

Mr Jason Li MP
Chair
Committee on the ICAC
Parliament House
Macquarie Street
SYDNET NSW 2000

By E-mail: icaccommittee@parliament.nsw.gov.au

Dear Mr Li

Supplementary questions

I refer to the email received from the Committee secretariat on 20 December 2023 attaching supplementary questions from the Committee following the public hearing on 11 December 2023.

The Commission's response to the questions is set out below.

- 1. Can you comment on the Commission's cyber-readiness and ability to respond to any cyber-security threats and risks, and measures you plan to introduce to improve the Commission's cyber-readiness.***

The Commission complies with the NSW Cyber Security Policy which outlines the mandatory requirements and responsibilities that all NSW Government agencies must adhere to in order to ensure cyber security risks are appropriately managed.

Each year the Commission conducts a cyber security maturity assessment. The Commission's "crown jewels" have been identified, and a cyber security attestation is provided and appears in the annual report (see page 76 of the 2022-23 annual report). Findings from the cyber security assessment are used to develop goals to improve maturity levels within the Commission.

Cyber security matters are communicated and discussed via a number of different committees and forums within the Commission including a monthly meeting with the CEO. Cyber security is a regular item on the Audit and Risk Committee meeting agenda and a report is provided at each committee meeting. A corporate risk register exists which addresses cyber risks and their associated mitigation strategies which are regularly reviewed and managed.

The Commission has documented a security incident response plan and playbook containing instructions to detect, respond, contain and recover from an information security event. Annual cyber security incident response exercises are undertaken simulating real world cyber incidents. This allows the Commission to regularly test its cyber security

incident response plan and take proactive measures to identify any gaps in the people, process and technology domains. The following is also relevant:

- An Information Security Management System (ISMS) has been implemented to manage information security using a standard framework.
- Development of a Cyber Security Awareness program that includes ongoing cyber security training for all staff, regular email communications and simulated phishing exercises.
- Annual penetration testing is conducted where remediation actions are identified and managed through to implementation.
- The Commission has processes in place to act on information and intelligence received regarding security threats.

The implementation of the mandatory requirements within the NSW Cyber Security Policy includes implementation of the Australian Cyber Security Centre's Essential 8 controls. In terms of vulnerability and patch management, vulnerability scanning is performed and there is a process for identifying and mitigating missing patches across the network. An automated method of asset discovery is regularly performed and reviewed and deployment of software patches for operating systems and applications is conducted on a regular basis. The Commission has successfully implemented application control within the technology environment, with this including the development of associated processes for the review and installation of approved software. The Commission has implemented permission-based access controls and privileged access management processes are in place.

Tools are used to monitor and identify cyber security events with endpoint security controls installed and active on all end point devices. This includes detection/prevention software providing real time reporting & alerting. Security policy controls are in place for the use of the Commissions internal IT systems and the Microsoft 365 environments, and there are measures in place to ensure security baselines remain consistent with Commission policy. Security event logs are retained and accessible for review with monitoring and alerting processes in place. In addition, the Commission has specific audit tools in place that capture all activity on IT systems, including desktops, laptops and access to IT systems. VPN access to the network is enforced and multi factor authentication (MFA) is used by the Commission. The Commission has a dedicated disaster recovery site, and backup and recovery processes exist and are reviewed regularly.

There are a number of measures planned to improve the Commission's cyber readiness. These include:

- continue to implement remedial actions to comply with the CSP and E8 mandatory requirements
- uplift cyber security risk management to ensure it is considered in all areas across the Commission
- boost cyber security awareness including the rollout of targeted face-to-face cyber security training
- further develop the ISMS to improve processes and strategies to enable the appropriate response to evolving security threats
- continuously assess resourcing requirements whilst taking into consideration constantly changing environmental factors.

- 2. What protocols and processes does the Commission have to anonymise or de-identify individuals involved in investigations (e.g. in transcripts or exhibits), and ensure that information intended to be kept anonymous is not inadvertently made public?***

The Commission understands this question to relate to where a person is involved in a compulsory examination or public inquiry and may be named in a report made pursuant to s 74 of the *Independent Commission Against Corruption Act 1988* (ICAC Act).

