

Committee on the Independent Commission  
Against Corruption



PARLIAMENT OF  
NEW SOUTH WALES

Review of aspects of the  
*Independent Commission Against  
Corruption Act 1988*



Report 6/57 – December 2022

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The motto of the coat of arms for the state of New South Wales is "Orta recens quam pura nites". It is written in Latin and means "newly risen, how brightly you shine".

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# Membership

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## Chair's foreword

This report by the Joint Committee on the Independent Commission Against Corruption (**ICAC**) summarises the findings of the Committee's inquiry reviewing aspects of the *Independent Commission Against Corruption Act 1988 (ICAC Act)*. The inquiry's terms of reference draw on recommendations made by the Committee in one of its recent reports, *Reputational impact on an individual being adversely named in the ICAC's investigations*.

The inquiry received eighteen submissions and heard evidence at a public hearing from a range of stakeholders, including the ICAC, the current and former Inspectors of the ICAC, and members of the legal profession. The Committee is recommending two potential changes to the ICAC Act. The first of these aims to introduce greater accountability for the ICAC to deliver its findings in a timely fashion and to report against stated timeframes. The second recommends that the Government consider expanding the role and powers of the Inspector of the ICAC to ensure that there is an accessible review process for ICAC decisions.

The first chapter examines the question of introducing time standards for the ICAC to deliver its investigation reports after the conclusion of a public inquiry. The Committee has been concerned about the issue of reporting timeframes through several of its recent inquiries, because lengthy timeframes may increase the negative impact on the reputations of those involved in ICAC investigations, as well as undermine public confidence in the work of the ICAC.

The Committee received evidence which suggested that having realistic, publicly available time standards for the completion of ICAC reports, and requiring the ICAC to provide regular reporting against those standards, would improve confidence in the ICAC's operations and may mitigate unwarranted reputational damage to those involved in investigations. However, the evidence did not support the introduction of a legislated, fixed time standard for the completion of reports. The Committee has therefore recommended that the Government amend the ICAC Act to require the ICAC to develop and publish time standards for completing its investigation reports, and to report on its performance against these standards.

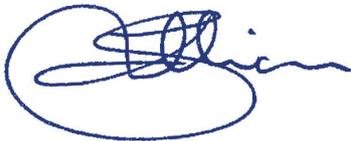
In the 2022-23 Budget, the ICAC received additional funding, which may improve the ICAC's performance against its own KPIs. The Committee has therefore recommended that the ICAC provide an update in its next annual report on whether the increased funding in the 2022-23 budget has shortened the time in which investigations are undertaken and reports finalised.

The second chapter examines the existing mechanism for judicial review and the role and powers of the Inspector of the ICAC. The Committee heard evidence that the existing mechanism of judicial review is sufficient and does not require further codification. However, the Committee had some concerns about the accessibility of judicial review of ICAC decisions, and considered whether the role of the Inspector should be expanded to include a judicial review-type function. Overall, the evidence did not support granting the Inspector the power to conduct a form of judicial review.

The Committee received evidence suggesting that a more appropriate model for bolstering the powers of the Inspector was to grant them powers equivalent to those of the Inspector of the Law Enforcement Conduct Commission (**LECC Inspector**). The LECC Inspector, similar to the ICAC Inspector, has powers to make reports and recommendations to the Parliament in respect of a matter of maladministration or misconduct. However, the LECC Inspector has broader powers to investigate maladministration arising wholly or partly from a mistake of fact or law. The LECC Inspector then has additional scope to compel a response to its recommendations from the LECC, and if dissatisfied with that response, to escalate the matter to the Minister. The Committee is persuaded that these additional powers are worthy of further consideration, and has recommended that the Government consider amending the ICAC Act to align the powers of the Inspector of the ICAC with those of the LECC Inspector.

Throughout the inquiry the Committee heard from a diverse range of stakeholders, and I would like to extend my thanks to all participants for their valuable contributions. I would particularly like to thank the former Chief Commissioner of the ICAC, the Hon. Peter Hall KC, and the new Chief Commissioner, the Hon. John Hatzistergos AM, for their willingness to share detailed information about the ICAC's internal processes, and similarly the outgoing and incoming Inspectors of the ICAC, Mr Bruce McClintock SC and Ms Gail Furness SC, for sharing their views on the Office of the Inspector.

I would also like to thank my fellow Committee members for their diligence and input into this inquiry. Finally, I would like to thank the Legislative Assembly Committee staff for their professional expertise and support throughout the inquiry.

A handwritten signature in blue ink, appearing to read 'Leslie Williams', enclosed within a large, hand-drawn blue oval.

**The Hon. Leslie Williams MP**  
Chair

## Findings and recommendations

Recommendation 1 \_\_\_\_\_ 1

That the Government amend the *Independent Commission Against Corruption Act 1988* to require the ICAC to develop and publish time standards for completing section 74 reports, and to report on its own performance against these standards.

Recommendation 2 \_\_\_\_\_ 1

That the ICAC, in its next annual report, provide an update on whether the increased funding made available in the 2022-23 Budget shortens the time in which investigations are undertaken and reports finalised.

Recommendation 3 \_\_\_\_\_ 9

That the NSW Government consider amending the *Independent Commission Against Corruption Act 1988* to provide the Inspector of the ICAC with similar powers to those currently held by the Inspector of the Law Enforcement Conduct Commission under section 124 of the *Law Enforcement Conduct Commission Act 2016*, including broader powers to:

- investigate maladministration, and
- require the ICAC to respond to the Inspector's recommendations, escalating to the Minister if dissatisfied with the response.

# Chapter One – Time standards for ICAC Reports

## Recommendation 1

**That the Government amend the *Independent Commission Against Corruption Act 1988* to require the ICAC to develop and publish time standards for completing section 74 reports, and to report on its own performance against these standards.**

## Recommendation 2

**That the ICAC, in its next annual report, provide an update on whether the increased funding made available in the 2022-23 Budget shortens the time in which investigations are undertaken and reports finalised.**

## Why are time standards for ICAC Reports being considered?

- 1.1 The evidence received during this inquiry acknowledged that timeliness of reporting for Independent Commission Against Corruption (**ICAC**) investigations plays an important role in maintaining public confidence in the work of the ICAC. Timely reporting may also help to minimise damage to the reputations of those involved in ICAC investigations, especially where that reputational damage may be unwarranted.
- 1.2 The Committee considers that legislative change is an important step in improving the timeliness of ICAC reports. The Committee is recommending that the Government amend the *Independent Commission Against Corruption Act 1988* (**ICAC Act**) to require the ICAC to develop and publish time standards for completing section 74 reports, defined in the Act as 'reports in relation to any matter that has been or is the subject of an investigation' (**Reports**).<sup>1</sup> The ICAC should then be required to report on its own performance against these standards in their annual reports.
- 1.3 The Committee considers that an appropriate model for consideration is the Queensland legislation, which requires the Queensland Crime and Corruption Commission to publish, on a publicly accessible website, the 'standard timeframes adopted by the Commission for assessing, investigating and completing its dealing with complaints about corruption'.<sup>2</sup>
- 1.4 The Committee acknowledges that more complex investigations may require different time standards to those required for straightforward investigations, and considers that the ICAC is best placed to develop an appropriately flexible set of standards that are fit for purpose. The Committee proposes that the ICAC's

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<sup>1</sup> [Independent Commission Against Corruption Act 1988](#) (ICAC Act), s 74(1).

<sup>2</sup> [Crime and Corruption Act 2001](#) (Qld), s 35B(2)(a). The Queensland legislative model was cited by the NSW Bar Association as a useful model for consideration; see Mr Scott Robertson SC, Member – Inquest and Inquiries Committee, NSW Bar Association, [Transcript of evidence](#), 4 November 2022, p 3; [Submission 17](#), NSW Bar Association (Bar Association), para 17.

suggested KPIs in its submission, outlined at [1.16], may be a good starting point for further consultation and consideration.

- 1.5 The Committee has been concerned about the issue of timeliness of ICAC Reports throughout its recent inquiries, including the *Reputational impact on an individual being adversely named in the ICAC's investigations (Reputational impact inquiry)* and its most recent annual review.<sup>3</sup>
- 1.6 The evidence presented in this current inquiry suggested that stakeholders share these concerns. Lengthy timeframes between the conclusion of a public hearing and the furnishing of a Report may, in the view of the Law Society of NSW, 'damage the reputation of persons under investigation, and undermine confidence in the ICAC and in the accountability of government.'<sup>4</sup> The ICAC itself gave evidence that:
- a long delay between the finalisation of the public inquiry and the publication of the report potentially undermines the effectiveness of the public exposure in the public inquiry.<sup>5</sup>
- 1.7 The Committee also heard evidence about the importance of timely reporting in terms of securing optimal outcomes for investigations, including the pursuit of criminal proceedings in matters referred to the Director of Public Prosecutions.<sup>6</sup>
- 1.8 There are currently no time standards in place in NSW for the ICAC to furnish its Reports to Parliament following an investigation of a complaint or referred matter under section 74 of the ICAC Act. The ICAC Act requires the ICAC to furnish its Reports 'as soon as possible after the Commission has concluded its involvement in the matter.'<sup>7</sup> However, the ICAC Act does not set any specific timeframe or range of timeframes for the completion of Reports.<sup>7</sup> This provision has remained unchanged since the inception of the ICAC Act.<sup>8</sup>
- 1.9 Under section 76 of the ICAC Act, the ICAC must report on the time that elapses between the conclusion of the public inquiry component of an investigation and the furnishing of the resulting Report in its annual reports.<sup>9</sup> This has been in place since legislative reforms were made to the functions of the ICAC in 2005.<sup>10</sup> The section 76 requirement is a general reporting function and does not require the

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<sup>3</sup> See: Committee on the Independent Commission Against Corruption, [Reputational impact on an individual being adversely named in the ICAC's investigations](#), Report 4/57, NSW Parliament, November 2021, Finding 9 and Recommendation 6, p 25; [Review of the 2020-2021 Annual Reports of the ICAC and the Inspector of the ICAC](#), Report 5/57, NSW Parliament, October 2022, Finding 4, p 12.

