also provided with the following documents to assist him in determining whether he wanted to provide an admission statement, in accordance with clause [Sch 2 s2(a)(ii)] of the Enterprise Agreement:

- Email analysis conducted by PSU (see attachment 6);
- Emails relating to possible misuse of [Sch 2 s2(a)(ii)] cameras (**Attachment 8**);
- Information relating to [Sch 2 s2(a)(ii)] shift times during the relevant period (**Attachment 9**);
- ACT Government Acceptable Use Policy (**Attachment 10**);
- [Sch 2 s2(a)(ii)] Policy 2017 (**Attachment 11**);
- [Sch 2 s2(a)(ii)] Code of Ethical Conduct (**Attachment 12**);
- Section 7 of the *Public Sector Management Act 1994* (Meaning of *public sector values*) (**Attachment 13**);
- Section 9 of the *Public Sector Management Act 1994* (Public sector conduct) (**Attachment 14**); and
- Section [Sch 2] of the [Sch 2 s2(a)(ii)] 2013-2017 (**Attachment 15**).

On 22 December 2017 [Sch 2 s2(a)(ii)] confirmed that he would attend an interview with the PSU for the purpose of providing an admission statement. [Sch 2 s2(a)(ii)] was interviewed on [Sch 2 s2(a)(ii)] 2018 and his statement was finalised and signed on [Sch 2 s2(a)(ii)] 2018 (**Attachment 16**). No further interviews or investigation was conducted in relation to this matter.

The findings in this report are based on an analysis by the investigator of the relevant evidence obtained. It is not a determination that misconduct has or has not occurred, which is a decision for you, as the delegate, to make. The burden of proof required is on the balance of probabilities.

Misconduct is defined in clause ^{50h 2 62(a)()} of the Enterprise Agreement as:

- a) *the employee fails to meet the obligations set out in section 9 of the PSM Act1994 (this includes bullying and harassment or discrimination);*
- b) *the employee engages in conduct that has brought, or is likely to bring, the Directorate or ACTPS into disrepute;*
- c) *a period of unauthorised absence and the employee does not offer a satisfactory reason on return to work;*
- d) *the employee is convicted of a criminal offence or where a court finds that an employee has committed an offence but a conviction is not recorded, taking into account the circumstances and seriousness of the offence, the duties of the employee and the interests of the ACTPS and/or of the Directorate;*
- e) *the employee fails to notify the head of service of criminal charges in accordance with clause H11; or*
- f) *the employee makes a vexatious or knowingly false allegation against another employee.*

Allegation 1 - 18:

On the following dates, **Sch 2 s2(a)(ii)** improperly used the property of the Territory, namely using ACT Government emails to send personal messages of an inappropriate nature to **Sch 2 s2(a)(ii)** **Sch 2 s2(a)(ii)** **Sch 2 s2(a)(ii)**:

- **Sch 2 s2(a)(ii)** 2017;
- **Sch 2 s2(a)(ii)** 2017;
- **Sch 2 s2(a)(ii)** 2017;
- **Sch 2 s2(a)(ii)** 2017;
- **Sch 2 s2(a)(ii)** 2017;
- **Sch 2 s2(a)(ii)** 2017;
- **Sch 2 s2(a)(ii)** 2017;
- **Sch 2 s2(a)(ii)** 2017;
- **Sch 2 s2(a)(ii)** 2017;
- **Sch 2 s2(a)(ii)** 2017;
- **Sch 2 s2(a)(ii)** 2017;
- **Sch 2 s2(a)(ii)** 2017;
- **Sch 2 s2(a)(ii)** 2017;
- **Sch 2 s2(a)(ii)** 2017;
- **Sch 2 s2(a)(ii)** 2017.

Summary of Evidence

The following facts are drawn from information contained in signed statements and documents, obtained from relevant parties.

1. Emails from **Sch 2 s2(a)(ii)** to **Sch 2 s2(a)(ii)** - **Sch 2 s2(a)(ii)** 2017 (Attachment 17)

Shift	In	Out	Timeframes	Total no. of emails	No. of emails of Inappropriate nature
Sch 2 s2(a)(ii)				11	7
Sch 2 s2(a)(ii)				3	
Sch 2 s2(a)(ii)				7	
Sch 2 s2(a)(ii)				21	7

Summary of content

- **Sch 2 s2(a)(ii)**

2. Emails – Sch 2 s2(a)(ii) 2017 (Attachment 18)

Shift	In	Out	Timeframes	Total no. of emails	No. of emails of Inappropriate nature
Sch 2 s2(a)(ii)				17	13
				1	
				3	1
				1	
				24	23
				46	37

Summary of content

• **Sch 2 s2(a)(ii)**

3. Emails – Sch 2 s2(a)(ii) 2017 (Attachment 19)

Shift	In	Out	Timeframes	Total no. of emails	No. of emails of Inappropriate nature
Sch 2 s2(a)(ii)				2	2
				1	
				10	5
				16	11
				12	11
				1	1
				13	9
				55	39

Summary of content

• **Sch 2 s2(a)(ii)**

4. Emails – **Sch 2 s2(a)(ii)** 2017 (Attachment 20)

Shift	In	Out	Timeframes	Total no. of emails	No. of emails of Inappropriate nature
Sch 2 s2(a)(ii)				2	1
				7	5
				2	2
				4	3
				15	11

Summary of content

• **Sch 2 s2(a)(ii)**

5. Emails – **Sch 2 s2(a)(ii)** 2017 (Attachment 21)

Shift	In	Out	Timeframes	Total no. of emails	No. of emails of Inappropriate nature
Sch 2 s2(a)(ii)				1	
				3	
				3	
				4	3
				1	1
				12	4

Summary of content

• **Sch 2 s2(a)(ii)**

6. Emails – **Sch 2 s2(a)(ii)** 2017 (Attachment 22)

Shift	In	Out	Timeframes	Total no. of emails	No. of emails of Inappropriate nature
Sch 2 s2(a)(ii)				4	
				2	
				68	61
				74	61

Summary of content

• **Sch 2 s2(a)(ii)**

Sch 2 s2(a)(ii)

8. Emails – Sch 2 s2(a)(ii) 2017 (Attachment 24)

Shift	In	Out	Timeframes	Total no. of emails	No. of emails of Inappropriate nature
Sch 2 s2(a)(ii)				16	11
				10	9
				26	20

Summary of content

Sch 2 s2(a)(ii)

9. Emails – Sch 2 s2(a)(ii) 2017 (Attachment 25)

Shift	In	Out	Timeframes	Total no. of emails	No. of emails of Inappropriate nature
Sch 2 s2(a)(ii)				1	1
Sch 2 s2(a)(ii)				7	7
Sch 2 s2(a)(ii)				3	2
Sch 2 s2(a)(ii)				20	20
Sch 2 s2(a)(ii)				12	11
Sch 2 s2(a)(ii)				43	41

Summary of content

Sch 2 s2(a)(ii)

[Redacted content]

10. Emails – Sch 2 s2(a)(ii) 2017 (Attachment 26)

Shift	In	Out	Timeframes	Total no. of emails	No. of emails of Inappropriate nature
Sch 2 s2(a)(ii)				3	2
Sch 2 s2(a)(ii)				1	1
Sch 2 s2(a)(ii)				4	3

Summary of content

:Sch 2 s2(a)(ii)

11. Emails – Sch 2 s2(a)(ii) 2017 (Attachment 27)

Shift	In	Out	Timeframes	Total no. of emails	No. of emails of Inappropriate nature
Sch 2 s2(a)(ii)				1	
				6	5
				5	5
				1	1
				11	4
				24	15

Summary of content

:Sch 2 s2(a)(ii)

12. Emails – Sch 2 s2(a)(ii) 2017 (Attachment 28)

Shift	In	Out	Timeframes	Total no. of emails	No. of emails of Inappropriate nature
Sch 2 s2(a)(ii)				4	3
				1	1
				12	10
				17	14

Summary of content

:Sch 2 s2(a)(ii)

13. Emails – **Sch 2 s2(a)(ii)** 2017 (Attachment 29)

Shift	In	Out	Timeframes	Total no. of emails	No. of emails of Inappropriate nature
Sch 2 s2(a)(ii)				1	1
				1	1

