

**Submission
No 10**

REVIEW OF ASPECTS OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988



Organisation: NSW Council for Civil Liberties

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NSWCCL SUBMISSION

COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION

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NSWCCL

Acknowledgement of Country

In the spirit of reconciliation, the NSW Council for Civil Liberties acknowledges the Traditional Custodians of Country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all First Nations peoples across Australia. We recognise that sovereignty was never ceded.

About NSW Council for Civil Liberties

NSWCCL is one of Australia's leading human rights and civil liberties organisations, founded in 1963. We are a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. We also listen to individual complaints and, through volunteer efforts, attempt to help members of the public with civil liberties problems. We prepare submissions to government, conduct court cases defending infringements of civil liberties, engage regularly in public debates, produce publications, and conduct many other activities.

CCL is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

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The NSW Council for Civil Liberties (**NSWCCL**) is grateful for the opportunity to make a submission to the Committee's Inquiry to review and report on aspects of the *Independent Commission Against Corruption Act 1988* (NSW) (**the Act**).

Preliminary comments

- 1 Before addressing the specific terms of reference of this Inquiry, NSWCCL would like to make some general comments on the role and significance of the Independent Commission Against Corruption (**ICAC**) and outline some issues about its ongoing effectiveness. These comments build upon our previous submission to the Committee's inquiry into the reputational impact on an individual being adversely named in the ICAC's investigations (**previous submission**).¹ The Committee's resulting Report 4/57 published in November 2021 appears to be the genesis of the present terms of reference.²
- 2 ICAC plays a key role in protecting the integrity of our government and public institutions, and instilling public confidence in the state democratic system. This has become especially important in recent decades as increasingly complex forms of corruption pose a serious threat to the public good and public trust in government is at record low levels.
- 3 Corruption is a major threat because it:
 - (a) undermines the integrity of the political system;
 - (b) perverts the policy making process; and
 - (c) causes public resources to be diverted and utilised for private or party gain.
- 4 The impacts of corruption also have corrosive effects on our national security and on human rights. In December 2021, as part of the United States Strategy on Countering Corruption, the Biden administration stated:³

Whether grand corruption perpetrated by powerful elites, or administrative corruption carried out by lower-level officials interacting directly with the public, corrupt acts harm the public interest, hamper countries' development, and diminish state capacity. Corruption has been shown to significantly curtail the ability of states to respond effectively to public health crises and to address climate change, migration, and inequities of all forms, while contributing to state fragility. Countries with high levels of corruption are more likely to have populations that suffer from human rights abuses, and are less likely to address those abuses. And states with endemic corruption are more vulnerable to terrorist networks, transnational organized and gang-related criminals, and human traffickers.
- 5 NSWCCL is deeply concerned with the risk of corruption because, if not effectively checked, it threatens our democratic values and processes – including the rights and liberties of free and equal persons. This is why we support a strong and effective ICAC, appropriately constrained by safeguards for individual liberties and rights that are compatible with operational effectiveness.
- 6 As stated in our previous submission, on balance, we consider ICAC to have been a force for good in NSW to date. Notwithstanding criticism from some quarters about individual issues, ICAC continues to enjoy strong community support and currently provides an important restraint on politicians and public officials from using their position for personal or party political reasons.
- 7 Notably, public support for integrity commissions recently burgeoned into calls for a Federal ICAC. The federal government is currently working towards establishing such a body, and is no doubt looking to NSW and elsewhere for appropriate models.
- 8 NSWCCL firmly believes that investigative bodies such as ICAC have the capacity to improve public trust and confidence in government, and accordingly should be adequately empowered, supported and funded

¹ See Submission No 34 dated 31 July 2020, available at <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2595#tab-submissions>.

² Committee on ICAC's Report 4/57 on reputational impact on an individual being adversely named in the ICAC's investigations – November 2021, available at <https://www.parliament.nsw.gov.au/ladocs/inquiries/2595/Report%20-%20Reputational%20impact%20on%20an%20individual%20being%20adversely%20named%20in%20the%20ICAC's%20investigations.PDF> (**Report 4/57**).

³ United States Strategy on Countering Corruption (December 2021) at page 6, available at <https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf>.

by parliament. This continues to be crucial, especially in the present context of disruptions caused to normal governmental and administrative processes by COVID-19.

