

**Submission  
No 14**

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

**Organisation:** Office of the Director of Public Prosecutions

**Date Received:** 1 August 2022

1 August 2022

Honourable Leslie Williams MP  
Chair, Joint Committee on the  
Independent Commission Against Corruption  
Parliament House  
6 Macquarie Street  
SYDNEY NSW 2000

By email: [icaccommittee@parliament.nsw.gov.au](mailto:icaccommittee@parliament.nsw.gov.au)

Dear Ms Williams,

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

Thank you for the opportunity to provide a submission in relation to the inquiry, 'Review of aspects of *Independent Commission Against Corruption Act 1988* (the Act)'. The terms of reference examine whether the Act continues to be effective and appropriate, with particular reference to:

- (1) the time standards in place for the Independent Commission Against Corruption (**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.

The Office of the Director of Public Prosecutions (ODPP) only seeks to make submissions with respect to the question of time standards, noting that the other issues fall outside the scope of the ODPP's engagement with the ICAC and this Office's statutory functions.

**Time Standards**

The ODPP recognises the importance of the timely preparation of public reports by investigative and inquisitorial bodies such as the ICAC. At the same time, the ODPP recognises that the types of matters that come before the ICAC are inherently complicated, factually, legally and procedurally.

In this context, whilst the ODPP supports the introduction or publication of a guideline or performance benchmark in relation to time standards, it does so on the basis that the ICAC must be appropriately funded and resourced.

---

**Office of the Director of Public Prosecutions**

175 Liverpool Street  
Sydney NSW 2000  
Locked Bag A8  
Sydney South NSW 1232  
DX 11525 Sydney Downtown

Phone 02 9285 8888  
Fax 02 9285 8601  
TTY 02 9285 8646

[odpp.nsw.gov.au](http://odpp.nsw.gov.au)

ABN 27 445 689 335

The ODPP does not consider that it is necessary or appropriate to legislate this standard, or to make the time standard binding in some way; there would be no appropriate enforcement mechanism, and the imposition of such a standard may be detrimental to a thorough investigation and assessment of the evidence being undertaken.

When considering time standards and issues of delay, it is important to draw a distinction between delay at the investigative stage, and delay following the completion of the investigative stage/hearings.

With respect to the former, the ODPP notes the broad range of matters that are referred to the ICAC for investigation, due to the expansive definition of “corrupt conduct” under the Act.<sup>1</sup> Because of this, it is not possible to be prescriptive as to which of the investigative powers afforded to the ICAC under the Act ought to be employed, or the amount of time that an investigation into any particular matter or type of matter should take.

In these circumstances, and as the agency ultimately responsible for prosecuting the matters that are the subject of an ICAC investigation, the ODPP does not consider it appropriate to put any time constraints on the conduct of such investigations. If an ICAC investigation is compromised with respect to its thoroughness and, by extension, the fairness with which it is conducted, that can pose a significant detriment to the ODPP’s capacity to successfully prosecute a matter, or to prosecute at all.

Similar considerations arise in relation to the finalisation of the report following the ICAC’s investigation or hearings. The work of the ICAC is complex and technical. The reports are commonly required to consider a significant body of evidence that frequently includes lengthy transcript from public and/or private hearings. The nature of the alleged corruption involved, together with the length of each hearing will be different, meaning that the reasonable time for the completion of a report in one matter will not be reasonable in another. The finalisation of a report may also be interrupted by various legal challenges.<sup>2</sup>

At present, the 2020/21 ICAC Annual Report discloses that the ICAC measures its timeliness of investigations against Key Performance Indicators (KPI).<sup>3</sup> At present the ICAC sets its KPI for the following investigation stages as:

- (1) Within 120 days for preliminary investigations;
- (2) Within 240 days for Strategic Intelligence and Research Unit preliminary investigations;
- (3) If an Operation (full investigation) is commenced the total investigation time is extended to 16 months.

This practice is relatively similar to equivalent commissions in other Australian jurisdictions (see Annexure A attached to this submission). The ODPP would support the continued operation of these KPIs for the investigation stage. The 2020/21 ICAC Annual report also discloses that it maintains a corporate goal<sup>4</sup> to measure timeliness for the publication of reports following a public inquiry. The goal is to publish a report 2 months from the end date of a public inquiry that was of 5 days or less duration, and 3 months from the end date in all other circumstances. It is apparent from the information provided by the ICAC in the report, at Table 22, that this corporate goal was not met in 2020/21, perhaps reflective of those periods being unreasonably short.

