Submission No 2

RELEVANT RECOMMENDATIONS OF THE BRODERICK REPORT

Organisation: NSW Independent Commission Against Corruption

Date Received: 30 May 2025

ICAC
INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES

Mr Alex Greenwich MP
Chair
Legislative Assembly
Standing Committee on Parliamentary Privilege and Ethics
Parliament House
Macquarie Street
Sydney NSW 2000

By email: Ethics.Committee@parliament.nsw.gov.au

Our Ref: AD25/0072

Dear Mr Greenwich

Inquiry into relevant recommendations of the Broderick report

Thank you for inviting the Commission to make a submission to the Committee's Inquiry.

The code of conduct and corrupt conduct

Members of the Committee would be aware that conduct falling with s 8 of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act") does not amount to corrupt conduct unless it could constitute or involve the following (see s 9(1) of the ICAC Act):

a) a criminal offence, or
b) a disciplinary offence, or
c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or
d) in the case of conduct of a Minister of the Crown or Parliamentary Secretary or a member of a House of Parliament—**a substantial breach of an applicable code of conduct**. [Emphasis added.]

If the Legislative Assembly decides to amend its code of conduct "to address bullying, sexual harassment and sexual misconduct more explicitly" (Broderick recommendation 3.1) or to "protect survivors and witnesses from retribution for making a report" (Broderick recommendation 5.5), it may bring additional forms of conduct within subsection 9(1)(d) above.

In addition, ss 9(4) and (5) state:

> *(4) Subject to subsection (5), conduct of a Minister of the Crown or Parliamentary Secretary or a member of a House of Parliament which falls within the description of corrupt conduct in section 8 is not excluded by this section if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.*

Level 7, 255 Elizabeth Street, Sydney NSW 2000 | GPO Box 500 Sydney NSW 2001 | ABN 17 934 402 440
T 02 8281 5999 | F 02 9264 5364 | E icac@icac.nsw.gov.au | www.icac.nsw.gov.au

> *(5) Without otherwise limiting the matters that it can under section 74A (1) include in a report under section 74, the Commission is not authorised to include a finding or opinion that a specified person has, by engaging in conduct of a kind referred to in subsection (4), engaged in corrupt conduct, unless the Commission is satisfied that the conduct constitutes a breach of a law (apart from this Act) and the Commission identifies that law in the report.*

Given that laws, such as the *Anti-Discrimination Act 1977*, already make various forms of harassment unlawful, it is possible that instances of the conduct addressed in the Broderick report could fall within ss 9(4) and (5). If so, the Commission would not necessarily need to rely on s 9(1)(d).

The connection between bullying, harassment and corrupt conduct

By itself, bullying and harassment is not regarded as corrupt conduct. Neither "bullying" nor "harassment" appear anywhere is ss 7-9 of the ICAC Act, which defines corrupt conduct.

There are, however, three recent Commission reports that may be relevant to the Inquiry. These are the *Investigation into the conduct of a then manager and a former contractor at Canterbury-Bankstown Council* (Operation Mantis, December 2024), *Investigation into the conduct of the local member for Drummoyne* (Operation Witney, July 2022) and *Investigation into political donations facilitated by Chinese Friends of Labor in 2015* (Operation Aero, February 2022).

In Operation Mantis, it was noted that contingent workers described a local government official as "*very bullying*". The Commission noted that the conduct of the public official "*contributed to the negative workplace culture*" and resulted in contingent workers being reluctant to "*raise issues or report corruption*" (p. 109).

In Operation Witney, the Commission found that a member of parliament behaved towards a local councillor "*in an intimidating and threatening manner*" (p. 126) and also threatened to withdraw political support from a number of councillors if they did not move resolutions and vote as he urged (p. 140).

This threatening behaviour formed part of "*a protracted course of conduct*" intended to improperly influence the local councillors and benefit the member's family's property interests in the area.

However, in making its finding of corrupt conduct, the Commission did not rely on s 9(1)(d) of the ICAC Act. Rather, it found that the conduct could constitute the common law offence of misconduct in public office, and therefore fell within s 9(1)(a).