<sup>4</sup> [Submission 4](#), The Law Society of New South Wales (Law Society), p 1.

<sup>5</sup> The Hon. Mr John Hatzistergos AM, Chief Commissioner, Independent Commission Against Corruption, [Transcript of evidence](#), 4 November 2022, p 46.

<sup>6</sup> Mr Chris Merritt, Vice President, Rule of Law Institute of Australia, [Transcript of evidence](#), 4 November 2022, pp 9-10; Ms Michelle O'Brien, Member – Public Law Committee, The Law Society of New South Wales, [Transcript of evidence](#), 4 November 2022, p 6; Mr Frank Veltro SC, Acting Deputy Director, Office of the Director of Public Prosecutions, [Transcript of evidence](#), 4 November 2022, p 6.

<sup>7</sup> [ICAC Act, s 74\(7\)](#).

<sup>8</sup> See as made legislation, [Independent Commission Against Corruption Act 1988](#), p 32.

<sup>9</sup> [ICAC Act, s 76\(2\)\(ba\)\(vi\)](#).

<sup>10</sup> See: [Independent Commission Against Corruption Amendment Act 2005 No 10](#).

ICAC to meet a particular timeframe, only to report on the time taken to furnish a Report.

- 1.10 The reporting period measured under this provision commences only once all submissions have been received by interested parties, which can be some time after the public hearing evidence has concluded.<sup>11</sup> Legal challenges or cross-party submissions during this period can substantially extend the gap between the conclusion of a public hearing and the time the ICAC begins drafting its Report.<sup>12</sup> In its submission to this inquiry, the ICAC also detailed the other internal processes that take place after a public hearing, including various layers of review to ensure procedural fairness has been adequately afforded to relevant parties, and to confirm that findings and recommendations are supported by evidence.<sup>13</sup>
- 1.11 The ICAC has developed a system of internal KPIs against which it measures its own performance in relation to the time taken to furnish Reports. The ICAC reports against these KPIs in a voluntary capacity in its annual reports.<sup>14</sup> This will be explained in further detail below.

### **ICAC's current reporting system for timeframes**

- 1.12 The ICAC has had internal KPIs in place since 2006-07 for the completion of Reports. The KPI was initially set at 80 per cent of Reports being furnished to the Parliament within 90 days of the completion of a public inquiry, measured from receipt of the final submission.<sup>15</sup>
- 1.13 The KPI was changed in 2010-11 to a two-tier system, with 80 per cent of Reports to be furnished to the Presiding Officers within 60 days of the completion of a public inquiry where the duration of the public inquiry evidence was five days or less, and 80 per cent of Reports to be furnished within 90 days where the duration of the public inquiry evidence was more than five days. This change was made to distinguish between more and less complex investigations, and to provide scope for longer drafting periods for more complex matters.<sup>16</sup>
- 1.14 The KPIs were revised again in 2016-17 to provide that 75 per cent of Reports be furnished within the timeframes specified in the 2010-11 KPIs. No change was made to the two-tier system at this time.<sup>17</sup> The ICAC reported against the 2016-17 KPIs in its most recent annual report.<sup>18</sup>

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<sup>11</sup> [Submission 5](#), Independent Commission Against Corruption (ICAC), p [15](#). A detailed breakdown of the internal processes undertaken by the ICAC in relation to the production of a report is contained at pp [12-14](#) and [16](#).

<sup>12</sup> For an outline of the submissions process, see [Submission 5](#), ICAC, p [12](#). Several witnesses mentioned the delays caused by legal challenges, see [Submission 14](#), Office of the Director of Public Prosecutions (ODPP), p [2](#); Chief Commissioner, [Transcript of evidence](#), p [47](#).

<sup>13</sup> [Submission 5](#), ICAC, pp [12-14](#) and [16](#).

<sup>14</sup> See: Independent Commission Against Corruption, [Annual report 2020-21](#), October 2021, p [56](#).

<sup>15</sup> [Submission 5](#), ICAC, p [15](#).

<sup>16</sup> [Submission 5](#), ICAC, p [15](#).

<sup>17</sup> [Submission 5](#), ICAC, p [15](#).

<sup>18</sup> [Annual report 2020-21](#), p [56](#).

### ICAC's current KPIs

Duration of public inquiry evidence	KPI for furnishing of report (75 per cent target)
Five days or less	60 days
More than five days	90 days

- 1.15 In evidence presented at the Committee's recent inquiries, including this inquiry, the Reputational impact inquiry, and the most recent annual review inquiry for 2020-21, the ICAC has been transparent about the fact that it is not meeting its own KPIs for the majority of investigations.<sup>19</sup> In the last decade, Reports have been furnished within the specified KPIs for only 38 per cent of investigations.<sup>20</sup>
- 1.16 The ICAC proposed a further revision of KPIs as part of its submission to this inquiry, which may more accurately reflect the time taken to produce Reports with consideration of their current resourcing. The proposed KPIs would provide that 80 per cent of Reports are furnished within 80 days of completion of the public inquiry where the inquiry evidence was five days or less, and 180 days otherwise.<sup>21</sup>
- 1.17 The ICAC considers that retaining an 80 per cent benchmark, as opposed to a KPI that aims for 100 per cent of Reports to conform with the time standard, is appropriate to provide adequate flexibility for managing more complex investigations and contingencies that may arise in the report delivery process.<sup>22</sup> A number of submissions and witnesses at the public hearing supported the need for flexibility in any KPI system the ICAC reported against, with many citing the varied nature of ICAC investigations.<sup>23</sup>

### Possible models for ICAC to develop and report on time standards

- 1.18 The evidence received through this inquiry supports the implementation of a more robust process for the ICAC to develop, publish and report against time standards for the completion of Reports. These time standards should be realistic, publicly available and sufficiently flexible to accommodate the variability of ICAC investigations.
- 1.19 Evidence collected during this inquiry provided several models for the Committee's consideration with the aim of introducing greater transparency and public accountability for the ICAC's reporting timelines.

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<sup>19</sup> See: The Hon. Peter Hall KC, Former Chief Commissioner, Independent Commission Against Corruption, [Transcript of evidence](#), 2 May 2022, pp 13-15; [Transcript of evidence](#), 18 September 2020, p 47; [Submission 5](#), ICAC, p 16.

<sup>20</sup> [Submission 5](#), ICAC, p 16.

<sup>21</sup> [Submission 5](#), ICAC, p 18.

<sup>22</sup> [Submission 5](#), ICAC, p 18.

<sup>23</sup> [Submission 7](#), Office of the Inspector of the Independent Commission Against Corruption (OIICAC), p 2; [Submission 12](#), Office of the Inspector of the Law Enforcement Conduct Commission (OILECC), p 2; Ms O'Brien, [Transcript of evidence](#), p 7; Mr John Nicholson SC, former Acting Inspector of the Independent Commission Against Corruption, [Transcript of evidence](#), 4 November 2022, p 25.

- 1.20 Many witnesses agreed that the ICAC itself is best equipped to develop its own time standards.<sup>24</sup> Witnesses were divided on whether the requirement to develop, publish and transparently report against time standards should be legislated, or left for the ICAC to implement internally.
- 1.21 Mr Scott Robertson SC of the NSW Bar Association made the following proposal:
- What we suggest for the Committee's consideration is a requirement—and this could be by way of a statutory requirement. In our submission we've given an example of a similar Queensland provision to require the commission to produce time standards, to require it to explain in the event that those time standards are not complied with. That thereby gives an ability for public scrutiny, including by this Committee, when those time standards aren't met.<sup>25</sup>
- 1.22 Ms Gail Furness SC, Inspector of the ICAC, was less firm about the need for legislative change, stating:
- I generally support the Bar Association's submission as to time frames. [...] Whether it needs to be legislated, I'm not sure. But, certainly, they should do it and they should give reasons for the delays.<sup>26</sup>
- 1.23 Mr Bruce McClintock SC, former Inspector of the ICAC and Inspector of the Law Enforcement Conduct Commission, stated that he had 'absolutely no difficulty' with the Bar Association's proposal of a legislative requirement that requires the ICAC to develop and report against time standards.<sup>27</sup>
- 1.24 Mr Josh Pallas from the NSW Council for Civil Liberties took a different view. Although he clarified that he saw no 'infringement of principle' with a legislative requirement to publish time standards, he said that he considered it 'ill-conceived at this point in time'. Mr Pallas explained that the ICAC is under new leadership and has recently received more funding, and that adequate time should be given for the incoming Commissioners to address the problem of time standards with the additional resources at their disposal.<sup>28</sup>
- 1.25 Mr Pallas further explained that the current inquiry and other inquiries have drawn the issue of time standards to the attention of the ICAC, and that the ICAC is now in a position to improve outcomes without requiring legislative intervention. He recommended instead that 'the proposal to compel [the ICAC] to publish time frames for the release of reports should only be revisited in circumstances where there does not appear to be positive progress [towards more timely reporting]'.<sup>29</sup>
- 1.26 The Office of the Director of Public Prosecutions proposed the creation of:

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<sup>24</sup> [Submission 9](#), Mr John Nicholson SC, p 2; [Submission 12](#), OILECC, p 2; [Submission 14](#), ODPP, p 3; [Submission 17](#), Bar Association, pp 5-10; Mr Robertson, [Transcript of evidence](#), p 3; Inspector, [Transcript of evidence](#), p 40.