---

<sup>1</sup> *Independent Commission Against Corruption Act 1988* (NSW) Part 3.

<sup>2</sup> See for example *Duncan v The Honourable David Andrew Ipp AO QC and Ors* [2013] NSWSC 314.

<sup>3</sup> ICAC Annual Report 2020-2021, pp 34-35.

<sup>4</sup> ICAC Annual Report 2020-2021, Table 22 p 56.



An analysis of Commissions that operate in other jurisdictions reveal that there are no binding time standards that govern the timeframes for Investigations or the publication of reports following hearings. The only exception is in Northern Territory, where the Commission is required to publish a report following a public inquiry within 3 months of the conclusion of the hearing.<sup>5</sup> There is no principled basis to adopt what can only be described as an arbitrary approach in the Northern Territory. The ODPP does not support the introduction of a legislated or enforceable time standard for the ICAC.

Bearing in mind the KPIs and goals by which the ICAC measures itself, the ODPP supports the creation of 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. This would not only promote accountability, but also serve to inform stakeholders and members of the public of the nature of the complex exercise being undertaken by the ICAC. The ODPP also refers to the previous comments of Chief Commissioner Hall that were made to this committee.<sup>6</sup> They remain apposite and describe the relationship between the timeliness of investigation and reporting, and the proper funding and resourcing needed to undertake that task. The ODPP reiterates that support for any adoption of time standards is contingent on adequate funding and resourcing requirements being met.

In the event that any time standard is being considered, the ODPP advocates the time standard or practice note should be developed by the Chief Commissioner, in consultation with internal and external stakeholders. Compliance should be overseen by the Chief Commissioner. This accords with accepted Court practices in New South Wales.

For any further information concerning these comments, please contact [REDACTED], Deputy Solicitor for the Public Prosecutions (Legal), Solicitor's Executive, Office of the Director of Public Prosecutions on [REDACTED] or [REDACTED].

Yours faithfully

[REDACTED]

Sally Dowling SC

Director of Public Prosecutions

---

<sup>5</sup> *Independent Commissioner Against Corruption Act 2017* (NT) s 52(1).

<sup>6</sup> The Hon. Peter Hall QC, Chief Commissioner, Independent Commission Against Corruption, [Transcript - Committee on ICAC - Public Hearing - 18 September 2020.PDF \(nsw.gov.au\)](#), 18 September 2020, p 47.



## ODPP Submissions – Annexure A

JURISDICTION	TIME STANDARDS/BENCHMARKS FOR INVESTIGATIVE STAGE
New South Wales – Independent Commission Against Corruption	Key Performance Indicators: <ul style="list-style-type: none"> <li>i) Within 120 days for preliminary investigations</li> <li>ii) Within 240 days for Strategic Intelligence and Research Unit preliminary investigations</li> <li>iii) If an Operation (full investigation) is commenced the total investigation time is extended to 16 months</li> </ul> * This KPI has been further refined for the 2021-22 period to incorporate a further distinction between standard and complex investigations
Queensland – Crime and Corruption Commission	From Commission website: Standard investigation within 12 months Complex investigations over 12 months.  * Annual Report - Benchmark measured against 12 months
Victoria – Independent broad-based Anti-corruption Commission	From Commission website: Standard investigations within 9 months Complex investigations within 18 months.  * Annual Report - Benchmark measured against 9 months for standard investigations, 18 months for complex.
South Australia – Independent Commission Against Corruption	From Annual Report: Performance benchmark set of 12 months from allocation through to the file closure. (File closure is considered to be the time that the Commissioner agrees with and accepts the investigator's final recommendation.)
Western Australia – Corruption and Crime Commission	From Annual Report: Key performance indicator to complete investigation within 12 months
Tasmania – Integrity Commission	No time limit on investigation – no key performance indicators disclosed
ACT – Integrity Commission	No time limit on investigation – no key performance indicators disclosed
Northern Territory- Independent Commissioner Against Corruption	No time limit on investigation – no key performance indicators disclosed