Summary of content

• **Sch 2 s2(a)(ii)**

14. Emails – **Sch 2 s2(a)(ii)** 2017 (Attachment 30)

Shift	In	Out	Timeframes	Total no. of emails	No. of emails of Inappropriate nature
Sch 2 s2(a)(ii)				1	
				2	
				7	4
				1	1
				2	2
				2	2
				12	12
				1	1
				1	1
				13	13
				42	36

Summary of content

• **Sch 2 s2(a)(ii)**

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15. Emails – **Sch 2 s2(a)(ii)** 2017 (Attachment 31)

Shift	In	Out	Timeframes	Total no. of emails	No. of emails of Inappropriate nature
Sch 2 s2(a)(ii)				1	1
				4	3
				1	1
				1	1
				3	2
				12	12
				22	20

Summary of content

- **Sch 2 s2(a)(ii)**
-
-

16. Emails – **Sch 2 s2(a)(ii)** 2017 (Attachment 32)

Shift	In	Out	Timeframes	Total no. of emails	No. of emails of Inappropriate nature
Sch 2 s2(a)(ii)				5	5
				4	3
				9	8

Summary of content

- **Sch 2 s2(a)(ii)**

17. Emails – **Sch 2 s2(a)(ii)** 2017 (Attachment 33)

Shift	In	Out	Timeframes	Total no. of emails	No. of emails of Inappropriate nature
Sch 2 s2(a)(ii)				1	1
				1	1

Summary of content

- **Sch 2 s2(a)(ii)**

18. Emails – Sch 2 s2(a)(ii) 2017 (Attachment 34)

Shift	In	Out	Timeframes	Total no. of emails	No. of emails of Inappropriate nature
Sch 2 s2(a)(ii)				2	2
Sch 2 s2(a)(ii)				2	2
Sch 2 s2(a)(ii)				9	9
Sch 2 s2(a)(ii)				13	13

Summary of content

• **Sch 2 s2(a)(ii)**
 • **Sch 2 s2(a)(ii)**
 • **Sch 2 s2(a)(ii)**
 • **Sch 2 s2(a)(ii)**

Sch 2 s2(a)(ii)

Sch 2 s2(a)(ii) could not recall when **Sch 2 s2(a)(ii)** commenced at **Sch 2 s2(a)(ii)** but, shortly after her commencement, they worked together and 'hit it off'. Over a long period of time, emails were generated between the two of them, which started off as being 'friendly and chatty' but then escalated to being 'a bit flirty'.

Sch 2 s2(a)(ii) made admissions that on the 18 days identified, he wrote and sent emails of an inappropriate nature to **Sch 2 s2(a)(ii)** using an ACT Government computer and his ACT Government email account. **Sch 2 s2(a)(ii)** had read the ACT Government Acceptable Use of ICT policy and agreed that his behaviour was inappropriate and should not have happened.

Sch 2 s2(a)(ii) could not recall with certainty where he was working on each of the occasions when he sent the emails but he clarified that the emails were only sent when there was a 'downturn' in work and at no time did he neglect his duties.

Sch 2 s2(a)(ii) explained that there was no intent to harm **Sch 2 s2(a)(ii)** and no disparaging remarks were made to her. He stated that if **Sch 2 s2(a)(ii)** had asked him to stop that he would have stopped. **Sch 2 s2(a)(ii)** got the impression that **Sch 2 s2(a)(ii)** was happy to reply to the emails and he never received any indication that she did not want him to send the emails.

Sch 2 s2(a)(ii) found the social interaction from the email conversations with **Sch 2 s2(a)(ii)** to be 'a chance to step back from the demands and rigours of work'. **Sch 2 s2(a)(ii)** explained that he also had a number of things going on in his personal life at the time and this offered a 'nice escape'. However, he accepted that this was not a reasonable excuse.

Legislation / Policy

ACT Government Acceptable Use of ICT policy

This policy applies to all ICT resources, devices and services including:

- desktop computers and devices
- mobile devices such as laptops, tablets and smartphones provided by ACT Government
- personally-owned devices connected to ACT Government resources and
- network, server, storage and cloud resources.

The policy states:

*You may make reasonable personal use of some ACT Government ICT resources, such as email and web browsing on the desktop or laptop computer that is issued to you, or a corporate smartphone or table, provided it is not **prohibited use** as defined by this policy.*

Do not allow personal correspondence, phone calls, web browsing or other ICT resources to interfere with your official duties or with the work of other staff or facilities required for business purposes.

Prohibited use of ACT Government ICT resources relevantly includes:

- *Do not make improper use of the property of the Territory.*
- *Do not use ICT resources to communicate inappropriate or prohibited material.*

Improper activities include:

- *Do not create, communicate, access, download or store inappropriate or prohibited material using ACT Government ICT resources unless it is part of your official duty to do so.*
- *Do not use ICT resources to engage in any unlawful conduct, including any conduct that contravenes the Information Privacy Act (ACT) 2014, the Copyright Act 1968, the Spam Act 2003, the Do Not Call Register Act 2006, the Telecommunications Act 1997, the Telecommunications (Interception and Access) Act 1979, the Archives Act 1983, the Sex Discrimination Act 1984, the Disability Discrimination Act 1992, the Crimes Act 1914, the Criminal Code Act 1995, or the Public Sector Management Act 1994.*
- *Do not use ICT resources to engage in any conduct that may make a person feel offended, humiliated and/or intimidated, where that reaction is reasonable in the circumstances (e.g. communicating a suggestive, graphic or sexually explicit message).*

The policy defines 'Inappropriate material' as:

Inappropriate material includes information that could damage the ACT Government's reputation, be misleading or deceptive, result in victimisation or harassment, lead to criminal penalty or civil liability, or be reasonably found to be offensive, obscene, threatening, abusive or defamatory.

Inappropriate material relevantly includes:

- *text, graphics, video or other material of a sexual nature (including pornography and other adult material such as swimsuit or lingerie modelling),*
- *offensive language or offensive material, including jokes or commentary of a sensitive nature (e.g. about race, age, gender, disability, marital status, sexual orientation, religion, political beliefs or appearance),*
- *material that is defamatory, abusive or constitutes a form or unlawful discrimination or potential harassment.*

The policy states the following in relation to excessive use:

- Excessive personal use of ICT resources is prohibited, particularly where it impacts on your official duties or on ACT Government operational effectiveness, clients, staff or resources; and
- Use good judgement and seek advice from your supervisor if you are unsure what constitutes "excessive" personal use.

Section 7 of the Public Sector Management Act 2009

Meaning of public sector values

- (1) The public sector values are –
 - (a) respect; and
 - (b) integrity; and
 - (c) collaboration; and
 - (d) innovation.

Analysis

Sch 2 s2(a)(ii) made full admissions that he engaged in inappropriate email exchanges with Sch 2 s2(a)(ii) on 18 dates within 2017.

Sch 2 s2(a)(ii) claimed that the emails only occurred when there was a 'downturn' in work and that there was no neglect of his duties as a result of the interaction with Sch 2 s2(a)(ii). This is not consistent with the analysis of the emails that, at times, showed multiple emails being sent over the course of the day. On some of those dates, in particular Sch 2 s2(a)(ii) 2017 and Sch 2 s2(a)(ii) 2017, the email correspondence would be described as excessive.

On Sch 2 s2(a)(ii) 2017, Sch 2 s2(a)(ii) sent a total of 74 personal emails to Sch 2 s2(a)(ii) 61 of which could be regarded as inappropriate in content. 68 of the emails were sent between Sch 2 s2(a)(ii) hours, a time period of 2 hours and 15 minutes.

On Sch 2 s2(a)(ii) 2017, Sch 2 s2(a)(ii) sent a total of 74 personal emails to Sch 2 s2(a)(ii) 62 of which could be regarded as inappropriate in content. 55 of the emails were sent between Sch 2 s2(a)(ii) hrs, a time period of 3 hours and 45 minutes.

On both dates, there were occasions where multiple emails were sent within a one minute timeframe, indicating responsive attention being given to the computer by Sch 2 s2(a)(ii) and not to his other duties, even though it is unclear what those specific duties were on those dates.

