

Budget Estimate Inquiry – Portfolio Committee No. 1 - Premier and Finance
Wednesday 18 August 2021
Independent Commission Against Corruption answers to Questions taken on notice

Question 1:

The Hon. DANIEL MOOKHEY: Thank you to all the commissioners and associated personnel for your appearance today. I might just direct these questions to the Chief Commissioner of the ICAC. How many referrals have you received from government agencies in the past financial year?

Mr HALL: I am afraid I will have to take that on notice. I do not have the figures readily to hand.

Answer:

In 2020-21, the Commission received 727 reports from principal officers of NSW public authorities under section 11 of the ICAC Act.

Question 2:

The Hon. DANIEL MOOKHEY: Okay. On notice, are you also able to provide us with references you have received from the police as well? If you can isolate that particular piece of information that would be useful, and any other general statistics you can would be most useful.

Mr HALL: Very well. We will check our records and let you know.

Answer:

In 2020-21, the Commission received 22 disseminations from law enforcement bodies. Of those disseminations, eight were received from the NSW Police Force.

Question 3:

Mr REED: Can we just clarify. That was referrals that are still being assessed, was it, that you were asking about?

The Hon. DANIEL MOOKHEY: Yes.

Mr REED: As distinct to matters that have become our preliminary inquiries. I think that is where—

The Hon. DANIEL MOOKHEY: Well, let us break it down by stage. If we can get the information as to how many are being preliminarily assessed and how much have proceeded beyond that stage as well—

Mr REED: So, to the end of 2020-21 we assessed 2,916 matters and we commenced 16 preliminary investigations, four SIRU preliminary investigations and seven new full operations. We will get you those figures, but that gives you the figures to the end of 2020-21.

Answer:

Of the reports received by the Commission from principal officers under section 11 of the ICAC Act in 2020-21, 21 remain open, while 706 have been finalised. Of those 21 matters, the Commission is:

- conducting a preliminary investigation under section 20A of the ICAC Act in one matter,
- conducting an investigation under section 20 of the ICAC Act in one matter,
- providing corruption prevention advice to an agency in one matter, and
- the remaining 18 matters remain under assessment and the Commission is yet to decide whether it will take investigative action.

Of the 22 disseminations from law enforcement bodies received in 2020-21, all matters have been finalised.

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Question 4:

The Hon. DANIEL MOOKHEY: Thank you, Chief Commissioner. Just turning to another matter, in the February budget estimates hearings it was established that the Department of Planning, Industry and Environment [DPIE] had made a reference to ICAC about planning processes affecting Rhodes East. Do you have recall of that particular matter?

The Hon. DANIEL MOOKHEY: Yes. I am asking: Are you in a position to provide us with any information as to how long it will take you to assess that particular matter?

Mr HALL: I will take that on notice. We will have a look at our records. If we can provide you with any information once we have properly identified the matter you are referring to, we will provide it if we can.

Answer:

It appears that the member's question refers to a report that the Commission received from the Department of Planning, Industry and Environment under section 11 of the ICAC Act on 18 February 2020. The Commission completed its assessment in 304 days.

Question 5:

The Hon. DANIEL MOOKHEY: In respect to that policy of returning matters to an agency to investigate itself, have you done that in respect to referrals received about Insurance Care NSW, otherwise known as icare?

Mr HALL: I will take that question on notice. I may or may not be able to provide you with information.

The Hon. DANIEL MOOKHEY: On notice, are you also able to tell us how many references you have received, or the ICAC has received, about icare in the last three years and what the outcome of each assessment was?

Mr HALL: We are in a position to provide figures. Those matters have been, as it were, segmented and dealt with significantly over time. I will be able to have our files checked to see if we can provide you with the information you are after.

Answer:

The Commission does not have a policy to return all reports it receives from principal officers of NSW public authorities under section 11 of the ICAC for those public authorities to investigate. Rather, it is the Commission's policy to consider the circumstances of each report and determine what action, if any, the Commission will take in response. When carrying out its assessment, the Commission is guided by section 12A of the ICAC Act, which states:

In exercising its functions, the Commission is, as far as practicable, to direct its attention to serious corrupt conduct and systemic corrupt conduct and is to take into account the responsibility and role other public authorities and public officials have in the prevention of corrupt conduct.

The Commission's policy states that when considering whether to refer a matter back to a NSW public authority and require it to conduct an investigation and provide a report to the Commission (per sections 53 and 54 of the ICAC Act), the Commission must consider whether there appears to be any conflicts of interest or other issues that are likely to jeopardise the integrity of the public authority's investigation.