Section 112 of the ICAC Act provides that the Commission may direct any information that might enable a person who has given or may be about to give evidence before the Commission to be identified or located, or the fact that any person has given or may be about to give evidence at a compulsory examination or public inquiry, shall not be published or shall not be published except in such manner, and to such persons, as the Commission specifies. The Commission is not to give such a direction unless satisfied that the direction is necessary or desirable in the public interest.

In each case, it is necessary to consider whether it is in the public interest to make such a direction.

It is generally the case that a direction is made with respect to a compulsory examination, as publication of the fact there was a compulsory examination, the name of the witness and the evidence given may prejudice the investigation and adversely impact upon the individual in circumstances where the investigation is at an early stage.

In the context of a public inquiry, it is necessary to balance arguments that a s112 direction be made against the public interest of maintaining transparency of the public inquiry process.

In the recent Operation Hector public inquiry, an interim direction was made pursuant to s 112 of the ICAC Act on 20 March 2023 with respect to a Transport for NSW employee. That direction was made in response to a detailed submission received on behalf of the person. The direction is recorded at page 4 of the transcript (with the name of the person redacted from the public version of the transcript).

I subsequently recorded my reasons in writing and made a further direction that references to the person and any images of the person are not to be published or otherwise communicated to anyone, pending but not including presentation of the Commission's report under s 74 of the ICAC Act to Parliament. That direction, with suitable redactions, appears at pages 1198-9 of the public transcript.

The name of the person was redacted from all public inquiry transcripts and witness lists on the Commission's public website. Additionally, the exhibits which contained briefs of evidence relating solely to that person were not published on the public website.

The Commission's Investigation Manual Policy and Procedure IP03 provides that when, during a hearing, a s 112 direction is made or varied it should be read onto the record by the presiding Commissioner. The case lawyer is required, as far as is practical, to advise anyone who is present in the hearing room when the relevant evidence was given but who left the hearing room before a suppression order was made, that the order was made.

The Commission has procedures with respect to the recording and filing of s 112 directions made during a hearing. These are the responsibility of the Associate.

At the end of each day of a public inquiry, the case lawyer is required to check the accuracy and currency of the details of the s112 directions recorded against the day's transcript session in the Commission's case management system. The case lawyer is then required to arrange for any suppressed information to be redacted from the relevant transcript or

exhibit to which the order refers prior to authorising its publication on the Commission's public website.

The above procedures were followed in Operation Hector to ensure compliance with the s 112 direction affecting the Transport for NSW employee.

3. Can you provide a brief outline of any outstanding actions to be taken in response to Committee recommendations directed to the Commission that were made in the previous Parliament?

The Commission has identified six reports made by the Committee during the previous Parliament. These are:

- a) Review of the 2017-2018 Annual Reports of the ICAC and the Inspector of the ICAC – November 2019 (**Report 1**)
- b) Review of the 2018-2019 Annual Reports of the ICAC and the Inspector of the ICAC – August 2020 (**Report 2**)
- c) Review of the 2019-2020 Annual Reports of the ICAC and the Inspector of the ICAC – August 2021 (**Report 3**)
- d) Reputational impact on an individual being adversely named in the ICAC's investigations – November 2021 (**Report 4**)
- e) Review of the 2020-2021 Annual Reports of the ICAC and the Inspector of the ICAC – October 2022 (**Report 5**)
- f) Review of aspects of the *Independent Commission Against Corruption Act 1988* – December 2022 (**Report 6**).

Report 1 did not contain any recommendations directed to the Commission.

Report 2 contained a recommendation that when the annual reporting period falls within an election year, the Commission should include an explanation in its annual report about why there may have been fewer meetings with the ICAC Committee due to the election and subsequent reconstitution of the ICAC Committee in the new Parliament.

The Commission accepts this recommendation.

The Commission did not consider it necessary to include such a statement in its 2022-23 annual report as the number of meetings in which Commission officers appeared was unchanged from the 2021-22 period (one each). I note that the number of reports published by the Committee in both years also remained the same (two each).