Whilst Sch 2 s2(a)(ii) made admissions that his behaviour was inappropriate, he described the correspondence with Sch 2 s2(a)(ii) as 'a bit flirty'. Again, this is not consistent with the analysis of the emails. The emails written by Sch 2 s2(a)(ii) and sent to Sch 2 s2(a)(ii) Sch 2 s2(a)(ii)

Sch 2 s2(a)(ii) They include examples Sch 2 s2(a)(ii) and Sch 2 s2(a)(ii) Sch 2 s2(a)(ii) Sch 2 s2(a)(ii) To describe them as flirtatious is dismissive and shows a lack of cognisance about the seriousness of the behaviour.

Sch 2 s2(a)(ii) also stated that there was no intent to harm Sch 2 s2(a)(ii) by his behaviour and that there were no disparaging remarks made to her. Sch 2 s2(a)(ii) appears to be receptive to and participate in the email correspondence with Sch 2 s2(a)(ii) She is, at times, Sch 2 s2(a)(ii) her

responses as **Sch 2 s2(a)(ii)** is and, on occasion, instigates the conversation. However, **Sch 2 s2(a)(ii)** apparent complicity does not negate the inappropriateness of **Sch 2 s2(a)(ii)** behaviour.

There were a number of occasions when **Sch 2 s2(a)(ii)** expressed discomfort about the conversation to **Sch 2 s2(a)(ii)**. On those occasions **Sch 2 s2(a)(ii)** appears to retract from the email conversation, even stating that he 'respected her boundaries'. However, **Sch 2 s2(a)(ii)** would then dismiss it saying that it was okay, she would use 'smiley face' emoticons or "lol" (laugh out loud) in her emails, giving **Sch 2 s2(a)(ii)** the perception that the email correspondence was okay. There is no evidence to suggest that, during the period, **Sch 2 s2(a)(ii)** discussed any concerns about the emails from **Sch 2 s2(a)(ii)** with management at **Sch 2 s2(a)(ii)**.

Despite this, the **Sch 2 s2(a)(ii)** nature of the emails, coupled with the persistent amount of emails could still be considered harassment of **Sch 2 s2(a)(ii)** even if she participated in the conversation, particularly considering **Sch 2 s2(a)(ii)** age and seniority in tenure. Following the escalation of **Sch 2 s2(a)(ii)** behaviour, **Sch 2 s2(a)(ii)** has made a complaint about the correspondence from **Sch 2 s2(a)(ii)**.

Sch 2 s2(a)(ii) stated that if **Sch 2 s2(a)(ii)** had asked him to stop that he would have. Again, this deflects **Sch 2 s2(a)(ii)** obligation, in his role as a public servant, not to send the emails to **Sch 2 s2(a)(ii)** in the first place.

The ACT Government Acceptable Use of ICT policy was current at the time of these incidents and clearly sets out the expectations of ACT public service employees. Failure to comply with this policy could be considered a breach of a lawful and reasonable direction.

Section 7 of the *Public Sector Management Act 2009* sets the public sector values. **Sch 2 s2(a)(ii)** behaviour did not comply with these values as it lacked respect towards a colleague to send her emails containing inappropriate content, even though he suggests that there was no intent to harm **Sch 2 s2(a)(ii)**. Furthermore, **Sch 2 s2(a)(ii)** sending **Sch 2 s2(a)(ii)** emails to **Sch 2 s2(a)(ii)** demonstrated a lack of moral principle by him. Consequently, he did not exhibit integrity in performing his role as a public servant, particularly as there are clear guidelines available in relation to appropriate behaviour.

Conclusion

On the basis of the information provided and admissions made by **Sch 2 s2(a)(ii)** there is sufficient evidence to conclude, on the balance of probabilities that on 18 dates during 2017 **Sch 2 s2(a)(ii)** improperly used the property of the Territory, namely ACT Government emails, to send personal messages of an inappropriate nature to **Sch 2 s2(a)(ii)**.

In determining whether this behaviour constitutes misconduct (as defined in clause **Sch 2 s2(a)(ii)** of the Enterprise Agreement), you may wish to consider whether **Sch 2 s2(a)(ii)** failed in his obligations under Section 9 of the *Public Sector Management Act 1994*, in particular:

- (1) A public servant must –
 - (c) when acting in connection with the public servant's job –
 - (ii) comply with any lawful and reasonable direction given by a person with the authority to give the direction; and
 - (iv) treat all people with courtesy and sensitivity to their rights and aspirations.
 - (d) do the public servant's job with reasonable care and diligence, impartiality and honesty.

- (2) A public servant must not –
- (a) behave in a way that –
 - (i) is inconsistent with the public sector values.
 - (c) improperly use a Territory resource, including information.
 - (e) when acting in connection with the public servant’s job – bully, harass or intimidate anyone.

Allegation 19 - 21:

On the following dates, Sch 2 s2(a)(ii) improperly used the property of the Territory, namely the cameras at Sch 2 s2(a)(ii) to watch a colleague, Sch 2 s2(a)(ii) Sch 2 s2(a)(ii):

- Sch 2 s2(a)(ii) 2017;
- Sch 2 s2(a)(ii) 2017;
- Sch 2 s2(a)(ii) 2017.

Summary of Evidence

The following facts are drawn from information contained in signed statements and documents, obtained from relevant parties.

Sch 2 s2(a)(ii) 2017

The relevant emails from Sch 2 s2(a)(ii) to Sch 2 s2(a)(ii) (see attachment 8) state:

Sch 2 s2(a)(ii)

Sch 2 s2(a)(ii)

Sch 2 s2(a)(ii)

Sch 2 s2(a)(ii)

Sch 2 s2(a)(ii)

Sch 2 s2(a)(ii)

Sch 2 s2(a)(ii) was rostered Sch 2 s2(a)(ii) hrs. He commenced his shift at Sch 2 s2(a)(ii) hrs and finished his shift at Sch 2 s2(a)(ii) hrs.

Sch 2 s2(a)(ii) 2017

The relevant emails from Sch 2 s2(a)(ii) to Sch 2 s2(a)(ii) (see attachment 8) state:

Sch 2 s2(a)(ii)

Sch 2 s2(a)(ii)

Sch 2 s2(a)(ii) was rostered Sch 2 s2(a)(ii) hrs. He commenced his shift at Sch 2 s2(a)(ii) hrs, there was no completion time recorded for this date.

Sch 2 s2(a)(ii) 2017

The relevant emails from Sch 2 s2(a)(ii) to Sch 2 s2(a)(ii) (see attachment 8) state:

Sch 2 s2(a)(ii)

Sch 2 s2(a)(ii)

Sch 2 s2(a)(ii) (From Sch 2 s2(a)(ii))

Sch 2 s2(a)(ii)

Sch 2 s2(a)(ii)

Sch 2 s2(a)(ii)

Sch 2 s2(a)(ii)

Sch 2 s2(a)(ii)

Sch 2 s2(a)(ii) was rostered Sch 2 s2(a)(ii) hrs. He commenced his shift at Sch 2 s2(a)(ii) hrs and completed his shift at Sch 2 s2(a)(ii) hrs.

Sch 2 s2(a)(ii)

Out of Scope

Legislation / Policy

ACT Government Acceptable Use of ICT policy

The policy states:

Do not allow personal correspondence, phone calls, web browsing or other ICT resources to interfere with your official duties or with the work of other staff or facilities required for business purposes.

Directorates may prohibit certain ICT resources such as business and infrastructure systems from personal use – the exclusions will be explained to you when access to these ICT resources is provided.