<sup>25</sup> Mr Robertson, [Transcript of evidence](#), p 3.

<sup>26</sup> Inspector, [Transcript of evidence](#), p 40.

<sup>27</sup> Mr Bruce McClintock SC, Inspector, Office of the Inspector of the Law Enforcement Conduct Commission, [Transcript of evidence](#), 4 November 2022, p 30.

<sup>28</sup> Mr Josh Pallas, President, NSW Council for Civil Liberties, [Transcript of evidence](#), p 15.

<sup>29</sup> Mr Pallas, [Transcript of evidence](#), p 15.

a publicly accessible guideline or performance benchmark, to be made available on the ICAC website, outlining the benchmark time standards that are sought to be met. This should also include detail regarding the various factors that cause delay.<sup>30</sup>

1.27 The Bar Association proposed that the ICAC both publish time standards, and be required to provide reasons for any departure from those time standards at the time of the production of the relevant Report.<sup>31</sup> At the hearing, Mr Richard Lancaster SC of the Public Law Section further noted that:

that approach has the virtue of providing additional transparency as to ICAC's time standards and allowing public scrutiny as to compliance with those standards whilst not imposing inflexible restrictions on the discharge of ICAC's functions.<sup>32</sup>

1.28 Mr John Nicholson SC, former Acting Inspector of the ICAC, proposed a more flexible model whereby the ICAC would nominate 'a starting time and a conclusion date' for a Report to be delivered once final submissions have been received, with any departure from that timeline to be communicated to the relevant parties and the Inspector of the ICAC with a 'newly set conclusion date'.<sup>33</sup> This style of reporting mechanism would effectively require the ICAC to set bespoke timeframes for each investigation taking into account the complexities of evidence for that inquiry, and communicate to stakeholders any adjustments to those timeframes in real time.

1.29 A similar idea was put forward by the Inspector, who outlined the following:

[The ICAC] set a timetable for submissions...If that changes, they generally tell people on the website what the submissions timetable is and when it is extended. At that stage, they should be able to give an indicative time frame for the furnishing of the report to Parliament. Things might change. They can inform people via the website if things change and why that indicative time frame won't be met.<sup>34</sup>

1.30 The NSW Council for Civil Liberties was less prescriptive in its recommendations, stating in its submission that 'we would be supportive of ICAC setting out a policy to explain how it assesses and manages delay or perceptions of delay'.<sup>35</sup> At the hearing, Mr Pallas further proposed that:

formalising the KPIs in an internal ICAC policy, creating a comprehensive dataset which measures itself against its KPIs in the annual report, and then this Committee testing ICAC's compliance against its own KPIs as set out in its annual report seems to be one way of doing it.<sup>36</sup>

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<sup>30</sup> [Submission 14](#), ODPP, p 3.

<sup>31</sup> [Submission 17](#), Bar Association, paras 26-28.

<sup>32</sup> Mr Richard Lancaster SC, Member – Public Law Section, NSW Bar Association, [Transcript of evidence](#), 4 November 2022, p 2.

<sup>33</sup> [Submission 9](#), Mr Nicholson, p 2.

<sup>34</sup> Inspector, [Transcript of evidence](#), p 41.

<sup>35</sup> [Submission 10](#), NSW Council for Civil Liberties (NSW CCL), para 34.

<sup>36</sup> Mr Pallas, [Transcript of evidence](#), p 18.

## Why legislating specific time standards is not being recommended

- 1.31 The evidence did not generally support the introduction of a legislated fixed time standard for the furnishing of Reports. The most frequently cited reasons for this view were:
- (a) the fact that the finalisation of reports may be outside the ICAC's control, for reasons including the involvement of other agencies,<sup>37</sup>
  - (b) the likelihood that statutorily imposed time standards may lead to unintended consequences, including:
    - (i) a tendency to 'cut corners' to speed up investigations,<sup>38</sup>
    - (ii) an erosion of procedural fairness for interested parties,<sup>39</sup>
    - (iii) increased risk to the reputations of those being investigated if incorrect conclusions are reached,<sup>40</sup> and
    - (iv) an inability or reluctance on the part of the ICAC to pursue complex matters, which may undermine the core function of the ICAC to expose serious and systemic corruption in New South Wales.<sup>41</sup>
- 1.32 The evidence did not identify any clear benefits to legislated timeframes, and instead suggested that imposing such time standards may have negative consequences for the discharge of the ICAC's functions.
- 1.33 Rather than legislating specific or inflexible time standards, the majority view of witnesses was that time standards should be developed and reported against transparently to improve public confidence in the ICAC and its investigations.

## Funding and staffing may also impact the timeliness of Reports

- 1.34 Several of the submissions to this inquiry pointed out that the ICAC's ability to meet timely reporting standards is contingent on the provision of adequate funding, including the provision of sufficient staff to assist with each stage of the reporting process.<sup>42</sup> In its recent report *Review of the 2020-2021 Annual Reports of the ICAC and the Inspector of the ICAC*, the Committee made a finding that staffing levels may impact timeliness of Reports.<sup>43</sup>

<sup>37</sup> [Submission 2](#), Dr Bruce Baer Arnold, p [2](#), [Submission 4](#), Law Society, pp [1-2](#), [Submission 5](#), ICAC, pp [16-18](#), [Submission 10](#), NSW CCL, pp [4-5](#), [Submission 12](#), OIICAC, p [2](#), [Submission 14](#), ODPP, p [2](#), [Submission 17](#), Bar Association, para [27-29](#).

<sup>38</sup> Mr Lancaster, [Transcript of evidence](#), p [2](#).

<sup>39</sup> Mr Robertson, [Transcript of evidence](#), p [3](#); Mr Andrew Chalk, Chair – Public Law Committee, The Law Society of NSW, [Transcript of evidence](#), 4 November 2022, p [7](#), [Submission 4](#), Law Society, pp [1-2](#), [Submission 17](#), Bar Association, paras [27-29](#).

<sup>40</sup> [Submission 10](#), NSW CCL, para [26](#).

<sup>41</sup> [Submission 10](#), NSW CCL, para [24](#).

<sup>42</sup> [Submission 2](#), Dr Arnold, pp [2-3](#); [Submission 4](#), Law Society, p [2](#); [Submission 10](#), NSW CCL, paras [16-20](#); [Submission 14](#), ODPP, p [3](#).

<sup>43</sup> [Review of the 2020-2021 Annual Reports of the ICAC and the Inspector of the ICAC](#), Finding 4, p [12](#).

- 1.35 The Committee heard during this inquiry how the complexity of investigations has increased over time, requiring additional resources to process. The receipt of electronic data has increased more than fivefold since 2013-14, and the days allocated for public hearing evidence have grown from an average 4.4 days in 2009-10 to 47.5 days in 2020-21.<sup>44</sup>
- 1.36 The ICAC has received additional funding in the 2022-23 Budget, which will result in an additional 17 FTE staff being recruited across the divisions of the ICAC.<sup>45</sup> The ICAC explained at the hearing that these additional resources are expected to alleviate pressure on its reporting timelines.<sup>46</sup>
- 1.37 Several witnesses, including the Chief Commissioner of the ICAC, the Hon. John Hatzistergos AM, considered that the increased funding allocated to the ICAC in the 2022-23 Budget may assist the ICAC to clear its backlog of outstanding Reports and improve its performance against its KPIs.<sup>47</sup> The Committee notes that the ICAC has new leadership, and the new Chief Commissioner has described how the ICAC will be giving priority to timeliness and careful allocation of resourcing.<sup>48</sup>
- 1.38 The adequacy of funding and the timeliness of investigations and Reports under the ICAC's new leadership is likely to be of continuing interest to this Committee.
- 1.39 Several witnesses also raised the idea of the Inspector taking a greater role in ensuring compliance with published time standards under its power to investigate matters of maladministration.<sup>49</sup> However, the Committee did not receive detailed evidence about this idea, and at this time is making no related findings or recommendations.

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<sup>44</sup> [Submission 5](#), ICAC, pp [16-17](#).