When referring a matter back to a NSW public authority and requiring it to conduct an investigation under sections 53 and 54 of the ICAC Act, the Commission has oversight of the investigation. The

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Commission requires the public authority to supply an investigation plan and a progress report. The Commission reviews the final report from the investigation. In addition, section 55 of the ICAC Act provides a pathway for the Commission to raise any issues concerning the investigation, including any conflicts of interest affecting its conduct.

The Commission would not, and is not aware of any time when it has, referred a matter to a person to investigate their own conduct. Where senior officers of a public authority are alleged to be involved, the Commission takes steps to ensure the investigation is not affected by a conflict of interest, for example by referring the matter to another senior officer in the public authority for investigation, to a body independent of the public authority concerned, or the Commission may decide to undertake a preliminary investigation under section 20A of the ICAC Act.

Between 1 July 2018 and 30 June 2021, the Commission received 59 complaints (under section 10 of the ICAC Act) and reports from principal officers (under section 11 of the ICAC Act) concerning icare. The Commission decided to take no action in relation to 43 of those matters, and refer eight matters to icare and other NSW public authorities for their information. The Commission made enquiries of icare and another public authority in respect of seven matters, resulting in the Commission taking no further action (three matters), referring details for the information of icare and another public authority (two matters), and requesting an investigation report from icare and another public authority (two matters). The Commission also requested that icare provide a copy of an investigation report in one additional matter.

Question 6:

Mr DAVID SHOEBRIDGE: Thank you, Mr Hall. It is hard to see how you can have genuine statutory independence if you are subject to financial strictures from those you are oversighting. That is a much longer discussion point. Could you provide to the Committee the correspondence that you sent?

Mr HALL: Yes, that will be done.

Answer:

A copy of the letter is attached to this Questions and Answers document.

The Hon. Gladys Berejiklian MP
Premier of NSW
52 Martin Place
SYDNEY NSW 2000

Dear Premier

SUBJECT: Funding Reform Proposals for Independent Integrity Agencies

This joint letter is written on behalf of the Independent Commission Against Corruption (ICAC), the NSW Electoral Commission and the Auditor-General for New South Wales.

First, could we acknowledge the significant demands faced by you and your Government at this time responding to the COVID-19 pandemic.

We further understand that by 5 August 2021, the Government had intended to provide a formal response to the Parliament on the Auditor-General's performance audit of *The effectiveness of the financial arrangements and management practises in four integrity agencies*.

In this context, the purpose of this letter is two-fold. First, to ask that the Government's response to the audit report not be rushed. Second, that we have an opportunity to meet with you to discuss the audit findings and proposed response.

The issues discussed in the *Performance Audit Report* involve matters of considerable complexity and of high public importance not only to the independent integrity agencies discussed in it but, in particular, to the New South Wales community. That being the case:

1. The NSW Electoral Commission, the Auditor-General for NSW and the NSW ICAC, to the extent that it is considered appropriate and necessary, will seek to work with the Government to ensure the best possible outcome in the public interest.
2. To that end, there clearly must be a full and an effective consultative process involving all stakeholders for the development of a new funding model or models.

Whilst there have been some preliminary discussions between representatives of the ICAC and the NSW Electoral Commission and Ministerial Office staff around ideas and concepts, there has not been the required detailed consultation with those agencies on issues and solutions. The pressing concern held by us is that at this point in time, and before any Government response, the public interest can only be effectively served in relation to this matter by a full and thorough examination of the issues raised and addressed in the abovementioned *Performance Audit Report*. It is only by such an examination that the problems identified in the report concerning the existing funding arrangements can be dealt with through the development of a new funding system(s) or model(s).

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Contribution by our Agencies

The NSW Electoral Commission, the ICAC and the Audit Office of NSW desire to work with you and all stakeholders, including the NSW Parliament, with a view to achieving an optimal outcome in the public interest.

Given the Government's intention to respond to the *Performance Audit Report* in the near future, it is important that such consultation occur prior to any final decision being reached by the Government.

We therefore respectfully request that the date for the response be changed to 29 October 2021 to enable the opportunity for a proper consultation process to be undertaken with us and other affected agencies. This would also better facilitate a meeting with you at an appropriate time during coming months to discuss the issues surrounding this matter.

A copy of this letter has been sent to the Hon Don Harwin MLC, Special Minister of State of New South Wales.

Yours sincerely

The Hon. Keith Mason AC QC
Chair
NSW Electoral Commission

15 July 2021

The Hon. Peter Hall QC
Chief Commissioner
NSW ICAC

15 July 2021

Margaret Crawford
Auditor-General for NSW
Audit Office of NSW

15 July 2021

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