Out of Scope

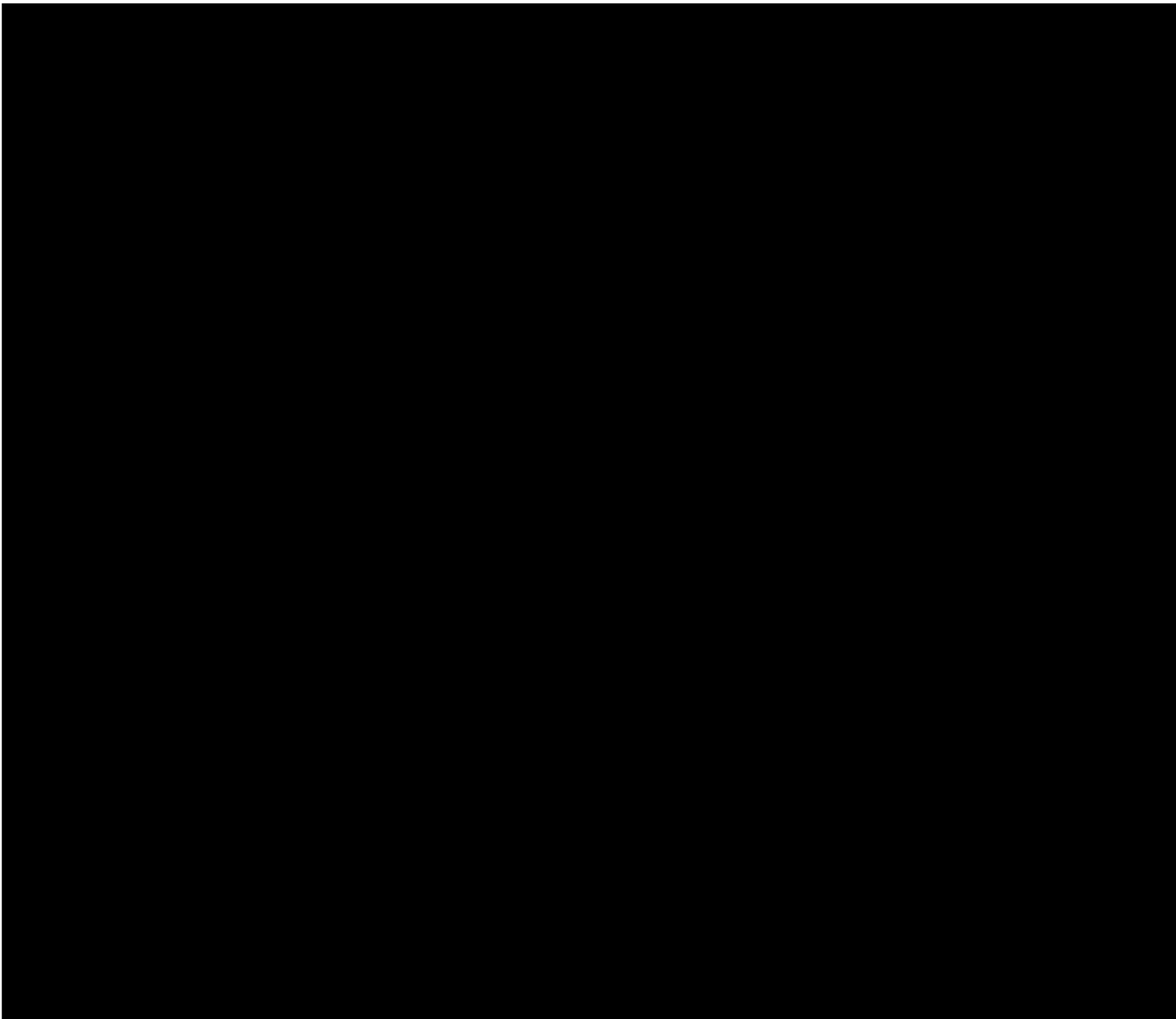
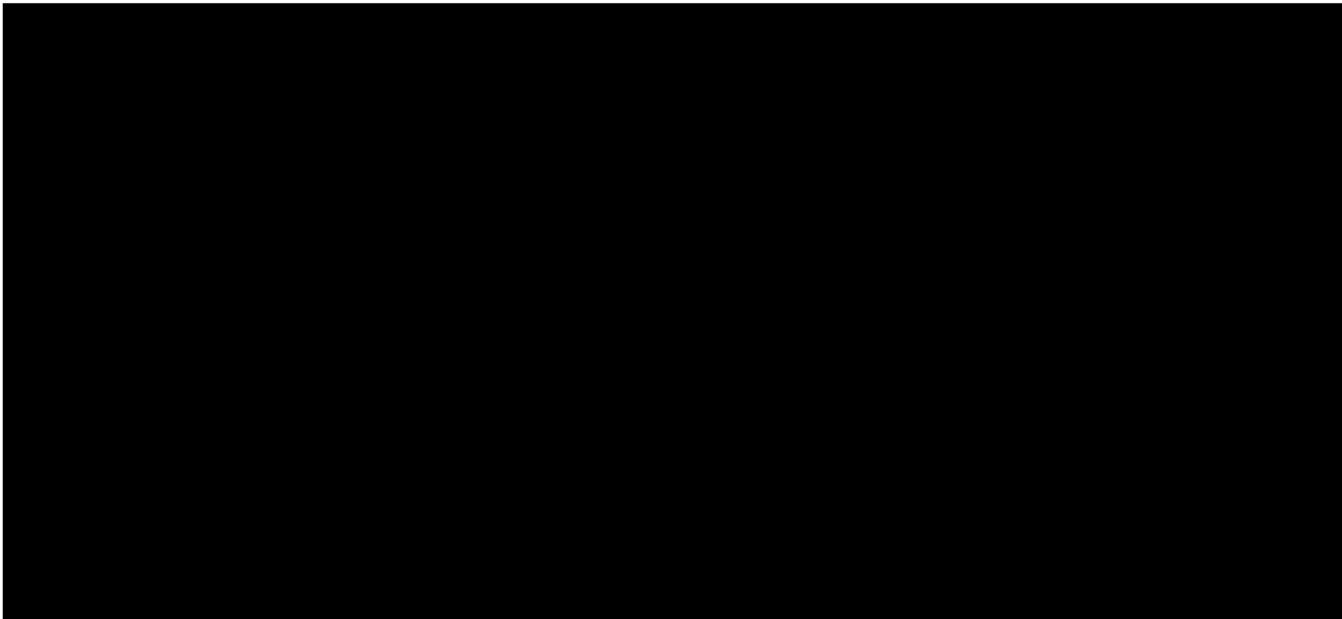
Section 7 of the *Public Sector Management Act 2009*

Meaning of public sector values

- (1) The public sector values are –
 - (a) respect; and
 - (b) integrity; and
 - (c) collaboration; and
 - (d) innovation.

Analysis

Out of Scope



Out of Scope

Out of Scope

Out of Scope

Out of Scope

Sch 2 s2(a)(ii)

Out of Scope

Recommendations

It is recommended that, as the delegate, you:

- a) review this report, along with the accompanying evidence, to determine on the balance of probabilities whether misconduct has occurred;
- b) if misconduct is found, determine an appropriate sanction in accordance with the **Sch 2 s2(a)(ii)** **Sch 2 s2(a)(ii)** and
- c) notify **Sch 2 s2(a)(ii)** of the outcome.

Sch 2 s2(a)(ii)

Professional Standards Unit

12 January 2018

Sch 2 s2(a)(ii)

Professional Standards Unit

12 January 2018

Attachments to report:

1. Letter to **Sch 2 s2(a)(ii)** re notice of investigation, dated **Sch 2 s2(a)(ii)** 17.
2. Email request from Directorate to conduct ICT audit, dated **Sch 2 s2(a)(ii)** 17.
3. Investigation referral, dated **Sch 2 s2(a)(ii)** 17.
4. Written response from **Sch 2 s2(a)(ii)** undated.
5. Letter to **Sch 2 s2(a)(ii)** re admission statement, dated **Sch 2 s2(a)(ii)** 17.
6. Email analysis prepared by PSU.
7. Letter to **Sch 2 s2(a)(ii)** re full particulars of allegations, dated **Sch 2 s2(a)(ii)** 17.
8. Emails relating to possible misuse of **Sch 2 s2(a)(ii)** cameras.
9. Information relating to **Sch 2 s2(a)(ii)** shift times during the relevant period.
10. ACT Government Acceptable Use Policy.
11. **Sch 2 s2(a)(ii)**
12. **Sch 2 s2(a)(ii)** Code of Ethical Conduct.
13. Section 7 of the *Public Sector Management Act 1994* (Meaning of *public sector values*)
14. Section 9 of the *Public Sector Management Act 1994* (Public sector conduct).
15. Section **Sch 2 s2(a)(ii)** of the **Sch 2 s2(a)(ii)**
16. Statement – **Sch 2 s2(a)(ii)** dated **Sch 2 s2(a)(ii)** 18.
17. Emails – **Sch 2 s2(a)(ii)** 17.
18. Emails – **Sch 2 s2(a)(ii)** 17.
19. Emails – **Sch 2 s2(a)(ii)** 17.
20. Emails – **Sch 2 s2(a)(ii)** 17.
21. Emails – **Sch 2 s2(a)(ii)** 17.
22. Emails – **Sch 2 s2(a)(ii)** 17.
23. Emails – **Sch 2 s2(a)(ii)** 17.
24. Emails – **Sch 2 s2(a)(ii)** 17.
25. Emails – **Sch 2 s2(a)(ii)** 17.
26. Emails – **Sch 2 s2(a)(ii)** 17.
27. Emails – **Sch 2 s2(a)(ii)** 17.
28. Emails – **Sch 2 s2(a)(ii)** 17.
29. Emails – **Sch 2 s2(a)(ii)** 17.
30. Emails – **Sch 2 s2(a)(ii)** 17.
31. Emails – **Sch 2 s2(a)(ii)** 17.
32. Emails – **Sch 2 s2(a)(ii)** 17.
33. Emails – **Sch 2 s2(a)(ii)** 17.
34. Emails – **Sch 2 s2(a)(ii)** 17.
35. **Sch 2 s2(a)(ii)** notes from meeting with **Sch 2 s2(a)(ii)** **Sch 2 s2(a)(ii)** 17.
36. Email from **Sch 2 s2(a)(ii)** to **Sch 2 s2(a)(ii)** **Sch 2 s2(a)(ii)** 17.
37. Additional written response from **Sch 2 s2(a)(ii)** undated.