- 9 We are particularly concerned that significant reductions to the ICAC budget in recent times has reduced its capacity and effectiveness to combat corruption. Although outside the terms of this Inquiry, NSWCCCL once again would like to express its strong support for an immediate increase to the ICAC budget, and for an independent funding model for ICAC to be introduced into the budget cycle.
- 10 In respect of this specific Inquiry, NSWCCCL is not aware of any pressing need to change aspects of the Act. In respect of each of the Terms of Reference, we consider the Act in its current form is appropriate and effective. In our view, the perceived issues surrounding ICAC can be resolved through better resourcing and oversight by parliament, rather than through legislative reform.

Summary of NSWCCCL's Submission to this Inquiry

- 11 The terms of reference of the Inquiry are extracted below:

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.

- 12 In response to the first term of reference, NSWCCCL strongly opposes introducing legislated time standards on the ICAC to finalise reports. Delays in ICAC reporting should be addressed by increasing ICAC's funding and resources, not by imposing arbitrary deadlines on the ICAC.
- 13 In response to the second term of reference, NSWCCCL considers the existing mechanisms of judicial review to be effective and appropriate. We see no obvious benefit in codifying or expanding upon the existing grounds of review as developed in case law, particularly in circumstances where procedural guidelines published in 2018 already provide a good level of transparency regarding the procedural fairness obligations ICAC officers and counsel assisting owe to affected persons in public inquiries.
- 14 In response to the third term of reference, NSWCCCL considers the Inspector's current role and powers under the Act are adequate and appropriate. The investigatory and audit functions of the Inspector, along with the Inspector's decisional freedom and independence, make the Inspector a strong and important soft accountability mechanism over the ICAC. Considering the proper role of the Inspector, in our view the office is unsuitable for conducting any kind of merits review of ICAC findings and should not be given harder powers of redress for individuals against reputational harm. NSWCCCL considers that the Inspector's ability to audit telephone intercepts (recently raised as an issue by the Inspector) is outside the Committee's remit at this time because it would require federal legislative change.

Term of Reference (1): Time Standards in place for ICAC

- 15 The Act does not set any time limit for ICAC to finalise reports, nor are there prescribed time standards. NSWCCCL considers that no such requirement should be introduced into the Act for three reasons:
- (a) Any delays in ICAC's reporting are most likely a consequence of underfunding and a lack of resources to enable investigations to be concluded in a timely manner. Imposing arbitrary time limits or standards on an already overworked and underfunded commission would not address the source of any delay. The cure for any perceived delay is to increase ICAC's funding.
 - (b) The imposition of time limits or standards would increase the likelihood of ICAC failing to expose corrupt conduct, or making findings of corrupt conduct where it should not:
 - (i) By its nature, corrupt conduct is secretive and difficult to detect. Investigations can be complex and time-consuming, and the time required to conduct an investigation is highly specific to the nature of the conduct being investigated. The imposition of time limits or

standards for ICAC to conclude its investigations would only serve as a barrier to uncovering such conduct.

- (ii) Conversely, time limits could risk ICAC failing to consider evidence in favour of an investigated public official. Procedural fairness requires that commissioners have time to consider all relevant material, including material provided by those being investigated, so that findings of corrupt conduct are not made improperly.
 - (iii) Foreknowledge of a time limit or standard, arbitrarily fixed, may discourage the ICAC to commence investigations into matters otherwise worthy of investigation because of resource constraints and the need to prioritise action.
- (c) The imposition of time limits or standards would be out of step with the approach taken in other Australian jurisdictions.

Funding of ICAC

- 16 As NSWCCCL outlined in its previous submission, the significant reductions to ICAC's budget over recent years seriously reduced its capacity and effectiveness.
- 17 Delay is an inevitable consequence of inadequate funding. ICAC cannot make findings in an appropriate time if it does not have the resources available to meet its caseload. Obviously, it would be inappropriate for ICAC to reduce the number of instances of potentially corrupt conduct it investigates.
- 18 The surest path to ICAC reporting in a timely fashion is to fund it properly. This has not been the case in recent years.
- 19 In October 2020, Margaret Crawford, the Auditor-General for New South Wales, reported into the effectiveness of ICAC's funding.⁴ Relevantly, the Auditor-General noted ICAC's funding for 2015-2016 had been cut by 25% from 2014-2015 whilst the demand for assessments of potential corrupt conduct remained steady and its investigation activities increased.
- 20 Only this year has the government agreed to substantially increase ICAC's funding,⁵ albeit to a level that is still less in real terms than it was in 2014-2015.⁶ Whilst this is a positive development and will help mitigate delays, NSWCCCL strongly supports this Committee's previous recommendation that ICAC be independently funded.⁷ An independent mechanism for funding will ensure that ICAC is adequately resourced to investigate appropriate instances of potential corruption.