<sup>45</sup> Chief Commissioner, Budget Estimates, Portfolio Committee No. 1 - Premier and Finance, [Transcript of evidence](#), 7 September 2022, pp [94-98](#); [Transcript of evidence](#), 4 November 2022, p [46](#).

<sup>46</sup> Chief Commissioner, [Transcript of evidence](#), p [46](#).

<sup>47</sup> Chief Commissioner, [Transcript of evidence](#), pp [46-47](#); Mr Pallas, [Transcript of evidence](#), pp [15-17](#).

<sup>48</sup> Chief Commissioner, [Transcript of evidence](#), pp [45-46](#).

<sup>49</sup> Mr Robertson, [Transcript of evidence](#), p [5](#); Mr Nicholson, [Transcript of evidence](#), p [27](#); Mr McClintock, [Transcript of evidence](#), p [30](#).

## Chapter Two – Judicial Review and Powers of the Inspector

### Recommendation 3

That the NSW Government consider amending the *Independent Commission Against Corruption Act 1988* to provide the Inspector of the ICAC with similar powers to those currently held by the Inspector of the Law Enforcement Conduct Commission under section 124 of the *Law Enforcement Conduct Commission Act 2016*, including broader powers to:

- investigate maladministration, and
- require the ICAC to respond to the Inspector's recommendations, escalating to the Minister if dissatisfied with the response.

- 2.1 This inquiry considered terms of reference relating to the existing mechanism of judicial review and the role and powers of the Inspector of the ICAC (**Inspector**).
- 2.2 The Committee agreed with the evidence stating that the existing mechanism of judicial review as it operates in the Supreme Court is adequate, and does not require further codification, as discussed further at [2.22]. However, the Committee was concerned that judicial review may not always be easily accessible. This led the Committee to consider evidence about whether the Inspector could be empowered to conduct a form of judicial review, or be equipped with a quasi-judicial review function.
- 2.3 After considering all the related evidence, the Committee decided that the Inspector should not be empowered to conduct judicial review or quasi-judicial review. Instead, the Committee agrees with the proposal put forward by Mr Bruce McClintock SC, former Inspector of the ICAC and current Inspector of the Law Enforcement Conduct Commission (**LECC Inspector**), to align the Inspector's powers with those currently held by the LECC Inspector. The Committee is recommending that the Government consider amending the *Independent Commission Against Corruption Act 1988 (ICAC Act)* to provide the Inspector with the powers the LECC Inspector holds under section 124 of the *Law Enforcement Conduct Commission Act 2016 (LECC Act)* in relation to:
- investigating maladministration that arises, wholly or in part, from a mistake of law or fact, and
  - empowering the Inspector to require the ICAC to respond to the Inspector's reports, with a further right of escalation to the responsible Minister if the Inspector is dissatisfied with the ICAC's response.
- 2.4 The Committee agreed with the majority of the evidence received on the broader question of the Inspector's current role and powers, which suggested that the Inspector is otherwise suitably empowered. The Inspector's general powers are discussed further at [2.43].

## Granting the Inspector additional powers to deal with maladministration

- 2.5 The LECC Inspector has broader powers than those of the ICAC Inspector to investigate maladministration, and to require the Law Enforcement Conduct Commission (**LECC**) to respond to any reports of the LECC Inspector.
- 2.6 At the hearing, Mr McClintock gave evidence that he is opposed to the Inspector carrying out a form of judicial or merits review. He suggested instead that the ICAC Act be amended so that the Inspector has additional powers to deal with maladministration by way of reports, as are afforded to the LECC Inspector.<sup>50</sup>
- 2.7 Mr McClintock provided a submission to the Joint Select Committee on National Anti-Corruption Commission Legislation that made a similar recommendation. It contained a draft provision for the functions of the Federal Inspector which included a definition of maladministration that encompassed conduct that, although not unlawful, arises wholly or in part from a mistake of fact or law.<sup>51</sup>
- 2.8 The wording of the legislative provisions governing the Inspector's powers under the ICAC Act and the LECC Act are similar in that both provide for the Inspector to investigate matters of misconduct or maladministration and to make reports and recommendations to Parliament.<sup>52</sup> However, there are some distinctions between the definitions of maladministration, with the definition in the LECC Act being broader to include conduct that, although not unlawful, arises wholly or in part from a mistake of law or fact.<sup>53</sup>
- 2.9 Under the ICAC Act, maladministration means conduct that involves action or inaction of a serious nature that is contrary to law, or unreasonable, unjust, oppressive or improperly discriminatory, or based wholly or partly on improper motives.<sup>54</sup>
- 2.10 Under the LECC Act, there are two types of maladministration: agency and officer maladministration. They have similar definitions, being conduct that:
- is unreasonable, unjust, oppressive or improperly discriminatory in its effect,
  - arises, wholly or in part, from improper motives,
  - arises, wholly or in part, from a decision that has taken irrelevant matters into account,
  - arises, wholly or in part, from a mistake of law or fact, or
  - is of a kind for which reasons should have (but have not) been given.

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<sup>50</sup> Mr McClintock, [Transcript of evidence](#), p 29.

<sup>51</sup> Federal Inquiry: *National Anti-Corruption Commission Bills 2022*, [Submission 44](#), Mr Bruce McClintock SC, p 2.

<sup>52</sup> [Law Enforcement Conduct Commission Act 2016](#) (LECC Act), [ss 122\(2\)\(b\) and 124\(4\)](#); [ICAC Act](#), [s 57B\(1\)\(b\) and \(c\)](#) and (5).

<sup>53</sup> Mr McClintock, [Transcript of evidence](#), p 31; 'maladministration' is defined in the [LECC Act](#), [s 11\(1\)\(iv\)](#).

<sup>54</sup> [ICAC Act](#), [s 57B\(4\)](#).

Either type of maladministration can be considered 'serious maladministration' if, in the case of an agency, the conduct is unlawful, or, in the case of an agency or officer, the conduct is of a serious nature.<sup>55</sup>

- 2.11 The definition of maladministration under the ICAC Act is similar to the concept of serious maladministration under the LECC Act. However, the definitions of agency and officer maladministration under the LECC Act may permit the LECC Inspector to consider whether the LECC or an officer of the LECC engaged in conduct that, although not unlawful, arises wholly or in part from a mistake of fact or law.<sup>56</sup> The LECC Inspector is not empowered to remake a decision of the LECC, but if the LECC Inspector considers there has been a mistake of fact or law, they can return the matter to the LECC and recommend that it be decided afresh.<sup>57</sup>
- 2.12 The Committee acknowledges that the proposal to amend the ICAC Act to empower the Inspector to deal with maladministration arising from a mistake of law or fact was not considered in detail at the hearing. This is why the Committee is recommending that the NSW Government consider whether the ICAC Act should be amended to give the Inspector this power. The risks and benefits of such an approach should be carefully considered.
- 2.13 For instance, a broader definition of maladministration under the LECC Act, if mirrored in the ICAC Act, may have the benefit of allowing the Inspector more scope to investigate serious errors made by the ICAC. However, an expansion of the Inspector's powers in relation to maladministration may also require additional resourcing, which is discussed further at [2.37].
- 2.14 Consideration should also be given to whether the proposal to expand maladministration to include conduct that may have arisen from a mistake of fact has the potential to incorporate elements of merits review. At this stage, the Committee does not generally support the implementation of a merits review process for ICAC decisions as a way of improving accessibility of review for impacted individuals. The Committee also previously considered that merits review should not be considered as part of a review of the ICAC Act.<sup>58</sup>
- 2.15 For these reasons, the Committee considers that the NSW Government should consult with affected stakeholders, including the Inspector and the ICAC, in considering whether the ICAC Act should be amended in this way.

### **Requiring the ICAC to respond to Inspector's reports**

- 2.16 Under the LECC Act, when the LECC Inspector makes a recommendation to the LECC, the Inspector may require the LECC to provide to them, within a reasonable time specified by the Inspector, advice as to whether it intends to implement the recommendation, and if not, the reasons for not doing so.<sup>59</sup>

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<sup>55</sup> [LECC Act, s 11](#) (1)–(3).

<sup>56</sup> [LECC Act, s 11](#) (1)(iv).

<sup>57</sup> Mr McClintock, [Transcript of evidence](#), p 31.

<sup>58</sup> [Reputational impact on an individual being adversely named in the ICAC's investigations](#), p 39.

<sup>59</sup> [LECC Act, s 124](#)(5).

- 2.17 The Committee did not receive detailed evidence about the process by which the LECC Inspector communicates their findings to the LECC and receives responses.
- 2.18 However, under the LECC Act, the LECC Inspector, if dissatisfied with the LECC's response, has further powers to communicate that dissatisfaction to the LECC and receive a response. If the LECC Inspector remains dissatisfied, they can submit a report to the Minister outlining the grounds of dissatisfaction.<sup>60</sup> There are no equivalent powers or measures in the ICAC Act.
- 2.19 The Committee notes that in recent years the ICAC has appeared to enjoy a close working relationship with the Office of the Inspector, formalised in Memorandums of Understanding, and that the Inspector receives regular updates on the ICAC's operations.<sup>61</sup>
- 2.20 However, the Committee considers that it may be useful to have a more formal process for communication between the two offices in relation to the Inspector's reports.
- 2.21 Accordingly, the Committee supports the principle of aligning the Inspector's powers more closely with those of the LECC Inspector, and recommends that the NSW Government consider the proposal. These powers include requiring the ICAC to respond to the Inspector's reports and being equipped with avenues of escalation if the Inspector is dissatisfied with the ICAC's response.

