

**INQUIRY INTO BUDGET PROCESS FOR INDEPENDENT  
OVERSIGHT BODIES AND THE PARLIAMENT OF NEW  
SOUTH WALES**

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**JAMIE PARKER MP**  
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The Chair, Mr David Shoebridge MLC  
Public Accountability Committee  
GPO Box 5341  
SYDNEY NSW 2000

Monday 18 November, 2019

Dear Committee,

**Re: Submission to the Inquiry into the budget process for independent oversight bodies and the Parliament of New South Wales**

Thank you for the opportunity to provide a submission to the NSW Parliamentary Inquiry into the budget process for independent oversight bodies and the Parliament of NSW.

My submission refer to the Law Enforcement Conduct Commission, the NSW Electoral Commission, the Parliament (Legislative Council and the Department of Parliamentary Services), and the Independent Commission Against Corruption.

**Law Enforcement Conduct Commission (LECC)**

The LECC was created in 2017 as an independent investigative commission to provide oversight of the NSW Police Force and NSW Crime Commission. Independent oversight is intended to respond to public concerns and complaints, identify police misconduct in individual cases and provide opportunities for policy and procedural reforms to improve integrity within the NSW Police Force. These activities are essential to maintaining public trust in the Police Force.

The Annual Report of the LECC showed a significant shortcoming in the budget provided to the body, meaning it was unable to properly conduct its duties.

*Despite our best efforts and the Commission's hardworking staff, we are constrained by a budget that does not allow us to take on all the investigations we would like. We*

*are, like most other State Government organisations, expected to achieve so-called "efficiency dividend" savings of 3% of our annual budget for the next four years.*

The LECC's budget was identified as the reason the body was able to only fully investigate 2% of the more than 2,547 complaints it began an initial assessment of. This is partially as a result of the efficiency dividend required from the organisation where the previous 3% cut to the organisation's budget has been increased to 5% for the next four years.

The result of this is that the Commission will be forced to find another \$6m in budget cuts over the next four years. There is no projected reduction in the number of complaints the body will receive or any other reason to justify this proposed reduction and it will have a significant impact on the LECC's ability to respond to complainants.

As the LECC Annual Report says:

*The fact is that the reduction in our financial means will inevitably result in reduction of staff and, necessarily, less oversight of law enforcement.*

Clearly significant additional resources must be allocated to the body to allow it to discharge its duties and to ensure that significant cases of police misconduct or harm to members of the community or groups do not slip through the cracks. As a start the efficiency dividend should be removed and a comprehensive assessment undertaken of the funding increases required to ensure the LECC is able to fulfil its mandate.

### **NSW Electoral Commission**

The lack of transparency in setting budgets and the effective veto that the executive has over the budget of the NSW Electoral Commission was addressed by the Commissioner in the evidence he gave to the Budget Estimates hearing on 5 September 2019.<sup>1</sup> This evidence established a clear need for a transparent, rigorous and independent budget process for this agency. However these observations could apply equally to all oversight bodies the subject of the inquiry.

Mr Schmidt's evidence included the following concerns about the expanding role of the Commission and the tightening budgetary landscape:

*Of course, the functions of the commission have expanded dramatically: funding and disclosure, the administration of public funding, the enforcement compliance which goes with that, the lobbyists, a range of other functions as well. The complexity and*

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<sup>1</sup> <https://www.parliament.nsw.gov.au/lcdocs/transcripts/2231/Transcript%20-%205%20September%2019%20-%20UNCORRECTED%20-%2020PC%201%20-%20Premier%20-%20Berejiklian.pdf>

expectations of the community as to what they will get from an election experience and the integrity have changed too.

...

*What I did when I came in was, first off, I commissioned in late 2016 a review by PricewaterhouseCoopers about the funding model. Its report came back and said, "It is fragile. There is a genuine risk with the way you are funded. You have a certain number of core people under the labour expenses cap and you have all these other people coming in and out with uncertainty for shorter or longer periods of time." So I put up a budget bid based on that; I was unsuccessful. Then the Auditor-General put out a report looking at certain agencies and the use of contingent labour and basically said contingent labour is not a good use of funding. It is not efficient; does not get the most bang for your buck.*

He also considered the impact of the latest round of cuts:

*A couple of weeks ago I was advised that—much earlier in the piece, with the first round of efficiency dividends, we had been advised of a saving for next year of \$1.6 million—we have now got an additional saving of \$1.2 million, which works out at being \$2.879 million, which I will need to find. At 30 June next year, I need to have that sorted out so I can go into the new financial year. How do I apply that? The advice I received when I was advised of the cut was that the expectation was that it would be primarily put towards salaried positions. If I applied that amount to my labour expense capped resources, that would be a reduction of that funding at 16.3 per cent. If I applied it to my other operating—electricity, rent—26.7 per cent. The total cost for the agency of those efficiency dividends is 10.1 per cent.*

The lack of certainty in budgets can often be critical to an agency's performance with uncertainty leading to the loss of long term valued staff and experience.