Time limits/standards and ICAC's effectiveness

- 21 Other than its state of resourcing, the time in which ICAC is able to report its findings will depend on the complexities of the investigations it undertakes.
- 22 As has often been repeated, "*corruption is by its nature secretive and difficult to elicit. It is a crime of the powerful.*"⁸ Corrupt public officials may have significant resources at their disposal to disguise their conduct. Complex and thorough investigations will frequently be required to uncover that conduct. Those investigations take time and each investigation is different. Time limits or standards would hobble ICAC's investigations.
- 23 It is not possible to predict how much time is required to unravel corrupt conduct when it is hidden from public scrutiny. Any time limit placed upon ICAC to conduct and conclude an investigation would necessarily be arbitrary.

⁴ The effectiveness of the financial arrangements and management practices in four integrity agencies (NSW Auditor-General's Special Report, 20 October 2020), available at <https://www.audit.nsw.gov.au/our-work/reports/the-effectiveness-of-the-financial-arrangements-and-management-practices-in-four-integrity-agencies>.

⁵ ICAC's funding was recently increased to \$30 million. See relevant media coverage available at <https://www.smh.com.au/national/perrotet-makes-sweeping-changes-to-boost-icac-funding-20220510-p5ak5a.html>

⁶ As set out in the Auditor General's Special Report dated 20 October 2020 referred to above, ICAC's revenue for 2014-2015 was \$29.5 million, or approximately \$33 million today, based on the RBA's inflation calculator.

⁷ See Committee on ICAC's Report 3/57 titled *Review of the 2019-2020 annual reports of the ICAC and the Inspector of ICAC* – August 2021, available at <https://www.parliament.nsw.gov.au/ladocs/inquiries/2640/Report%20-%20Review%20of%20the%202019-2020%20annual%20reports%20of%20the%20ICAC%20and%20the%20Inspector%20of%20the%20ICAC.pdf>.

⁸ Second Reading Speech of the ICAC Act by the Hon. Nick Greiner (26 May 1988), available at <https://www.icac.nsw.gov.au/about-the-nsw-icac/legislation/second-reading-speech>.

- 24 Moreover, time limits would result in perverse outcomes. The more serious and systemic an instance of corruption, the less likely ICAC would be able to uncover it within an arbitrarily fixed time. And important investigations may never even start. ICAC could be discouraged from commencing an investigation into potentially corrupt conduct for the very reason that the conduct appears too serious or too systemic to be investigated within the applicable time limit. Instead, ICAC would have to prioritise its time and resources so as to finalise investigations into less serious and less systemic complaints of corruption.
- 25 Imposing time standards for finalising ICAC reports regarding corruption allegations would also be incongruous with the fact that there is no statute of limitations or timeframe for the NSW DPP to decide when and whether to charge someone with an indictable offence relating to corruption (such as the offence of misconduct in public office).⁹ It would be an odd result if the police and DPP were able to investigate and prosecute offences arising from corruption without fixed time limits, but ICAC were not able to take the time needed during an investigation.
- 26 Finally, in addition to the effect that time limits would have on ICAC's effectiveness, NSWCCCL is concerned that time limits could prejudice those being investigated. A finding of corrupt conduct can cause significant reputational damage. It is crucial that those under investigation are given the opportunity to respond to allegations and produce potentially exculpatory evidence in their favour. If introduced, time limits could prevent ICAC from receiving or properly assessing that evidence in an orderly fashion.