### Existing mechanism of judicial review in the Supreme Court

- 2.22 The Committee heard evidence that the existing mechanism of judicial review as it operates in the Supreme Court of NSW is suitable.<sup>62</sup>
- 2.23 The Supreme Court cannot retest the facts as found in an ICAC investigation or consider whether the ICAC made the proper and correct decision, which would amount to a merits review.<sup>63</sup> The evidence in this inquiry did not generally support the idea of introducing any avenue of merits review for ICAC decisions.<sup>64</sup>
- 2.24 The Bar Association referred to two specific instances in its submission where individuals have successfully sought judicial review of an adverse finding against them made by the ICAC. The first was the case of *Duncan*, where declaratory relief was granted on the basis that ICAC's determination was not made according to law and was therefore a nullity.<sup>65</sup> Similarly, in the case of *Greiner*, Gleeson CJ concluded that the plaintiffs were entitled to a declaration that the adverse findings against

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<sup>60</sup> [LECC Act, s 124](#)(6) and (7).

<sup>61</sup> Mr McClintock, [Transcript of evidence](#), 4 November 2022, p 30; [Transcript of evidence](#), 2 May 2022, p 21; Inspector, [Transcript of evidence](#), p 40.

<sup>62</sup> [Submission 2](#), Dr Arnold, p 3; [Submission 4](#), Law Society, pp 2-3; [Submission 5](#), ICAC, pp 19-20; [Submission 7](#), OIICAC, pp 2-3; [Submission 8](#), Professor Nicholas Cowdery AO KC, p 2; [Submission 10](#), NSW CCL, pp 7-8; [Submission 12](#), OILECC, pp 2-4; [Submission 17](#), Bar Association, paras 31-46.

<sup>63</sup> [Submission 17](#), Bar Association, para 35.

<sup>64</sup> [Submission 4](#), Law Society, p 2; [Submission 7](#), OIICAC, p 2; [Submission 12](#), OILECC, p 4.

<sup>65</sup> [Duncan v Independent Commission Against Corruption](#) [2014] NSWSC 1018.

them were 'made without or in excess of jurisdiction'; were a 'nullity' and were 'on the facts as found in the [ICAC's] report...wrong in the law'.<sup>66</sup>

2.25 An individual can only seek judicial review where they can demonstrate to the Supreme Court that their case falls under one of the established grounds of review. These grounds are not codified in NSW, and therefore the Supreme Court has discretion as to the circumstances in which a review can be heard. In *Duncan*, the Supreme Court provided comments regarding the grounds on which declaratory relief could be sought in relation to a decision of the ICAC, although this list of grounds could still be expanded through the common law. The Bar Association summarised these grounds as follows:

- (a) a material error of law on the face of the record (including the reasons given for the decision) is shown;
- (b) the reasoning of the ICAC is not "objectively reasonable, in the sense that the decision was not one that could have been reached by a reasonable person acquainted with all material facts and having a proper understanding of the statutory function, or was not based on a process of logical reasoning from proven facts or proper inferences therefrom";
- (c) a finding made by the ICAC is not supported by any evidence;
- (d) the ICAC failed to consider relevant matters or took into account irrelevant ones; and/or
- (e) there was a denial of procedural fairness.<sup>67</sup>

2.26 One issue raised throughout written submissions was the question of codification of the grounds of review. In the view of the Bar Association, codification was not necessary because a legislated model would lack 'the flexibility of the common law' and may lead to a conflict between the codified grounds of review and the Supreme Court's supervisory jurisdiction, or even oust the Court's right to grant declaratory relief.<sup>68</sup> The Hon. Adjunct Professor Joseph Campbell KC agreed, stating in his submission that codification of judicial review would be 'fraught with danger, likely to not be very successfully achieved, and likely to create more problems than it solves'.<sup>69</sup>

2.27 After considering all the evidence, the Committee considers that the existing mechanism of judicial review is suitable and at this stage requires no further codification.

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<sup>66</sup> [Greiner v ICAC \(1992\) 28 NSWLR 125](#); [Submission 17](#), Bar Association, paras [34-36](#).

<sup>67</sup> [Duncan v Independent Commission Against Corruption](#) [2014] NSWSC 1018; [Submission 17](#), Bar Association, para [34](#).

<sup>68</sup> [Submission 17](#), Bar Association, paras [43-44](#).

<sup>69</sup> [Submission 18](#), The Hon. Adjunct Professor Joseph Campbell KC, p [12](#).

## Alternative models for extending the role and powers of the Inspector

- 2.28 The Inspector's role and powers are established under Part 5A of the ICAC Act. The Inspector's primary function is to audit the operations of the ICAC and to deal with complaints of misconduct or maladministration.<sup>70</sup>
- 2.29 The Committee heard some evidence on other potential models for extending the role and powers of the Inspector in addition to the proposal of granting the Inspector LECC-style powers. These included granting the Inspector:
- judicial review powers, or
  - powers similar to the WA Parliamentary Inspector.
- 2.30 At this stage, the Committee considers that these models, which are discussed in more detail below at [2.31] and [2.39], may not be suitable for the Inspector. Further, with the exception of the recommendation to grant the Inspector LECC-style powers, as discussed at [2.5] above, the Committee has concluded that the Inspector generally has adequate powers to fulfil their statutory functions.

### Problems with granting the Inspector judicial review powers

- 2.31 The Committee considered whether granting the Inspector judicial review powers, or quasi-judicial review powers, would be a suitable way to address some of its concerns about the accessibility of judicial review.
- 2.32 The Committee received evidence that neither the current judicial review process, nor empowering the Inspector with additional review powers, is guaranteed to successfully mitigate unwarranted reputational damage. Some witnesses suggested that media reporting has a significant influence on public perception of individuals investigated by ICAC. Further, the Court deciding that ICAC was partially or wholly wrong in making its findings does not necessarily result in more favourable publicity that counteracts the reputational damage caused by the initial ICAC findings.<sup>71</sup>
- 2.33 The Inspector, Ms Gail Furness SC, noted that the Supreme Court is 'eminently qualified and resourced to make decisions' and that the power to quash an ICAC report 'should probably be exercised by the Supreme Court.'<sup>72</sup> With specific regard to judicial review powers, the Inspector advised that she agreed with Mr Scott Robertson SC of the Bar Association that granting the Inspector the function to undertake similar reviews to the Supreme Court would mean:

creating another layer, and that layer—that is, a decision of mine—would be subject to review. So if the person didn't like my finding, then there would be the Supreme Court available. To me, it adds another layer rather than solving the problem.<sup>73</sup>

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<sup>70</sup> [ICAC Act, s 57B\(1\)](#).

<sup>71</sup> The Hon. Adjunct Professor Joseph Campbell KC, [Transcript of evidence](#), 4 November 2022, p [22](#); Inspector, [Transcript of evidence](#), p [41](#).

<sup>72</sup> Inspector, [Transcript of evidence](#), p [41](#).

<sup>73</sup> Inspector, [Transcript of evidence](#), p [42](#).

- 2.34 Mr Richard Lancaster SC from the NSW Bar Association was also concerned that conferring additional review powers on the Inspector would duplicate the review process, as final jurisdiction resides in the Supreme Court. He stated that:

There would be real practical difficulty with that because it would involve a whole new layer of review of what the ICAC does in circumstances where there wouldn't be any ability to exclude precisely the same kind of case subsequently being brought in the Supreme Court...any amendment that provided for the inspector-general to do that would just be an extra layer and all these issues with delay in finalisation of reports and of matters would be exacerbated by adding an additional layer of review at the inspector level.<sup>74</sup>

- 2.35 The NSW Council for Civil Liberties (**NSWCCL**) also supported the argument advanced by the Bar Association about duplicating the review process, stating that 'procedural fairness obligations are a very important protection for individuals against unwarranted reputational damage.' Additionally, the NSWCCL highlighted the soft power of the Inspector and stated that the Inspector's current powers are appropriate and adequate:

In many circumstances, the publishing of the Inspector's report or recommendations can ameliorate reputational damage caused to individuals through ICAC misconduct. Moreover, the Inspector's statutory powers to refer matters to other public authorities and to recommend disciplinary action or criminal prosecution against ICAC officers is a crucial first step in redressing affected individuals. When viewed in the context of the broader public accountability matrix over the ICAC, NSWCCL considers that the Inspector's current powers and functions under the Act are appropriate.<sup>75</sup>

- 2.36 However, the former Acting Inspector, Mr John Nicholson SC, was in favour of a new avenue of review that would be vested in the Inspector in certain circumstances, on the basis that:

It is much less expensive, can be much more quickly executed and the Inspector would not have power to award damages or anything like that. It would simply be a recognition of the consequence of a no bill or an acquittal and really otherwise wouldn't undermine an ICAC finding in respect of conduct that is, in a general sense, conduct that would be amounting to conduct engaging in corrupt conduct.<sup>76</sup>

- 2.37 Some witnesses also raised the issue that an increase to the Inspector's role in this regard may require significant additional resourcing for the Office of the Inspector, a role currently performed on a part-time basis (approximately three days per week) with the support of one staff member, who works for both the Inspector and the LECC Inspector.<sup>77</sup>

- 2.38 The Committee agrees with the majority of evidence received and acknowledges that other issues may arise if the Inspector is given expanded powers of review. The Committee is therefore making no recommendations to expand the Inspector's role and powers to grant it judicial review-like powers.