ACT
Government

Chief Minister, Treasury and
Economic Development

Investigation Report

Sch 2 s2(a)(ii)

Learning Support Assistant

Sch 2 s2(a)(ii)

Education Directorate

Case Reference: 2017/01

Prepared by:

Sch 2 s2(a)(ii)

Professional Standards Unit

16 June 2017



ACT
Government

Chief Minister, Treasury and
Economic Development

Mr Dougal Whitton
Senior Manager
Employee Relations, People and Performance
Education Directorate

Dear Mr Whitton

Investigation Report regarding allegations of possible misconduct by Sch 2 s2(a)(ii)

Background

Sch 2 s2(a)(ii) is employed as a Learning Support Assistant at the Sch 2 s2(a)(ii). He has performed this role for approximately Sch 2 s2(a)(ii) years. The Sch 2 s2(a)(ii) offers a unique supported high school and/or college program to eligible students who meet the Sch 2 s2(a)(ii).

In a meeting on 14 December 2016, Sch 2 s2(a)(ii) at the Sch 2 s2(a)(ii) asked Sch 2 s2(a)(ii) if he downloaded Proloquo2Go onto the iPads to two teachers within the school. Sch 2 s2(a)(ii) stated he 'did a hack job' when responding to Sch 2 s2(a)(ii) question.

Proloquo2Go is software application available for download on the Apple App Store. The program is advertised as 'an award-winning symbol-supported communication app. It provides a voice to over 150,000 individuals who cannot speak. The app is designed to promote language development and grow communication skills. Its innovative features support users, parents, teachers and therapists to quickly personalise the vocabulary and settings'.

On 14 December 2016, Sch 2 s2(a)(ii) reported the matter to the Employee Relations Team in the Education Directorate, who carried on a preliminary assessment. On 20 December 2016, Sch 2 s2(a)(ii) was notified in writing by Ms Lauren Harman, Manager, Employee Relations, Education Directorate of this investigation (attachment 1). The preliminary allegations identified and notified to Sch 2 s2(a)(ii) were that:

1. Sch 2 s2(a)(ii) downloaded software application Proloquo2go without authority.

Out of Scope

Investigative process

On 22 December 2016, this matter was referred to the Professional Standards Unit (PSU) for investigation (attachment 3)

This investigation was conducted in accordance with the provisions of the *Public Service Administration and Related Classifications Enterprise Agreement 2013 – 2017* under which **Sch 2 s2(a)(ii)** employed.

On 16 May 2017, **Sch 2 s2(a)(ii)** received in writing the following final allegations, particularised with the relevant information obtained (**attachment 4**) and was offered an opportunity to respond:

1. **Sch 2 s2(a)(ii)** downloaded software application Proloquo2go without authority.

Out of Scope

On 19 May 2017, **Sch 2 s2(a)(ii)** participated in an electronically recorded interview. On 26 May 2017, **Sch 2 s2(a)(ii)** was provided with a transcript of the recording (**attachment 5**). To date, **Sch 2 s2(a)(ii)** has not provided PSU Investigators with a verified copy of the interview transcript.

Evidence

Description	Attachment
Sch 2 s2(a)(ii) - signed witness statement dated 9 February 2017	6
Sch 2 s2(a)(ii) signed witness statement dated 20 February 2017	7
Sch 2 s2(a)(ii) - signed witness statement dated 1 March 2017	8
Sch 2 s2(a)(ii) signed witness statement dated 1 March 2017	9
Sch 2 s2(a)(ii) signed witness statement dated 12 May 2017	10
Sch 2 s2(a)(ii) – signed witness statement dated 30 March 2017	11
Sch 2 s2(a)(ii) signed witness statement dated 1 May 2017	12
Sch 2 s2(a)(ii) - signed witness statement dated 11 May 2017	13
ACT Department of Education and Training, Acceptable Use of ICT Resources policy 2008	14
Acceptable Use of IT Resources form	15
ICT Document No. WhoG-136 – Acceptable Use of ICT Resources Policy November 2014	16
Email from Sch 2 s2(a)(ii) dated 23 May 2017	17
Email from Sch 2 s2(a)(ii) dated 26 May 2017	18
Redacted meeting minutes dated 2 December 2016	19
Sch 2 s2(a)(ii) - signed witness statement dated 18 April 2017	20
Sch 2 s2(a)(ii) - signed witness statement dated 4 May 2017	21

Allegation 1:

Sch 2 s2(a)(ii) downloaded software application Proloquo2go without authority.

Summary of Evidence

The following facts are drawn from information contained in signed statements and documents, obtained from relevant parties.

Sch 2 s2(a)(ii) – see attachment 6

Sch 2 s2(a)(ii) is the **Sch 2 s2(a)(ii)** at the **Sch 2 s2(a)(ii)**, **Sch 2 s2(a)(ii)** has performed this role for the past **Sch 2 s2(a)(ii)** years. On 9 February 2017, **Sch 2 s2(a)(ii)** provided a signed statement to PSU Investigators. In summary, **Sch 2 s2(a)(ii)** stated that in December 2016 she became aware Proloquo2go was installed on two iPads belonging to **Sch 2 s2(a)(ii)**. These iPads were allocated to **Sch 2 s2(a)(ii)** and **Sch 2 s2(a)(ii)**.

Sch 2 s2(a)(ii) was advised by **Sch 2 s2(a)(ii)** Information Communication and Technology (ICT) Coordinator, at **Sch 2 s2(a)(ii)** that he did not install this program onto the iPads of **Sch 2 s2(a)(ii)** and **Sch 2 s2(a)(ii)**. On 14 December 2016, **Sch 2 s2(a)(ii)** had a meeting with **Sch 2 s2(a)(ii)**. It was during this meeting **Sch 2 s2(a)(ii)** asked **Sch 2 s2(a)(ii)** if he installed Proloquo2go onto the iPads assigned to **Sch 2 s2(a)(ii)** and **Sch 2 s2(a)(ii)**. **Sch 2 s2(a)(ii)** used words to the effect 'I did a hack job' when responding to this question by **Sch 2 s2(a)(ii)**.

Sch 2 s2(a)(ii) – see attachment 7

Sch 2 s2(a)(ii) is the Business Manager at **Sch 2 s2(a)(ii)**. In her role, she is responsible for sharing the supervision of Learning Support Assistants (LSA) with the sub-school executives, processing payments for the school, receipting, managing money issues and facilities at the school.

On 20 February 2017, **Sch 2 s2(a)(ii)** provided a signed witness statement to PSU Investigators. In summary, **Sch 2 s2(a)(ii)** stated **Sch 2 s2(a)(ii)** is employed as a LSA within **Sch 2 s2(a)(ii)**. His role is to support students in a classroom under the direction of a teacher. **Sch 2 s2(a)(ii)** stated **Sch 2 s2(a)(ii)** role as a LSA does not include any ICT related functions.

Sch 2 s2(a)(ii) understands there were a number of licenses for Proloquo2go purchased by **Sch 2 s2(a)(ii)** about **Sch 2 s2(a)(ii)** years ago. Since that time, no new licenses have been purchased by the school.