The approach in other jurisdictions

- 27 When considering whether time standards on the ICAC to finalise reports should be introduced in the Act, it is helpful to observe the practices in other Australian jurisdictions. Only the Northern Territory has a time requirement in their integrity commission legislation for the NT ICAC to deliver a report.
- 28 Section 52(1) of the *Independent Commissioner Against Corruption Act 2017* (NT) provides:
- If the ICAC holds a public inquiry, the ICAC must make a report (a public inquiry report) on the inquiry within 3 months after its conclusion.
- 29 Under s 52(3), the NT ICAC has discretion over the content of a public inquiry report:
- A public inquiry report may:
- (a) contain as much information as the ICAC considers appropriate in relation to the subject matter of the investigation to which the inquiry relates; and
 - (b) include a finding as to whether a person has engaged in, is engaging in or is about to engage in, improper conduct; and
 - (c) include information as to whether an allegation of improper conduct has been referred to, or in the ICAC's opinion warrants referral to, a referral entity.
- 30 However, s 52(7) then provides:
- The ICAC may make one or more further reports under this section in relation to a public inquiry if the ICAC considers it is appropriate to do so in the circumstances.
- 31 As can be seen, whilst in the Northern Territory there is a requirement for the NT ICAC to make a report within 3 months after the conclusion of a public inquiry, a finding as to whether a person has engaged in improper conduct is optional rather than mandatory (per s 52(3)). It is not necessary for NT ICAC to come to any final conclusions. The Northern Territory legislation contemplates that the NT ICAC may (quite properly) issue a report stating that it is not yet in a position to conclude that a person has or has not acted improperly, and then deliver a further report once it is in a position to come to a conclusion.
- 32 NSWCCCL considers that the NT position, which is out of step with that in all other relevant states, should not be adopted in NSW. ICAC would effectively be required to give a public running commentary on the status of an investigation when it is unable to finalise its conclusions. That would benefit no one, least of all a person under investigation.

⁹ The only time limit for commencing criminal proceedings is that set out for summary offences in s 179 of the *Criminal Procedure Act 1986* (NSW). See *Obeid v R* (2015) 91 NSWLR 226 at [133] for a description of the elements of the offence of misconduct in public office.

- 33 If the NSW parliament were to introduce time standards for the ICAC to finalise reports, it would be the first jurisdiction in Australia to do so.
- 34 Although we would be supportive of ICAC setting out a policy to explain how it assesses and manages delay or perceptions of delay, for the reasons expressed, we consider it is inappropriate to impose time standards on ICAC to finalise reports.

Term of Reference (2): Existing Mechanism of Judicial Review

- 35 NSWCCCL considers that the existing mechanisms of judicial review applicable to ICAC are effective and appropriate. Whilst there is no explicit mention of judicial review of ICAC's decisions in the Act, the existing case law has clearly set out the scope and grounds of review of ICAC decisions, and that declaratory relief is available.

Current review mechanism

- 36 The Supreme Court has inherent and statutory supervisory jurisdiction to review the legality of ICAC decisions to ensure it carries out its functions and performs its duties in accordance with the law.¹⁰
- 37 In *Duncan v ICAC* [2014] NSWSC 1018, McDougall J summarised available grounds of review:
- (a) there is a material error of law on the "face of the record" (which includes the reasons given for the decision given by ICAC);
 - (b) ICAC's reasoning 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 ICAC's statutory function, or was not based on a process of logical reasoning from proven facts or proper inferences from those facts;
 - (c) ICAC makes a finding that is not supported by any evidence whatsoever – that is to say, there is no evidence that could rationally support the finding;
 - (d) ICAC has not taken relevant matters into account, or it has taken irrelevant matters into account; or
 - (e) there has been a material denial of natural justice.
- 38 The following are illustrative examples of where judicial review would be available:
- (a) If ICAC were to commence an investigation in relation to an allegation that would not amount to 'corrupt conduct' within the meaning of the Act, a person under investigation may seek a declaration from the Supreme Court that ICAC has no power to investigate.¹¹
 - (b) If ICAC concluded that the conduct of a person could involve a criminal offence, in circumstances where the factual findings it made could not support that conclusion.¹²
 - (c) If ICAC concluded that a person has committed an offence (which is beyond its statutory remit).¹³

Codification and/or expansion

- 39 In the Committee's Report 4/57, it found that an issue that needed further examination was whether the existing mechanism of judicial review could be codified in legislation to make its existence clearer and better understood to the wider public.¹⁴
- 40 In our view, codification of the existing grounds of review would not bring any obvious benefits. All statutory bodies such as ICAC must comply with their governing legislation and are susceptible to judicial review if they act outside their jurisdiction or make an error of law. NSWCCCL does not see good reason at this time to include any specific reminder of this in the Act. Historical attempts to codify judicial review grounds have not always produced the desired effect. NSWCCCL is not aware of any evidence to suggest

¹⁰ *Greiner v Independent Commission Against Corruption* (1992) 28 NSWLR 125 at 130.