### **Parliament (Legislative Council and the Department of Parliamentary Services)**

The budgets for Parliament are allocated in a similar manner to the oversight agencies and the lack of independence in setting this budget has led to significant shortcomings which are impacting the operation of the Parliament. This is in addition to new requirements of the organisation, complex audiovisual and infrastructure needs, and greater demands on many areas of the organisation notably committees, Parliamentary Counsel and the library teams. Evidence received in Estimates identifies the impact of efficiencies required of the Parliament as requiring \$1.337 million of spending cuts from an already lean budget.

The President further provided the following evidence:



*As President it is my responsibility. Ultimately the buck stops with me. Asking my department heads to keep finding ways of trimming the bone is incredibly unfair. This is my argument to Treasury. At a time when there was a lot of fat it is fine, but this 1 per cent, 1½ per cent, 2 per cent, 3 per cent and now 4 per cent are cumulative. You keep adding it on and you keep asking yourself over the 10-year period—I am just taking a figure out of the air—if it has been \$4½ million since we were in government, you have to assume that prior to that period there was another couple of million dollars. Now I am being asked to find another \$1.3 million on top of that.*

Some of the cuts to date have been achieved through the reduction of what are clearly essential services and the degradation of wages and conditions for workers in the building:

*Another aspect, we have reduced the hours in the library. There are some savings there. In relation to cleaners, some of the full-time staff have left. We answered a question from Mr Shoebridge about this last year. They have been replaced by some casual staff. Hours are increasing but costs are going down. You can find some ways but finding 2 per cent is incredibly difficult. I truly believe that finding 4 per cent is near impossible.*

The fact that the budget of the Parliament is set by the Executive means that the Parliament is not truly independent. When inadequate resource are available for even the most basic work such as maintaining a heritage building, then the essential oversight work of Parliament will inevitably suffer. The Greens are committed to working with other political parties, key stakeholders and the public to institute a robust and independent budget process for the NSW Parliament commencing nearly next year.

### **Independent Commission Against Corruption**

Proper, independent funding of the Independent Commission Against Corruption (ICAC) is essential to the prevention of corruption in this state.

On 8 February 2018 I asked the Premier a question in Parliament relating to the funding of the ICAC:

*My question is directed to the Premier. Considering reports that in November last year the Committee on the Independent Commission Against Corruption heard submissions from the Independent Commission Against Corruption [ICAC] that an estimated \$2.5 million would be needed to ensure "resources adequately met demand", what has the Government done to provide the urgently needed funds to ensure that ICAC can do its job effectively?*

Her response stated that: "...when the two new ICAC commissioners were appointed, I made it very clear to them that if at any time they needed additional resources they should approach the Department of Premier and Cabinet and the Government would provide additional resources."

It is clear that since then, the Premier nor her Department has lived up to that promise.

Funding arrangements for the ICAC were not updated following the three-Commissioner model being established nor following the Electoral Commission being able to refer matters for investigation by the ICAC, something that the Commission has been recently engaged in.

#### *Insufficient funding of the ICAC*

On 21 October 2019, The Hon. Peter Hall who is ICAC's Chief Commissioner appeared before the Committee on the Independent Commission Against Corruption. He stated that the ICAC is not being funded sufficiently by the Department of Premier and Cabinet:

*In 2019-20, the Commission is due to receive appropriation and grant funding of \$27.399 million to fund its operations for the year. This sum of money is barely sufficient to fund the Commission's work for the year. The forward estimates for 2020-21 however, provide for appropriation funding of only \$24.814 million. Already the Commission has been advised that this funding will be reduced by \$673,000 in additional savings for that year alone. The Commission has estimated that the minimum core funding that it requires to maintain the tempo of its operations in 2020-21 is at least \$28.084 million—that is, \$3.943 million more than the projected funding for 2020-21.*

He stated that the ICAC has already made efforts to reduce costs in the face of insufficient funding:

*The Commission has little flexibility to reduce variable costs as these have already been reduced as far as possible to meet previous savings imposed upon the Commission. The Commission, I should note, has a very small back office. The only area in which it can find the amount of savings required by this level of reduced funding is to reduce its staff members. It has very little, as I have said, by way of a back office so, accordingly, any staff reductions will have to be made to frontline staff, including investigators, lawyers and other key staff. To make savings of \$3.943 million for the year 2020-21, the Commission would need to reduce its full-time equivalent [FTE] staff from the currently funded number of 120. This would reduce the Commission's FTE staffing significantly. Such reductions would, of course, have an immediate and serious effect on the Commission's frontline services and, therefore, its ability to fight corruption.*