Sch 2 s2(a)(ii) stated the normal process for purchasing a software product for the school is for the request to initially go through the school's ICT Coordinator, **Sch 2 s2(a)(ii)**. If the program is a standalone product, like Proloquo2go is, it would not have to go through ICT Shared Services.

If a software product is purchased from Apple, an invoice would be sent to **Sch 2 s2(a)(ii)** ACT Government email address. She would then confirm with **Sch 2 s2(a)(ii)** that this is an appropriate software purchase before paying the invoice. **Sch 2 s2(a)(ii)** has never received an invoice from Apple for a software purchase.

Proloquo2go is a software product purchased from Apple.

Sch 2 s2(a)(ii) – see attachment 8

Sch 2 s2(a)(ii) is a **Sch 2 s2(a)(ii)** classroom teacher at **Sch 2 s2(a)(ii)** and has performed this role since the start of **Sch 2 s2(a)(ii)**. **Sch 2 s2(a)(ii)** works with year 11 and 12 student within the college section of the school.

On 1 March 2017, Sch 2 s2(a)(ii) provided a signed witness statement to PSU Investigators. In summary, Sch 2 s2(a)(ii) stated she knows Sch 2 s2(a)(ii) to be a LSA at Sch 2 s2(a)(ii). His role is to support students by completing duties such as Sch 2 s2(a)(ii) generally supporting them in their learning environment.

Sch 2 s2(a)(ii) stated when she began working at Sch 2 s2(a)(ii) she was allocated an iPad and it was during term one of 2016 when she was teaching a Sch 2 s2(a)(ii) year 12 student, Sch 2 s2(a)(ii) approached her and said she should be using the program Proloquo2go. Sch 2 s2(a)(ii) subsequently approached Sch 2 s2(a)(ii) and she advised him the year 12 student did not have Proloquo2go or an iPad. Sch 2 s2(a)(ii) stated that the student did have an iPad; however Sch 2 s2(a)(ii) never saw the student with it.

Around April 2016, Sch 2 s2(a)(ii) approached Sch 2 s2(a)(ii) and told her he could put Proloquo2go onto the iPad allocated to her. At first, Sch 2 s2(a)(ii) stated she did not accept this offer, but then realised Sch 2 s2(a)(ii) had Proloquo2go on the iPad allocated to her. Sch 2 s2(a)(ii) subsequently gave Sch 2 s2(a)(ii) her iPad and its password. He then returned the iPad with Proloquo2go installed. Sch 2 s2(a)(ii) does not know how Sch 2 s2(a)(ii) installed Proloquo2go onto the iPad, only that he told her that he shouldn't really put Proloquo2go onto her iPad.

Sch 2 s2(a)(ii) stated it wasn't until a conversation with Sch 2 s2(a)(ii) in late 2016 that she realised the installation of Proloquo2go may have been unauthorised or illegal.

Sch 2 s2(a)(ii) - see attachment 9

On 1 March 2017, Sch 2 s2(a)(ii) provided a signed witness statement to PSU Investigators. Within this statement Sch 2 s2(a)(ii) stated she is Sch 2 s2(a)(ii) of the Senior School (years 11 and 12) at Sch 2 s2(a)(ii) and has performed this role since Sch 2 s2(a)(ii). In her role, she is responsible for the management of LSA's within the Senior School and she has direct management of Sch 2 s2(a)(ii). Sch 2 s2(a)(ii) described Sch 2 s2(a)(ii) duties as meeting the students before school and then helping them transition into the school around 9:00am. He will then attend various classes throughout the day and assist both students and teachers. Sch 2 s2(a)(ii) does not have any responsibilities in relation to Sch 2 s2(a)(ii) iPads as this is managed by Sch 2 s2(a)(ii) ICT Coordinator, Sch 2 s2(a)(ii).

Sch 2 s2(a)(ii) states in October 2015 she became aware Proloquo2go was installed on an iPad allocated to Sch 2 s2(a)(ii). It was around this point in time Sch 2 s2(a)(ii) also approached Sch 2 s2(a)(ii) and asked her if she would like a copy of Proloquo2go installed on the iPad allocated to herself. Sch 2 s2(a)(ii) told Sch 2 s2(a)(ii) that she did not want a copy of Proloquo2go installed onto the iPad.

In Term 2 of 2016, Sch 2 s2(a)(ii) states she heard a conversation between Sch 2 s2(a)(ii) and Sch 2 s2(a)(ii). During this conversation, Sch 2 s2(a)(ii) said she could use Proloquo2go on her iPad to communicate with students in her class. Sch 2 s2(a)(ii) responded by saying he could put Proloquo2go onto the iPad allocated to her.

Sch 2 s2(a)(ii) is aware that Proloquo2go is not a free software program that can be installed on iPads as there is a license agreement for each installed version of Proloquo2go. Sch 2 s2(a)(ii) states that she asked Sch 2 s2(a)(ii) why Sch 2 s2(a)(ii) has been able to install Proloquo2go onto the iPads allocated to Sch 2 s2(a)(ii) and Sch 2 s2(a)(ii). He responded by saying Proloquo2go was not available to everyone and should not be installed on iPads for which no license had been purchased.

On 14 December 2016, Sch 2 s2(a)(ii) had a meeting with Sch 2 s2(a)(ii) and Sch 2 s2(a)(ii). During this meeting, Sch 2 s2(a)(ii) asked Sch 2 s2(a)(ii) if had installed Proloquo2go onto the iPads allocate to Sch 2 s2(a)(ii) and Sch 2 s2(a)(ii). He responded by saying 'you will have to ask them'.

Sch 2 s2(a)(ii) – see attachment 11

Sch 2 s2(a)(ii) is a classroom teacher within the Senior School of Sch 2 s2(a)(ii) and has performed this role on a permanent basis for Sch 2 s2(a)(ii). On 1 March 2017, Sch 2 s2(a)(ii) provided a signed witness statement to PSU Investigators. In her statement, she stated she has known Sch 2 s2(a)(ii) for the past four years. He is employed as a LSA within Sch 2 s2(a)(ii) and his duties include supporting students and teachers within the classroom. Whilst performing his role, Sch 2 s2(a)(ii) regularly uses an iPad to assist students.

Sch 2 s2(a)(ii) states Proloquo2go is a software application used on iPads to communicate with non-verbal students. The application works by allowing a person to press an icon and the icon is then verbalised into words. This action allows for two-way communication with students who do not have verbal communication skills.

Sch 2 s2(a)(ii) further states Sch 2 s2(a)(ii) has an iPad with a copy of Proloquo2go installed on it; however, this iPad is always being used by other teachers. This has led to Sch 2 s2(a)(ii) becoming frustrated as she had a number of non-verbal students within her class with whom she could not communicate with.

During a class with a number of non-verbal students, Sch 2 s2(a)(ii) has approached Sch 2 s2(a)(ii) and asked if she would like a copy of Proloquo2go installed on Sch 2 s2(a)(ii) iPad which was allocated to her. Sch 2 s2(a)(ii) has accepted this offer from Sch 2 s2(a)(ii) as it would allow her to communicate with the non-verbal students. Sch 2 s2(a)(ii) installed Proloquo2go on her iPad during 2015. Sch 2 s2(a)(ii) states she believed she could use Proloquo2go on her iPad.

Sch 2 s2(a)(ii) – see attachment 12

Sch 2 s2(a)(ii) is the ICT Coordinator and Executive Teacher for Professional Practice at Sch 2 s2(a)(ii). He is responsible for the administration and management of all ICT within the school including all the smart boards, computers and iPads. Sch 2 s2(a)(ii) has approximately 170 iPads of which 60 are allocated to teachers and LSAs for their use in supporting students within the classroom with the remaining 110 iPads being allocated to students for their use whilst at school. Sch 2 s2(a)(ii) has performed this role since Sch 2 s2(a)(ii).

On 1 May 2017, Sch 2 s2(a)(ii) provided a signed witness statement to PSU Investigators. In his statement, he states that he is responsible for allocating iPads to teachers and LSAs and he controls what applications are purchased, downloaded and installed on these iPads.