Report 3 contained two recommendations directed to the Commission:

- a) That the Commission provides the Committee with the updated Operations Manual once it is finalised.
- b) That the Commission provides an update in its next annual report as to the uptake and effectiveness of its newly launched Witness Cooperation Policy.

The Commission's work on updating the Operations Manual is an ongoing process.

The Operations Manual contains highly sensitive investigative methodology and is not in the public domain. With the exception of physical surveillance policies and procedures, which contain highly confidential methodology, the Commission can make a copy of the Operations Manual available to members of the Committee for inspection at the Commission's premises should the Committee wish.

The Commission's 2022-23 annual report provides an update on the Commission's Cooperation Policy (see page 65).

Report 4 contained three recommendations directed to the Commission:

- a) The Commission should consider implementing mental health protocols for individuals as part of its investigations.
- b) The Commission prepare and publish with each report a table of persons involved in that inquiry, with the indication that the person was the subject of an adverse finding, a corruption finding or was a witness only.
- c) That the Commission updates the relevant investigation page on its website following a judicial proceeding.

The Commission's response to these recommendations was provided by Chief Commissioner the Hon Peter Hall KC when he gave evidence to the Committee on 2 May 2022 during the Committee's inquiry on its review of the 2020-2021 annual reports of the ICAC and the Inspector of the ICAC. The relevant evidence is at transcript pages 16 and 17. The Commission's response is also set out at pages 50 – 51 of its 2021-22 annual report.

In short, with respect to Recommendation a), in September 2022 the Commission adopted a new Operations Manual Work Instruction on witness welfare which provides for the identification and management of risks to the health and safety of persons impacted by Commission investigations.

Since then, the Commission has:

- undertaken a recruitment process for a witness liaison officer, with the successful candidate currently undergoing security vetting,
- finalised the procurement process for a witness mental health referral service and training of Commission staff,
- drafted a new Operations Manual procedure, which will be finalised shortly,
- organised for a number of staff to undertake a Mental Health First Aid course.

For the reasons set out by Chief Commissioner Hall and set out in the 2021-22 annual report, the Commission decided against implementing Recommendation b). In coming to that decision, the Commission took into account the following considerations:

- i. To be effective, any table would need to be placed in a prominent part of the report.
- ii. Currently, each s 74 report contains a *Summary of investigation and outcomes*. This sets out the details of corrupt conduct findings made against individuals and the s 74A(2) statements made in the report. This clearly indicates who has been found to be corrupt (and, by implication, who has not found to be corrupt).
- iii. There may be other persons named in the body of a report who are subject to adverse factual findings falling short of corrupt conduct. Identifying them in a table may possibly increase the likelihood of reputational damage to them by providing a central and prominent reference point where such persons are identified.
- iv. The fact that a witness who is not subject to any corrupt conduct or other adverse finding is otherwise named in a report does not involve any reputational damage to that person. It will be clear from the context in which they are named that there is no adverse finding. In these circumstances,

identifying them in a table is unnecessary. Indeed, some may not relish their contribution to the inquiry being made prominent by having their name appear in such a table.

With respect to Recommendation c), the Commission accepts that where any finding of corrupt conduct is overturned by a court, it is appropriate for the Commission to publish that fact on the relevant investigation website page (in addition to publishing such information in its annual report).

Report 5 contained one recommendation directed to the Commission, being that the Commission update the Committee on the outcome of its review of its information handling practices.

On 17 November 2022, I wrote to the Chair of the Committee with an update on the outcome of the review. A copy of that letter was published on the Committee's website.

Report 6 contained one recommendation directed to the Commission, being that the Commission, 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.


The Commission accepted this recommendation.

The Commission's 2022-23 annual report provides information on how the increased funding received for 2022-23 assisted its investigative function (see pages 34-35).

The increase in funding has also assisted the preparation of the operation Hector's 74 report by permitting additional resources to be allocated to the drafting of the report.

Please let me know if you require any further information in relation to the above.

Yours sincerely


The Hon John Hatzistergos AM
Chief Commissioner

9 January 2024