

**Submission  
No 8**

**REVIEW OF ASPECTS OF THE INDEPENDENT COMMISSION AGAINST  
CORRUPTION ACT 1988**

**Name:** Professor Nicholas Cowdery AO QC

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## **Inquiry into: Review of aspects of the Independent Commission Against Corruption Act 1988**

SUBMISSION BY: **PROFESSOR NICHOLAS COWDERY AO QC FAAL**

28 July 2022

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I was invited by email message on 16 June 2022 to make a submission to the inquiry “in [my] legal expertise”. This submission is made in my personal capacity.

I am presently (among other appointments) an Adjunct Professor in the Sydney Institute of Criminology, University of Sydney and a Visiting Professorial Fellow in the Faculty of Law & Justice, University of New South Wales. I am a former Director of Public Prosecutions for NSW (1994-2011) and I was a Barrister from 1971 to 2017. I have been an Associate (Acting) Judge of the District Court of NSW for periods in 1988, 1989 and 1990. I am a member of the Centre for Public Integrity ([www.publicintegrity.org.au](http://www.publicintegrity.org.au)) Committee for a National Integrity Commission. I am a member of the Committee of the NSW Council for Civil Liberties.

On 23 June 2016 I made a submission to this Committee during its Inquiry into the “ICAC Inspector’s Report to Premier: The Inspector’s Review of the ICAC” and on 28 July 2020 I made a submission to the Inquiry into the “Reputational Impact on an Individual being Adversely Named in the ICAC’s Investigations”. I adhere to the views I expressed in those submissions.

### **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.

### **GENERAL SUBMISSION**

In general terms I agree with and support the submissions made to this Inquiry by the NSW Council for Civil Liberties.

I had some involvement in the preparation of those submissions in my capacity as a member of the Committee of the NSWCCCL and I see no need to expand on those submissions here.

I add brief submissions on the Terms of Reference below.

#### TERM OF REFERENCE 1

This refers to “time standards” in place to “finalise reports” (of which there are presently none).

There is a difference, in my mind, between time standards, which are indicative, and time limits, which are directory. I do not consider that either should be designated for the reasons set out in the NSWCCCL submission. If the ICAC is properly resourced and competently staffed, it may be expected that it will comply with its statutory obligations in a reasonably timely manner.

The meaning of “finalise reports” is also uncertain. Is it intended to refer to all steps along the way to such an outcome, from the beginning of an investigation, or only to the actions to be taken in the period after all investigations are complete (including – or not? – the procedural fairness steps of providing submissions and drafts to the parties and dealing with responses) and all that remains is to furnish a report? Is it intended to refer only to a final report, or is it contemplated there would be scope for steps to be taken as in the Northern Territory (see the NSWCCCL submission)?

In any event, any such time standards or limits must inevitably be arbitrary and could be productive of unfairness and ineffectiveness in particular cases.

#### TERM OF REFERENCE 2

In my view the present avenues available for judicial review are adequate and sufficient and no benefit would accrue from an attempt to codify them because of the myriad circumstances that might arise and would have to be described in such a code.

I draw attention to the ICAC website where one can find the Accountability Mechanisms; External that serve to fill any gaps that may exist in judicial review options presently existing.

#### TERM OF REFERENCE 3

In my view the role and powers of the Inspector are appropriate and sufficient.



Nicholas Cowdery AO QC FAAL