¹¹ *Independent Commission Against Corruption v Cunneen* (2015) 256 CLR 1.

¹² *Duncan v ICAC* [2014] NSWSC 1018.

¹³ See s 74B of the Act and *Balog v Independent Commission Against Corruption* (1990) 169 CLR 625.

¹⁴ Report 4/57 at v.

that the public is not aware of and does not understand the availability and function of judicial review procedures.

- 41 NSWCCCL also considers that further grounds of review are not required. In our view, the current grounds outlined above at [37] are sufficient to allow a court to determine whether ICAC has acted lawfully. Further, it would be inappropriate for the Supreme Court to be able to review the 'merits' of an ICAC decision or report, or to remake findings of fact. A court is not a suitable institution to decide questions of that nature and it would be a waste of judicial resources to repeat factual inquiries that ICAC has already undertaken.

ICAC Guidelines and procedural fairness obligations

- 42 The mechanism of judicial review has already been significantly bolstered in 2018 by the tabling of ICAC's procedural guidelines relating to the conduct of public inquiries, pursuant to s 31B to the Act.¹⁵ These guidelines set out a number of requirements for ICAC regarding:

- (a) disclosure of exculpatory evidence and other relevant evidence to affected persons;
- (b) access to relevant documents;
- (c) providing people with reasonable time to prepare before giving evidence; and
- (d) other considerations necessary to ensure procedural fairness.

- 43 While a breach of the guidelines is not determinative of a breach of procedural fairness under judicial review, their publication clarifies the permissible operation of the ICAC during its inquiries and makes it more transparent to the public. We consider that these guidelines already provide a good level of transparency regarding ICAC's procedural fairness obligations.

- 44 Further, as the NSW Bar Association stated in its last submission to the Committee, procedural fairness obligations are a very important protection for individuals against unwarranted reputational damage.¹⁶

Indemnification for costs of successful judicial review

- 45 In judicial review proceedings, the general rule is that costs follow the event. This means that those who successfully have adverse ICAC findings impugned will typically have their costs of the judicial review paid by the unsuccessful party. We think this is appropriate and the general rule on costs should remain for judicial review.

Term of Reference (3): Role and Powers of the Inspector of the ICAC

- 46 In its Report 4/57, the Committee noted that the Inspector cannot conduct a merits review of ICAC's findings, and that the Inspector's functions may not be sufficient in providing redress for individuals against reputational harm.¹⁷

- 47 We consider the Inspector's powers to be adequate and appropriate. The office of the Inspector is unsuitable for conducting a merits review of ICAC decisions, and the Inspector's present powers and functions are sufficient to protect the interests of individuals affected by ICAC decisions.

The Inspector: important soft accountability role and funding

- 48 It is our view that the office of the Inspector is a strong safeguard for individual liberties and rights because it provides an avenue for individuals to bring complaints of misconduct and maladministration by the ICAC and its officers. As the Committee noted in its Report 4/57, the Inspector can carry out investigations into the circumstances surrounding a grievance or complaint against the ICAC.¹⁸

- 49 The Inspector is appointed by the Governor of NSW.¹⁹ The Inspector's functions and powers include the ability to:²⁰

¹⁵ The Guidelines are available on ICAC's website: <https://www.icac.nsw.gov.au/investigations/information-for-people-involved-in-investigations>. See NSW Law Society's submission to the Committee for its Report 4/57 (Submission 39) at 6; NSW Bar Association's submission to the Committee for its Report 4/57 (Submission 38) at 9-15. See also Report 4/57 at [2.14]-[2.15].

¹⁶ NSW Bar Association's submission to the Committee for its Report 4/57 (Submission 38) at 15.

¹⁷ Report 4/57 at [4.25]-[4.26].