In Operation Aero, the Commission found that a member of parliament engaged in corrupt conduct by attempting to procure false testimony from a witness. The attempt took place in the member's office in Parliament House. The Commission found that the member deliberately chose this location to use the "*prestige of his office to pressure* [the witness] *to lie*". The report stated:

> *A parliamentary office is a venue that carries with it an implication of power, authority and integrity. It is associated with the institution of Parliament, which members of Parliament have committed to respect. The allocation of a parliamentary office to a member of Parliament is a privilege, which attaches to that official position and which is protected by security and can be used with confidentiality.*

In this investigation, the Commission also based its finding on s 9(1)(a) rather than s 9(1)(d) of the ICAC Act. That is, the Commission found the conduct could involve an offence of attempting to hinder an investigation under s 315 of the *Crimes Act 1900*.

In addition, a deliberate failure to act or carry out an official duty could be construed as "partial" conduct or a "breach of public trust" under s 8 of the ICAC Act. Whether or not this amounted to serious corrupt conduct would depend on the factual circumstances of each case, but it is possible that failing to report or covering up a serious offence, such as a sexual assault, could fall within the Commission's jurisdiction. In practice, however, such matters are more likely to be investigated by police than the Commission.

Impact on whistleblowing

A person employed under the *Members of Parliament Staff Act 2013* is considered a public official pursuant to the *Public Interest Disclosures Act 2022* and can make a public interest disclosure. If staff make a disclosure about serious wrongdoing to a relevant person, they would be considered whistleblowers, which includes confidentiality requirements and protection against detrimental action.

Persons who take detrimental action against whistleblowers may engage in bullying or harassment. Consequently, any efforts to prevent or respond to bullying/harassment could play an important role in promoting reports of suspected wrongdoing, including serious corrupt conduct.

The Commission's *Investigation into the conduct of the then member of parliament for Wagga Wagga and the then premier and other* (Operation Keppel, June 2023) observed that parliamentary and electorate staff are in a difficult and vulnerable position, as their employment is at the discretion of the individual member but paid for by the NSW Parliament. The Commission therefore suggests that staff may have greater confidence in internal reporting systems the if they can choose from a number of reporting channels.

Taking detrimental action – which can include intimidation, bullying or harassment – against the maker of a public interest disclosure is already an offence under the *Public Interest Disclosures Act 2022*. Similarly, Part 8A of the ICAC Act sets out a number of protections for persons who assist the Commission with its functions, along with offences that are consistent with those in the PID Act.

Accordingly, augmenting the code of conduct as recommended by the Broderick report (recommendation 5.5), is unlikely to have a significant impact on the Commission's functions in respect of whistleblowers and witnesses.

Penalties for breaching the code

Broderick recommendation 3.1 makes reference to "*stronger accountability arrangements*" and "*proportional penalties for breach of the Code*".

The Commission has previously outlined its view that Parliament has the power to ensure that there are proportionate sanctions for breaches. These sanctions can be implemented by Parliament irrespective whether it is for a breach of an applicable code of conduct, a regulation, or relevant standing orders.

As outlined, for example, in the Commission's submission made to the inquiry by the Legislative Council Privileges Committee into the Draft Constitution (Disclosures by Members) Regulation 2024, the range of sanctions could include, but is not limited to the following:

- rectification
- reimbursement
- attendance at additional training
- apology to the relevant House
- for the member to provide an explanation at the Bar of the House
- admonish or reprimand the Member
- suspend the Member from the service of the House.

Conclusion

In summary, the Commission does not oppose any of the Broderick recommendations that form part of the Inquiry. While their implementation would expand the applicable code of conduct, doing so would not significantly broaden the Commission's jurisdiction or functions. This is primarily because the ICAC Act already contains ample scope to investigate alleged corrupt conduct by members of parliament and their staff.

Should you have any questions about the commission submission, please contact my office or Mr Lewis Rangott, Executive director, Corruption Prevention at [redacted].

Yours sincerely

[redacted]

The Hon John Hatzistergos AM
Chief Commissioner

30 May 2025