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<sup>74</sup> Mr Lancaster, [Transcript of evidence](#), p 5.

<sup>75</sup> [Submission 10](#), NSW CCL, para 60.

<sup>76</sup> Mr Nicholson, [Transcript of evidence](#), pp 25-26.

<sup>77</sup> Inspector, [Transcript of evidence](#), p 41; Mr McClintock, [Transcript of evidence](#), p 33.

### Problems with granting the Inspector powers similar to the WA Parliamentary Inspector

- 2.39 At the hearing the Committee heard that the Western Australian Parliamentary Inspector (**WA Parliamentary Inspector**) has broad powers to review determinations made by the Crime and Corruption Commission (**CCC**) in circumstances where it receives notice of an allegation concerning an officer of the CCC.<sup>78</sup> The WA Parliamentary Inspector has a broad range of remedies available, including the power to annul the CCC's determination and substitute another, in limited circumstances.<sup>79</sup> However, the Committee heard that in practice these powers are rarely used.<sup>80</sup>
- 2.40 Further, as outlined at the hearing by the current WA Parliamentary Inspector, Mr Matthew Zilko SC, the powers are strictly tied to allegations of misconduct and cannot be triggered by a complainant requesting a review of a CCC decision:
- ...my power to overturn is confined to misconduct on the part of the Commission or its officers, including right up to the top – the Commissioner himself. [...] But that's only in respect of Commission officers, not in respect of a third party, such as a member of Parliament who the Commission may make findings against.<sup>81</sup>
- 2.41 At the hearing, Mr Zilko further highlighted the substantive similarities between the framework for the WA and NSW Inspectors:
- There are many similarities between the relevant provisions, as one might expect. For instance, both officers are charged with scrutinising the operations of an integrity agency; both can hold an inquiry with the full powers of a royal commission; and both report to parliament rather than to an individual minister.<sup>82</sup>
- 2.42 The Committee considered the evidence from the WA Parliamentary Inspector and other witnesses and is of the view that implementing the WA model in NSW may not meaningfully improve access to review of ICAC decisions, as the powers are only available in limited circumstances where there has been an allegation of misconduct against the Commission. The Committee does not consider that this is an appropriate model to adopt at this time.

### General powers of the Inspector

- 2.43 The Committee considered evidence from a range of witnesses about the general powers of the Inspector. The current Inspector gave evidence that she considers the current powers of the Inspector sufficient, and that she regards the Inspector's ability to make reports to Parliament as being 'a very powerful tool'.<sup>83</sup>
- 2.44 The Inspector's view was supported by the Law Society of NSW, who indicated that the powers of the Inspector were 'generally adequate and not in need of

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<sup>78</sup> [Corruption, Crime and Misconduct Act 2003](#) (WA) (CCM Act), [s 196\(4\)](#) and [\(5\)](#).

<sup>79</sup> [CCM Act, s 196\(7\)](#).

<sup>80</sup> Mr Matthew Zilko SC, Parliamentary Inspector of the Corruption and Crime Commission, [Transcript of evidence](#), 4 November 2022, p [36](#). See also [Submission 3](#), Parliamentary Inspector of the Corruption and Crime Commission (PICCC), p [3](#).

<sup>81</sup> Mr Zilko, [Transcript of evidence](#), p [37](#).

<sup>82</sup> [Submission 3](#), PICCC, p [1](#).

<sup>83</sup> Inspector, [Transcript of evidence](#), p [41](#).

expansion'.<sup>84</sup> Professor Nicholas Cowdery AO KC agreed that the powers of the Inspector 'are appropriate and sufficient',<sup>85</sup> as did the NSWCCCL, who advised that the powers of the Inspector are 'adequate and appropriate' and 'sufficient to protect the interests of individuals affected by ICAC decisions'.<sup>86</sup>

- 2.45 The Bar Association stated in their submission that 'the Inspector has sufficient powers under the ICAC Act to obtain information related to complaints and to provide forms of redress where affected persons suffer reputational harm'.<sup>87</sup> At the hearing this view was reiterated by Mr Robertson, who advised that the Bar Association thought the powers of the Inspector were broad enough to deal with the matters of concern to the Committee, citing also the power to deal with maladministration by way of reports and recommendations and the protection this offers to the public and the Parliament.<sup>88</sup>
- 2.46 Although the Committee has recommended that the NSW Government consider whether the Inspector should be given some of the powers of the LECC Inspector, the Committee otherwise agrees that the current role and powers of the Inspector are sufficient.

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<sup>84</sup> [Submission 4](#), Law Society, p 3.

<sup>85</sup> [Submission 8](#), Professor Cowdery, p 2.

<sup>86</sup> [Submission 10](#), NSW CCL, p 8.

<sup>87</sup> [Submission 17](#), Bar Association, para 3.

<sup>88</sup> Mr Robertson, [Transcript of evidence](#), pp 4-5.

## Appendix One – Terms of reference

That the Committee on the Independent Commission Against Corruption (ICAC) inquire into and report on aspects of the Independent Commission Against Corruption Act 1988 to determine whether the Act continues to be effective and appropriate, with particular reference to:

- 1) the time standards in place for the ICAC to finalise reports and the relevant practices in other jurisdictions;
- 2) the existing mechanism of judicial review;
- 3) the role and powers of the Inspector of the ICAC.

## Appendix Two – Conduct of inquiry

On 9 June 2022, the Committee resolved to inquire into and report on aspects of the *Independent Commission Against Corruption Act 1988*.

The terms of reference for the inquiry are at **Appendix One**.

### **Call for submissions**

The Committee issued a media release on 14 June 2022 and wrote to key stakeholders inviting them to make a submission to the inquiry.

Submissions closed on 29 July 2022. A total of 18 submissions were received from anti-corruption bodies and inspectors of anti-corruption bodies from NSW and other jurisdictions, investigative bodies, academics, legal experts, advocacy organisations, legal experts and individuals.

A list of submissions is at **Appendix Three**.

### **Hearing**

The Committee held a public hearing on 4 November 2022 at Parliament. Representatives of Government agencies, investigative and anticorruption bodies from NSW and other jurisdictions, academics and legal experts appeared in person and via videoconference.

A list of witnesses is at **Appendix Four**. A transcript of evidence taken at the hearing is available on the Committee's [webpage](#).

## Appendix Three – Submissions

<b>No.</b>	<b>Author</b>
1	Mr Grant Mistler
2	Dr Bruce Baer Arnold
3	Parliamentary Inspector of the Corruption and Crime Commission
4	The Law Society of New South Wales
5	NSW Independent Commission Against Corruption
6	UNSW Law Society
7	Office of the Inspector of the Independent Commission Against Corruption
8	Professor Nicholas Cowdery AO KC
9	Mr John Nicholson SC
10	NSW Council for Civil Liberties
11	Victorian Inspectorate
12	Office of the Inspector of Law Enforcement Conduct Commission
13	Independent Commission Against Corruption South Australia
14	Office of the Director of Public Prosecutions
15	Confidential
16	Rule of Law Institute of Australia
17	New South Wales Bar Association
18	The Hon. Adjunct Professor Joseph Campbell KC
18a	The Hon. Adjunct Professor Joseph Campbell KC

## Appendix Four – Witnesses

**04 November 2022**

**Parliament House, Room 814-815, Sydney, NSW**

<b>Witness</b>	<b>Position and Organisation</b>
Mr Andrew Chalk	Chair - Public Law Committee, The Law Society of New South Wales
Ms Michelle O'Brien	Member - Public Law Committee, The Law Society of New South Wales
Mr Richard Lancaster SC	Member – Public Law Committee, New South Wales Bar Association
Mr Scott Robertson SC	Member – Inquests and Inquiries Committee, New South Wales Bar Association
Mr Frank Veltro SC	Acting Deputy Director, Office of the Director of Public Prosecutions
Mr James Chin	Legal Policy Officer, Office of the Director of Public Prosecutions
Mr Malcolm Stewart	Senior Vice President, Rule of Law Institute of Australia
Mr Chris Merritt	Vice President, Rule of Law Institute of Australia
Mr Josh Pallas	President, NSW Council for Civil Liberties
The Hon. Adjunct Professor Joseph Campbell KC	
Mr John Nicholson SC	Former Acting Inspector of the Independent Commission Against Corruption
Mr Bruce McClintock SC	Former Inspector of the Independent Commission Against Corruption
Mr Eamonn Moran PSM KC	Inspector, Victorian Inspectorate
Mr Matthew Zilko SC	Parliamentary Inspector, Parliamentary Inspector of the Corruption and Crime Commission
Ms Gail Furness SC	Inspector, Office of the Inspector of the Independent Commission Against Corruption
The Hon. John Hatzistergos AM	Chief Commissioner, NSW Independent Commission Against Corruption
The Hon. Helen Murrell SC	Commissioner, NSW Independent Commission Against Corruption
Mr Philip Reed	Chief Executive Officer, NSW Independent Commission Against Corruption
Mr Roy Waldon	Executive Director, Legal Division and Solicitor to the Commission, NSW Independent Commission Against Corruption

## Appendix Five – Extracts from minutes

### MINUTES OF MEETING 23

Thursday, 9 June 2022, 9.00 am

Room 814-815 and videoconference

#### Members present

In person: The Hon. Leslie Williams MP (Chair), Mr Ron Hoenig MP (Deputy Chair) (9.07 am), the Hon. Mr Adam Searle MLC, Mrs Nichole Overall MP, the Hon. Christopher Rath MLC, the Hon. Rodney Roberts MLC, Mr Lee Evans MP, Mr Jamie Parker MP, Ms Wendy Lindsay MP (9.05 am), Ms Tania Mihailuk MP (9.07 am).