¹⁸ Report 4/57 at [4.21].

¹⁹ Section 57A of the Act. See also [1.3 of the Inspector's Annual Report for the period ending 30 June 2021, available at <https://www.oicac.nsw.gov.au/assets/oicac/reports/annual-reports/OICAC-Annual-Report-2020-2021.pdf>.

²⁰ See ss 57B and 57C of the Act.

- (a) investigate and assess complaints about the ICAC, its officers or any aspect of its operations and conduct, and to publish reports and recommendations dealing with such complaints;
- (b) require ICAC officers to produce documents or attend to answer questions;
- (c) refer matters to other public authorities for consideration or action; and
- (d) recommend disciplinary action or criminal prosecution against ICAC officers.

50 The Inspector can also conduct audits of the operation of the ICAC to assess its effectiveness and appropriateness, and does so on a regular basis.²¹ For example, in 2020 the Inspector audited the ICAC's procedures for dealing with counsel assisting in its investigations.²²

51 The Inspector may exercise its functions either on its own initiative, in response to a complaint, or in response to a reference by parliamentary committee or any public authority.²³ Under the Act, the Inspector is explicitly not subject to the Commission in any aspect.²⁴

52 We consider that in light of the functions and powers of the Inspector, and its decisional freedom and explicit independence enshrined in the Act, the Inspector is a powerful and important soft accountability mechanism over the ICAC. It is therefore essential that government provide the Inspector with adequate financial, resourcing and practical support so that it can exercise its crucial accountability functions. However, NSWCCCL does not see any present need to change the Inspector's powers in the Act.

Specific issues and NSWCCCL's responses

- Telecommunication intercepts

53 One limitation that the Committee noted in its Report 4/57 was that the Inspector cannot audit telephone intercepts of ICAC officers because this would require legislative amendment at the Federal level.²⁵ This was the subject of a special report of the Inspector in October 2020.²⁶

54 In response, NSWCCCL considers that expanding the Inspector's audit powers may improve its ability to effectively and appropriately carry out its soft accountability functions under the Act. However, this issue, being a Commonwealth legislative matter, is outside the Committee's purview at this time.

55 If in the future, the issue appropriately falls to the Committee for consideration and the Inspector considers such an expansion appropriate, then NSWCCCL would be open to further considering and making submissions on the matter.

- Stronger powers/consequences

56 The Committee also noted in its Report 4/57 that the publishing of Inspector's reports concerning maladministration or abuse of power by ICAC may not be an effective means for redressing affected individuals.²⁷

57 In response, NSWCCCL considers that the current powers of the Inspector under the Act are appropriate to carry out its soft accountability function by investigating complaints, publishing reports, and conducting audits of ICAC operations.

58 The Inspector should not become a full-blown review body over ICAC decisions and findings, because it would be unsuitable to repose such powers in that office. The Inspector is neither sufficiently resourced nor has the expertise to effectively conduct such a significant review function. The Inspector also does not have the appropriate institutional status to overturn ICAC decisions without generating public outcry.

59 NSWCCCL requests that the Committee take proper account of the Inspector's crucial, yet ultimately soft, accountability function. It is true that the Inspector cannot indemnify or compensate persons affected by an abuse of process by ICAC, and reports and recommendations cannot themselves deliver hard

²¹ Section 57B of the Act.

²² Report 4/57 at [4.24].

²³ Section 57B(2) of the Act.

²⁴ Section 57B(3) of the Act.

²⁵ Report 4/57 at [4.22].

²⁶ Telecommunications (Interception and Access) Act 1979 (Cth) – Serious Gap in Inspector's Powers (Special Report, 27 October 2020), available at <https://www.oiac.nsw.gov.au/assets/oiac/reports/special-reports/Telecommunications-Interception-and-Access-Act-1979-Cth-Serious-Gap-in-Inspectors-Powers.pdf>.

²⁷ Report 4/57 at [4.26].

consequences designed to redress complainants. But in our view, that is not the Inspector's proper role as a soft accountability and oversight mechanism over the ICAC.

60 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, NSWCCCL considers that the Inspector's current powers and functions under the Act are appropriate.

We trust that this submission assists the Committee in its work and would be pleased to offer further assistance if it would be of use.

Yours sincerely,



Josh Pallas
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