Sch 2 s2(a)(ii) states Sch 2 s2(a)(ii) first purchased iPads about five years ago and at the same time, a program called Proloquo2go was also purchased. Sch 2 s2(a)(ii) describes Proloquo2go as a program which allows students who do not have verbal communication skills, opportunities to communicate.

Sch 2 s2(a)(ii) knows Sch 2 s2(a)(ii) to be a LSA within Sch 2 s2(a)(ii) and he understands Sch 2 s2(a)(ii) duties to include supporting student in the classrooms, corridors and playgrounds. Sch 2 s2(a)(ii) further states Sch 2 s2(a)(ii) does not have any official role or duties in relation to the management of ICT

parameter. The email was dated 23 October 2013 and contained the title 'tard'. [Sch 2 s2(a)(ii)] was the author of this email and it was addressed to [Sch 2 s2(a)(ii)]. This email contained the following wording:

Good morning mate,

[Sch 2 s2(a)(ii)] proloquo1 ... And [Sch 2 s2(a)(ii)] proloquo3 ...

I tried logging in as discussed yesterday with no success. Tried @ and 'at' and 2012 and 2013 to no avail.

And of course, now iTunes has frozen access on those Apple Id's for security reasons. Good on 'em !! ☺ ☺

Could you possibly reset and give me the heads up?

Cheers man

[Sch 2 s2(a)(ii)]

Other Evidence

ACT Department of Education and Training, Acceptable Use of ICT Resources policy 2008 – see attachment 14

Section 5.0 of the Acceptable Use of ICT Resources policy 2008 states 'Using ACT Government and DET IT Resources for activities, which are unethical, controversial or offensive, is forbidden and will lead to disciplinary action being taken against the offender'.

Page 8 of this policy contains a form titled 'Acceptable Use of IT Resources'.

Signed Acceptable Use of IT Resources form – see attachment 15

As a part of the investigation referral, PSU Investigators were given a copy of a signed 'Acceptable Use of IT Resources' bearing the name of [Sch 2 s2(a)(ii)]. This document contains a signature and is dated 5 July 2011.

In summary, a person who signs this form agrees to abide by the requirements for use and access of Directorate ICT assets. This form also stipulates that 'this signed acceptance is valid for the period of employment with the Department of Education and Training, or until a revised statement is deemed to be determined by the Chief Information Officer'.

ICT Document No. WhoG-136 – Acceptable Use of ICT Resources Policy, November 2014 – see attachment 16

In 2014, a Whole of Government acceptable use of ICT resources policy was issued by the Shared Services ICT Collaboration Forum in agreement with all ACT Government Directorates. This policy outlines the acceptable use of ICT resources for all ACT Government employees and provides a direction to all ACT Government staff to comply with its requirements.

Section 8 of this policy prescribes an employee's responsibilities in regards to copying or installing software onto an ICT asset. This section has been provided below:

8. Copying or installing software on ACT Government computers

Software of any description must not be copied or installed on ACT Government computers unless staff have been given specific approval to do so. This applies to all software, including software that is privately owned or obtained from the Internet, on-line services or portable media such as CDs/DVDs and USB keys.

If a staff member has a need to install any software, they should follow the appropriate process within their directorate. For information on this, they should contact their Supervisor in the first instance and then the relevant ICT Manager.

Sch 2 s2(a)(ii) – see attachment 5

Sch 2 s2(a)(ii) participated in an electronically recorded interview with PSU Investigators on 19 May 2017. During this interview, Sch 2 s2(a)(ii) provided the following information:

- He is a LSA within Sch 2 s2(a)(ii) and his role is to help facilitate the learning of students. He has performed this role for the past Sch 2 s2(a)(ii) years.
- **Sch 2 s2(a)(ii)**
- He has a passion for the program Proloquo2go as this gives the non-verbal students an opportunity to communicate and gives them a 'voice'.
- Not all non-verbal students within the school use Proloquo2go. There are a number of students who should have access to the program, but don't.
- There are less than 12 iPads at the school which have Proloquo2go installed on them.
- He has an understanding of how the license for Proloquo2go works, however he is unsure of how many iPads are included on each license.
- Sch 2 s2(a)(ii) Sch 2 s2(a)(ii) iPad which was allocated to him had a copy of Proloquo2go installed on it by Sch 2 s2(a)(ii) the former ICT trainee. Sch 2 s2(a)(ii) gave him the iPad and Sch 2 s2(a)(ii) returned it to him with Proloquo2go installed.
- Sch 2 s2(a)(ii) and Sch 2 s2(a)(ii) asked Sch 2 s2(a)(ii) to install Proloquo2go on their iPads.
- He believed iTunes has a capacity to share purchased applications through a system called 'iTunes Family Sharing'. This allows people to access and share applications based on relationships being family, friends etc.
- He researched 'iTunes Family Sharing' and could not find any rules which stated he could not share Proloquo2go onto the iPads allocated to Sch 2 s2(a)(ii) and Sch 2 s2(a)(ii) Sch 2 s2(a)(ii) further stated he could not find a definition of what 'family' was defined as, and so in his mind you could have a group of friends and be able to share one purchased application on a maximum of four to five devices.
- He thought that if this was the case with 'iTunes Family Sharing' it was a great way to save money and that is why he did it.
- He conducted research on the 'iTunes Family Sharing' only on the Apple website and did not find any legal documentation that would prohibit him sharing Proloquo2go.
- He stated he did not 'download and install Proloquo2go' onto the iPads allocated to Sch 2 s2(a)(ii) and Sch 2 s2(a)(ii) rather he copied it from his iPad.
- This was completed by doing a backup of his Sch 2 s2(a)(ii) iPad onto his computer at home which enabled a copy of Proloquo2go to sit on his computer. He then copied this copy of Proloquo2go onto the iPads of Sch 2 s2(a)(ii) and Sch 2 s2(a)(ii)
- Sch 2 s2(a)(ii) was of the belief Sch 2 s2(a)(ii) had 12 licenses for Proloquo2go and not all the licences were being used at one time.

- At the time he copied Proloquo2go onto the iPads allocated to **Sch 2 s2(a)(ii)** and **Sch 2 s2(a)(ii)** he believed it wasn't an issue as in his mind it was not going to affect the license agreement.
- He has seen the ACT Department of Education and Training Acceptable Use of Information Technology (IT) Resources Statement before. He has not read this statement, however; he does have a general understanding of the content.
- When shown a copy of the Acceptable Use of IT Resources form, **Sch 2 s2(a)(ii)** stated he filled out the form and it contains his signature. **Sch 2 s2(a)(ii)** also identified the date he completed the form was 5 July 2011.
- **Sch 2 s2(a)(ii)** described the Acceptable Use of IT Resources form as a standard document for the acceptable use of IT and IT resources. He also stated that it was an acceptance that you are 'not going to do the things they don't want you to do'.
- **Sch 2 s2(a)(ii)** stated he had not read the Acceptable Use of IT Resources form as he has **Sch 2 s2(a)(ii)** and finds 'all that sort of stuff a little bit intensive'.
- **Sch 2 s2(a)(ii)** cannot recall if he has ever seen the Acceptable Use of ICT Resources Policy which was published in 2014. He said it might have been left in a staffroom or similar but he cannot recall ever being specifically handed a copy of the policy.
- He says he thought that because **Sch 2 s2(a)(ii)** knew about him having Proloquo2go on his iPad there would have been a record. Neither he nor **Sch 2 s2(a)(ii)** ever hid their use of Proloquo2go and it was always done out in the open.
- **Sch 2 s2(a)(ii)** stated that no one gave him the authority to copy/transfer a copy of Proloquo2go onto the iPads of **Sch 2 s2(a)(ii)** and **Sch 2 s2(a)(ii)**
- The only reason **Sch 2 s2(a)(ii)** put Proloquo2go onto the iPads was to help the students and teachers and by doing this it has had a positive effect on them.
- **Sch 2 s2(a)(ii)** would not engage in this type of behaviour again.

At the end of the interview **Sch 2 s2(a)(ii)** was asked to provide any evidence in relation to his claim that he had **Sch 2 s2(a)(ii)** **Sch 2 s2(a)(ii)** failed to provide any evidence in relation to this claim. The investigator also contacted **Sch 2 s2(a)(ii)** and **Sch 2 s2(a)(ii)** to confirm whether they had initiated the request for **Sch 2 s2(a)(ii)** to download the Proloquo2go application on their iPads.