Via Webex: Mr Raymond Williams MP.

#### Officers present

Clara Hawker, Stephanie Mulvey, Abigail Turingan, Rima Dabliz, and Amy Pond.

#### 1. Confirmation of minutes

Resolved, on the motion of Ms Mihailuk: That the minutes of the meeting of 6 June 2022 be confirmed.

2. \*\*\*

3. \*\*\*

#### 4. Adoption of next inquiry

- The Committee considered the proposed terms of reference, inquiry timeline and stakeholder list.
- The Committee agreed to note on the Committee inquiry webpage that the Committee is unable to consider individual matters or complaints.

Resolved, on the motion of Ms Mihailuk:

- That the Committee conduct an inquiry into a review of aspects of the ICAC Act in accordance with the draft terms of reference, as amended:
  - That the Committee on the Independent Commission Against Corruption (ICAC) inquire into and report on aspects of the Independent Commission Against Corruption Act 1988 to determine whether the Act continues to be effective and appropriate, with particular reference to:
    1. The time standards in place for the ICAC to finalise reports and the relevant practices in other jurisdictions;
    2. The existing mechanism of judicial review;
    3. The role and powers of the Inspector of the ICAC.
- That the Chair issue a media release announcing the inquiry.
- That the Committee call for submissions to be received by 29 July 2022 and write to the listed stakeholders.

5. \*\*\*

**6. Next Meeting**

The meeting adjourned at 9.20 am until a time to be determined.

**MINUTES OF MEETING 25**

Tuesday, 12 July 2022, 9.00 am

Room 1254 and videoconference

**Members present**

By Webex: The Hon. Leslie Williams (Chair), Mr Lee Evans MP, Mrs Nichole Overall MP, Mr Ron Hoenig MP, the Hon. Rodney Roberts MLC, Ms Tania Mihailuk MP, Mr Ray Williams MP, Ms Wendy Lindsay MP, Mr Jamie Parker MP (9.05 am), the Hon. Adam Searle MLC (9.02 am).

**Officers present**

Helen Minnican, Clara Hawker, Stephanie Mulvey, Amy Pond, and Abegail Turingan.

**Apologies**

The Hon. Chris Rath MLC

**1. Confirmation of minutes**

Resolved, on the motion of Mr Williams: That the minutes of the meeting of 9 June 2022 and 23 June 2022 be confirmed.

2. \*\*\*

3. \*\*\*

**4. Incoming correspondence - Review of aspects of the ICAC Act**

**4.1 Mr Bruce McClintock SC, Inspector of the ICAC, to the Chair dated 21 June 2022**

- proposing to make a submission to the Inquiry on the review of aspects of the ICAC Act in his personal capacity and thanking the Committee for its support.
- Committee noted the correspondence and agreed that the secretariat will shortly make arrangements to meet with Mr McClintock, pursuant to its resolution on 2 May.

**4.2 Ms Emma Townsend, Director, to the Chair dated 29 June 2022**

- advising that the SA Office of Public Integrity will not be making a submission.
- Committee noted the correspondence.

**4.3 Ms Alanna Condon, Policy Lawyer, Bar Association to secretariat dated 4 July 2022**

- seeking an extension until 5 August 2022.
- Resolved, on the motion of Mr Searle: That the extension be granted to the Bar Association.

5. \*\*\*

6. \*\*\*

**7. Next meeting**

The meeting adjourned at 9.29 am.

**MINUTES OF MEETING 26**

Friday, 19 August 2022, 10.04 am

Room 1254 and videoconference

**Members present**

In person: Mrs Leslie Williams MP (Chair), Mr Lee Evans MP, Mr Jamie Parker MP, the Hon. Adam Searle MLC, the Hon. Rodney Roberts MLC, the Hon. Chris Rath MLC, and Ms Tania Mihailuk MP. By Webex: Mr Ron Hoenig MP (Deputy Chair), Ms Wendy Lindsay MP, Mr Ray Williams MP, and Mrs Nichole Overall MP (10.10 am).

**Officers present**

Stephanie Mulvey, Amy Pond, and Abegail Turingan.

**1. Confirmation of minutes**

Resolved, on the motion of Mr Parker: That the minutes of the meeting of Tuesday 12 July 2022 be confirmed.

2. \*\*\*

**3. Incoming Correspondence**

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The Committee noted the following correspondence:

- Ms Margaret Cunneen SC to the Chair dated 14 July 2022 regarding the Committee's reputational impact inquiry and matters potentially related to the Committee's review of aspects of the ICAC Act.
  - Mr Searle noted that he is listed as a Barrister at the same Chambers as Ms Cunneen.
  - Mr Hoenig noted he knows Ms Cunneen.
- \*\*\*
- NSW Ombudsman Paul Miller to Chair dated 26 July 2022 stating he will not make a submission to the inquiry.

**4. Review of aspects of the ICAC Act: Submissions**

Resolved, on the motion of Mr Rath: That the Committee publish submissions 1-14 and 16-18 in full.

Resolved, on the motion of Mr Evans: That the Committee keeps submission 15 confidential and that the secretariat advise the author of the reasons for the Committee's decision.

**5. Review of aspects of the ICAC Act: 16 September Hearing**

The Committee considered witnesses for the 16 September hearing.

Discussion ensued.

Committee agreed that the Committee hold a public hearing on 16 September and that the secretariat will distribute a proposed schedule of witnesses for the Members to provide feedback.

6. \*\*\*

7. \*\*\*

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9. \*\*\*

10. \*\*\*

**11. Next meeting**

The meeting adjourned at 11.44 am.

**MINUTES OF MEETING 27**

Wednesday, 12 October 2022, 9.02 am

Room 814-815 and videoconference

**Members present**

In person: Mrs Leslie Williams MP (Chair), Mr Ron Hoenig MP (Deputy Chair), Mr Lee Evans MP, Mr Jamie Parker MP, the Hon. Adam Searle MLC, the Hon. Rodney Roberts MLC, the Hon. Chris Rath MLC, Mrs Nichole Overall MP, and Ms Wendy Lindsay MP.

By Webex: Ms Tania Mihailuk MP.

**Officers present**

Stephanie Mulvey, Amy Pond, Imogen Wurf, and Abegail Turingan.

**Apologies**

Mr Ray Williams MP.

**1. Confirmation of minutes**

Resolved, on the motion of Mr Searle: That the minutes of the meeting of Friday 19 August 2022 be confirmed.

2. \*\*\*

3. \*\*\*

**4. General business**

The Committee noted the following dates for upcoming Committee business:

- \*\*\*
- Friday 4 November, 9am – 5pm – Public Hearing into review of aspects of the ICAC Act.

- Tuesday 13 December, 1pm – 2:30pm – Report deliberative (Review of aspects of the ICAC Act).

\*\*\*

#### **5. Next meeting**

The meeting adjourned at 9.18 am. The Committee to next meet at 2pm, Monday 17 October in Room 814/815.

### **MINUTES OF MEETING 28**

Monday, 17 October 2022, 2.02 pm

Room 814-815 and videoconference

#### **Members present**

In person: Mrs Leslie Williams MP (Chair), Mr Lee Evans MP, Mr Jamie Parker MP, the Hon. Adam Searle MLC, the Hon. Rodney Roberts MLC, the Hon. Chris Rath MLC, Mrs Nichole Overall MP, Ms Wendy Lindsay MP, Ms Tania Mihailuk MP.

By Webex: Mr Ray Williams MP.

#### **Officers present**

Stephanie Mulvey, Amy Pond, Imogen Wurf, Blake Garcia, and Mohini Mehta.

#### **Apologies**

Mr Ron Hoenig MP (Deputy Chair).

#### **1. Confirmation of minutes**

Resolved, on the motion of Mr Parker: That the minutes of the meeting of Wednesday 12 October 2022 be confirmed.

2. \*\*\*

3. \*\*\*

4. \*\*\*

5. \*\*\*

#### **6. General Business**

\*\*\*

- The Committee noted the following dates for upcoming Committee business:
- Friday 4 November, 9am – 5pm – Public Hearing into review of aspects of the ICAC Act.
- Tuesday 13 December, 1pm – 2:30pm – Report deliberative (Review of aspects of the ICAC Act).

\*\*\*

\*\*\*

#### **7. Next meeting**

The meeting adjourned at 2.18 pm until 9.00 am, Friday 4 November in Room 814/815.

## **MINUTES OF MEETING 29**

Friday, 4 November 2022, 9.00 am

Room 814-815 and videoconference

### **Members present**

In person: Mrs Leslie Williams MP (Chair), Mr Ron Hoenig MP (Deputy Chair), Mr Lee Evans MP, Mr Jamie Parker MP, the Hon. Adam Searle MLC, the Hon. Rodney Roberts MLC, the Hon. Chris Rath MLC, and Ms Wendy Lindsay MP.

By Webex: Mrs Nichole Overall MP.

### **Officers present**

Stephanie Mulvey, Imogen Wurf, Blake Garcia, Catherine Blake, Abegail Turingan, and Hayley Jarrett.

### **Apologies**

Mr Ray Williams MP, Ms Tania Mihailuk MP.

#### **1. Confirmation of minutes**

Resolved, on the motion of Mr Parker: That the minutes of the meeting of 17 October 2022 be confirmed.

#### **2. \*\*\***

#### **3. Pre-hearing deliberative meeting**

##### **3.1 Procedural resolutions**

Resolved on the motion of Mr Searle:

- That the Committee invites the witnesses listed in the notice of the public hearing for Friday, 4 November 2022 to give evidence in relation to the Review of aspects of the ICAC Act.
- That the Committee authorises the audio-visual recording, photography and broadcasting of the public hearing on 4 November 2022 in accordance with the NSW Legislative Assembly's guidelines for coverage of proceedings for parliamentary committees administered by the Legislative Assembly.
- That witnesses be requested to return answers to questions taken on notice and supplementary questions within 7 days of the date on which the questions are forwarded.

#### **4. Public Hearing – Review of Aspects of the ICAC Act**

##### **4.1 Public Hearing**

The Chair opened the public hearing at 9:01 am and made a short opening statement.

The following witnesses were admitted:

- Mr Andrew Chalk, Chair - Public Law Committee, The Law Society of New South Wales, sworn and examined.
- Ms Michelle O'Brien, Member - Public Law Committee, The Law Society of New South Wales, affirmed and examined.

- Mr Richard Lancaster, Member - Public Law Committee, New South Wales Bar Association, affirmed and examined.
- Mr Scott Robertson SC, Member - Inquests and Inquiries Committee, New South Wales Bar Association, sworn and examined.
- Mr Frank Veltro SC, Acting Deputy Director, Office of the Director of Public Prosecutions, sworn and examined.
- Mr James Chin, Legal Policy Officer, Office of the Director of Public Prosecutions, affirmed and examined.

Evidence concluded; the witnesses withdrew.

The following witnesses were then admitted:

- Mr Malcom Stewart, Senior Vice President, Rule of Law Institute of Australia, sworn and examined.
- Mr Chris Merritt, Vice President, Rule of Law Institute of Australia, affirmed and examined.

Evidence concluded; the witnesses withdrew.

The following witness was then admitted:

- Mr Josh Pallas, President, NSW Council for Civil Liberties, affirmed and examined.

Evidence concluded; the witness withdrew.

The following witness was then admitted:

- The Hon. Adjunct Professor Joseph Campbell KC, affirmed and examined.

Evidence concluded; the witness withdrew.

The following witness was then admitted:

- Mr John Nicholson SC, Former Acting Inspector of the Independent Commission Against Corruption, sworn and examined.

Evidence concluded; the witness withdrew.

The following witness was then admitted:

- Mr Bruce McClintock SC, Former Inspector of the Independent Commission Against Corruption, affirmed and examined.

Evidence concluded; the witness withdrew.

The following witnesses were then admitted:

- Mr Eamon Moran PSM KC, Inspector, Victorian Inspectorate, sworn and examined by videoconference.
- Mr Matthew Zilko SC, Parliamentary Inspector, Western Australian Corruption and Crime Commission, affirmed and examined by videoconference.

Evidence concluded; the witnesses withdrew.

The following witness was then admitted:

- Ms Gail Furness SC, Inspector of the Inspector of the Independent Commission Against Corruption, affirmed and examined.

Evidence concluded; the witness withdrew.

The following witnesses were then admitted:

- The Hon. John Hatzistergos AM, Chief Commissioner, NSW Independent Commission Against Corruption, sworn and examined.
- The Hon. Helen Murrell SC, Commissioner, NSW Independent Commission Against Corruption, affirmed and examined.
- Mr Philip Reed, Chief Executive Officer, NSW Independent Commission Against Corruption, affirmed and examined.
- Mr Roy Waldon, Executive Director, Legal Division and Solicitor to the Commission, NSW Independent Commission Against Corruption, sworn and examined.

Evidence concluded; the witnesses withdrew.

The Chair closed the public hearing at 3.15 pm.

#### **5. Post hearing deliberative meeting**

The Chair opened the deliberative meeting at 3.16 pm.

##### **5.1 Transcript of evidence**

Resolved, on the motion of Mr Evans: That the Committee publishes the transcript of evidence taken at the public hearing, after correction, and the answers to questions on notice, on the Committee's webpage.

#### **6. Next Meeting**

The meeting adjourned at 3.21 pm. The Committee to next meet at 1.15 pm, Tuesday 15 November.

### **MINUTES OF MEETING 30**

Tuesday, 15 November 2022, 1.19 pm

Room 814-815

#### **Members present**

Mrs Leslie Williams MP (Chair), Mr Lee Evans MP, Mr Jamie Parker MP, the Hon. Adam Searle MLC, the Hon. Rodney Roberts MLC, the Hon. Chris Rath MLC, Ms Wendy Lindsay MP, Mrs Nichole Overall MP, Ms Tania Mihailuk MP.

#### **Officers present**

Stephanie Mulvey, Imogen Wurf, Blake Garcia, Catherine Blake, Abegail Turingan, and Hayley Jarrett.

#### **Apologies**

Mr Ron Hoenig MP (Deputy Chair).

### **1. Confirmation of minutes**

Resolved, on the motion of Mr Searle: That the minutes of the meeting no. 29 of Friday 4 November 2022 be confirmed.

### **2. Correspondence**

The Committee noted the following incoming correspondence:

- \*\*\*
- 4 November 2022 – Email from Adjunct Professor Joe Campbell providing the Committee with a supplementary submission following his appearance at the Public Hearing held on 4 November.
- 11 November 2022 – Letter to the Committee from the Chief Commissioner of ICAC.
- Resolved, on the motion of Mr Evans: That the Committee accepts the supplementary submission from Adjunct Professor Campbell and publish it on the Committee's webpage.

\*\*\*

### **3. Workshop – review of aspects of the ICAC Act**

The Committee considered the questions in the discussion paper and evidence received in this inquiry.

Discussion ensued.

Committee agreed that the secretariat would prepare a briefing note on proposed options for additional review-type powers for the Inspector, and members would provide any comments via email.

### **4. Next Meeting**

The meeting adjourned at 1.46 pm. The Committee to next meet at 1.00 pm on 13 December 2022.

## **UNCONFIRMED MINUTES OF MEETING 31**

Tuesday, 13 December 2022, 1.13 pm

638G and via videoconference

### **Members present**

In person: Mrs Leslie Williams MP (Chair).

By Webex: Mr Lee Evans MP, the Hon. Adam Searle MLC, the Hon. Chris Rath MLC, Ms Wendy Lindsay MP.

By phone: Ms Tania Mihailuk MP.

### **Officers present**

Stephanie Mulvey, Imogen Wurf, Blake Garcia, Catherine Blake, Abegail Turingan, and Nicolle Gill.

## Apologies

Mr Ron Hoenig MP, Mrs Nichole Overall MP, Mr Jamie Parker MP, the Hon. Rodney Roberts MLC, and Mr Ray Williams MP.

### 1. Confirmation of minutes

Resolved, on the motion of Ms Lindsay: That the minutes, as amended, of meeting no. 30 held on Tuesday 15 November 2022 be confirmed.

### 2. \*\*\*

### 3. Report deliberative

Pursuant to the Committee's agreement at its last meeting, a briefing note on proposed options for additional powers for the Inspector was circulated to members.

#### 3.1 Consideration of Chair's draft report

The Chair's draft report *Review of Aspects of the Independent Commission Against Corruption Act 1988* has been distributed to the Committee to consider.

By concurrence of all members, the Committee considered the report in globo.

Resolved, on the motion of Ms Lindsay:

- That the Committee adopts the draft report, and that it be signed by the Chair and presented to the House.

Resolved, on the motion of Mr Searle:

- That the Committee authorises the secretariat to make appropriate final editing and stylistic changes, as required.

Resolved, on the motion of Ms Lindsay:

- That once tabled, the report be published on the Committee's website.

### 4. General business

The Chair noted that there will be a media release issued following the tabling of the report that summarises its findings.

The Chair noted her thanks to Committee staff for their work on the report.

### 5. Next Meeting

The meeting adjourned at 1.18 pm.