Sch 2 s2(a)(ii) - attachment 17

On 23 May 2017, **Sch 2 s2(a)(ii)** provided an email to PSU Investigators. In this email, **Sch 2 s2(a)(ii)** again stated she did not ask **Sch 2 s2(a)(ii)** to put Proloquo2go onto her iPad, rather, he offered to install Proloquo2go after seeing her frustrations at having to collect the teachers iPad which had Proloquo2go installed on it.

Sch 2 s2(a)(ii) - attachment 18

On 26 May 2017, **Sch 2 s2(a)(ii)** provided an email to PSU Investigators. Within this email, **Sch 2 s2(a)(ii)** stated she never approached or requested **Sch 2 s2(a)(ii)** install a copy of Proloquo2go onto the iPad allocated to her. She further stated **Sch 2 s2(a)(ii)** offered a number of times to install Proloquo2go in response to her frustrations at having a student who did not have access to Proloquo2go and that she eventually took **Sch 2 s2(a)(ii)** up on his offer to install Proloquo2go.

Analysis

From the above evidence, it is not contested that **Sch 2 s2(a)(ii)** has installed Proloquo2go onto **Sch 2 s2(a)(ii)** **Sch 2 s2(a)(ii)** iPads allocated to **Sch 2 s2(a)(ii)** and **Sch 2 s2(a)(ii)**. Although **Sch 2 s2(a)(ii)** uses the term

'copied', this description is considered to be the same as 'downloaded' in this matter. Therefore the actual act of how Sch 2 s2(a)(ii) installed Proloquo2go onto the iPads is not material to the allegation as both 'copied' and 'downloaded' are considered to have the same meaning.

Taking the above analysis into account, Sch 2 s2(a)(ii) has provided an admission to 'copying' Proloquo2go onto the iPads allocated to Sch 2 s2(a)(ii) and Sch 2 s2(a)(ii). This was confirmed by Sch 2 s2(a)(ii) and Sch 2 s2(a)(ii) stating that they gave their iPads to Sch 2 s2(a)(ii) and he returned the iPads with Proloquo2go installed. Neither Sch 2 s2(a)(ii) nor Sch 2 s2(a)(ii) approached Sch 2 s2(a)(ii) to request this. Both state that Sch 2 s2(a)(ii) approached them and offered to install the application.

The Acceptable use of ICT Resources Policy, November 2014 states that 'Software of any description must not be copied or installed on ACT Government computers unless staff have been given specific approval to do so... If a staff member has a need to install any software, they should follow the appropriate process within their directorate. For information on this, they should contact their Supervisor in the first instance and then the relevant ICT Manager.'

Sch 2 s2(a)(ii) provided evidence that he is the only person at Sch 2 s2(a)(ii) who can give someone the authority to download and install software onto a Sch 2 s2(a)(ii) iPad. He further states 'I have not given Sch 2 s2(a)(ii) authority to install Proloquo2go on any iPad belonging to Sch 2 s2(a)(ii)'. This was confirmed by Sch 2 s2(a)(ii) during his interview where he agreed no person had given him the authority to copy/transfer Proloquo2go onto any iPads. Sch 2 s2(a)(ii) therefore failed to comply with the Acceptable use of ICT Resources Policy, November 2014.

It is also clear from the above evidence Sch 2 s2(a)(ii) has no official role in regards to the management of Sch 2 s2(a)(ii) ICT assets, including the downloading or installing of software onto iPads. Sch 2 s2(a)(ii) has not followed the correct procedure and has not approached Sch 2 s2(a)(ii) with a request for him to install Proloquo2go onto the iPads allocated to Sch 2 s2(a)(ii) and Sch 2 s2(a)(ii).

Sch 2 s2(a)(ii) further confirmed that there were no valid software licenses in place for the Proloquo2go applications on Sch 2 s2(a)(ii) and Sch 2 s2(a)(ii) iPads.

Conclusion

On the basis of the information provided, there is sufficient evidence to conclude, on the balance of probabilities that Sch 2 s2(a)(ii) downloaded software application Proloquo2go without authority. This finding is based on an analysis by the investigator of the relevant evidence obtained. It is not a determination that misconduct has or has not occurred, which is a decision for you, as the delegate, to make.

On 1 September 2016, a number of amendments were made to the *Public Sector Management Act 1994* including changes to Section 9, General obligations of public employees. However; as the alleged conduct occurred prior to 1 September 2016, the pre-amended version of Section 9 is applied to this allegation.

In determining whether this behaviour constitutes misconduct (as defined in clause H6.5 of the *Public Service Administration and Related Classifications Enterprise Agreement 2013 – 2017*), you may wish to consider whether Sch 2 s2(a)(ii) failed in his obligations under Section 9 of the *Public Sector Management Act 1994*, in particular:

A public employee shall, in performing his or her duties:

(c) act with probity

- (i) comply with any lawful and reasonable direction given by a person having authority to give the direction;

Out of Scope

Out of Scope

Out of Scope

Out of Scope

Out of Scope

Recommendations

It is recommended that, as the delegate, you:

- a) review this report, along with the accompanying evidence, to determine on the balance of probabilities whether misconduct has occurred;
- b) if misconduct is found, determine an appropriate sanction in accordance with the the *Public Service Administration and Related Classifications Enterprise Agreement 2013 – 2017*; and
- c) notify **Sch 2 s2(a)(ii)** of the outcome.

Sch 2 s2(a)(ii)

Professional Standards Unit

16 June 2017

Sch 2 s2(a)(ii)

Professional Standards Unit

16 June 2017



ACT
Government
Education

Sch 2 s2(a)(ii)

Dear Sch 2 s2(a)(ii)

Written warning and admonishment

This letter constitutes a written warning and admonishment in accordance with subclause H10.1 (a) of the *ACT Public Service Administration and Related Classifications Enterprise Agreement 2013 - 2017 (EA)*.

On 12 October 2016 I wrote to you proposing discipline action following my determination that misconduct had occurred. You were provided the opportunity to provide me with a response to the proposed discipline action within 14 days of the letter. No response has been received to date.

On the basis of the Investigation conducted by the Professional Standards Unit I have determined that your actions were not consistent with the expectations outlined in Section 9 of the *Public Sector Management Act 1994 (PSM Act)*. I consider your actions of downloading the software application without authority, **Out of Scope**

Out of Scope as unprofessional.

Out of Scope

Out of Scope Your actions are not in keeping with Section 9 of the General obligations of public employees of Section 9 of the PSM Act 1994, in particular:

- (2) A public servant must not—
 - (a) behave in a way that—
 - (i) is inconsistent with the public sector values; or
 - (ii) undermines the integrity and reputation of the service;

I am directing you, in the future, to comply with your obligations under Section 9 of the PSM Act, and the ACTPS Signature Values and Behaviours. Failure to comply with this direction, resulting in proven misconduct of a similar nature may result in disciplinary action up to and including termination of your employment.

You may appeal the decision to take disciplinary action in accordance with Section J- Appeal Mechanism of the EA (attached). Applications must be in writing, describe the decision or action taken, the reasons for the application and the outcomes sought. Application must be received by the Convenor of Appeal Panels within 14 calendar days of being notified of the decision to take the action. Applications should be sent to:

The Convenor of Appeal Panels
Public Sector Workplace Relations
Chief Minister, Treasury and Economic Development
GPO BOX 158
CANBERRA ACT 2601
Email: ACTPS.Appeals@act.gov.au

Should you require support in relation to this matter, the Employee Assistance Program (EAP) provides employees and their family members with confidential and professional counselling and related services to assist in resolving work related and personal issues. Please contact one of the providers to arrange an appointment.

- **Converge International**
Phone: [1300 687 327](tel:1300687327) and website: <http://www.convergeinternational.com.au>
- **Davidson Trahaire Corpsych**
Phone: [1300 360 364](tel:1300360364) and website: <http://www.davcorp.com.au>
- **OPTUM**
Phone: [1300 361 008](tel:1300361008) and website: <http://www.optum.com.au>

If you have any questions in relation to the information in this letter please contact Sarah Tarrant, A/g Ass Manager Employee Relations, on ph: 62054419 or email to sarah.tarrant@act.gov.au .

Yours sincerely



Jim Tosh
Manager
Employee Relations
20 July 2017