*That, however, would not be the end of the matter. To meet ongoing savings—measures embedded in the forward estimates—Commission FTE positions would need to be further considered for reduction in each of the following financial years, up to the year 2025-26. To overcome this problem, the Commission proposes that its appropriation for 2020-21 and subsequent years, be set at a core funding level that reflects its operational requirements and is not subject to government-imposed efficiency dividends or other cost-saving measures imposed from time to time.*

He also stated the impact of budget cuts on training within the ICAC:

*Training and IT are vital to the work of the Commission. I have indicated the secretive nature of the conduct and the need for strategic intelligence to get behind and reconstruct scenarios suggested to lie behind corrupt conduct.*

*Due to decreased budget allocations for current and forward years, the Commission has found it necessary to make significant budget reductions to expenditure on items considered discretionary training, such as training of staff. In the ensuing year allocated training, excluding information technology staff, amounts to just over \$200 spent for the employee, far below recognised best practice, which is estimated at \$2,400 per employee—or 1.5 per cent of the labour budget. This adversely impacts on staff morale and blunts the Commission's ability to retain entirely skilled staff and to continue to develop their capabilities to meet evolving organisation and technological changes. If there is one thing that can be said about anti-corruption work, it is that it does not stand still, either in the nature of the conduct or the skills required to detect it.*

He also stated the impact on capital spending:

*Capital spend underpins the Commission's long-term organisational performance and effectiveness. The rate of technological change impacting the Commission's operations is relentlessly ever-increasing. It is necessary for the Commission to maintain and keep abreast of information technology and communications. The KPMG second report identified several information technology projects to improve network capability and digitise processes. The cost of these was estimated at \$825,000. The Commission, during 2017-18, submitted a capital funding request to annualise information technology and communications and historical budget allocations. The aim was to provide flexibility to meet organisational demand for technology. The Commission engaged IT consultants to assist it in developing a budget case request. The Commission's request to integrate its disparate corporate systems into a single application what is known as enterprise resource planning [ERP], however, was declined. The Expenditure Review Committee, however, approved half of the amount of the ICT request; namely, \$1 million.*

Clearly when the Commission's funding is reduced that inflicts serious damage on the ICAC's ability to perform anti-corruption functions especially as the ICAC's investigations become more complex. It is imperative to ensure that ICAC is sufficiently funded.

#### *ICAC funding should be independent*

Transparency International, the global coalition against corruption, in 2015, in the publication Anticorruption Agencies Strengthening Initiative, observed on page 10:

*An important advantage of creating the ACA (Anti-Corruption Agency) is that it sends a powerful signal to citizens, officials and business persons in a country that the government is committed to fighting corruption. However, this initial advantage is eroded if the government does not demonstrate its commitment by providing the ACA with sufficient legal powers and adequate human and financial resources to perform its functions. Also, the government should provide the ACA with operational autonomy so that it can investigate anyone, regardless of his or her status, position or political affiliation. All of these operational advantages will count for nothing if the government fails to support the ACA by allowing it to operate independently and by providing it with adequate resources for performing its functions effectively.*

The ICAC is not a Government agency, it is an agency accountable to the Parliament. Given this, the ICAC's funding should not be subject to approval from the Department of Premier and Cabinet (DPC).

This view is also held by the current Inspector of the ICAC The Hon Bruce McClintock QC who stated in the annual report of the Inspector of the ICAC for the period ending 30 June 2019 that:

*To ensure the ultimate statutory independence of the Commission, funding for it should be determined via a non-politicised process and one that is not subject to bureaucratic management or oversight. A reconsideration of the current funding model to one that takes into account the entirety of the Commission's ever-increasing workload, particularly following the introduction of the three-Commissioner model would ensure that the Commission can continue to expose and investigate serious corrupt conduct.*

In addition during his statements before the Committee on the Independent Commission Against Corruption, the Chief Commissioner argued that under the present system ICAC has no certainty to deliver operations over more than one year because it has no certainty of future funding. This can inhibit the ICAC's ability to plan and in turn, its ability to fight corruption.



He also stated that grants from DPC depend on the New South Wales cluster system which carries the potential to compromise the Commission's independence and constrain or limit the Commission's operations. The Commission should not be restricted by a principle to always act within its annual budget appropriation, as many government agencies are. This is because the ICAC is not a government agency nor is it responsible to the executive government.

#### *A better funding model for the ICAC*

The ICAC Chief Commissioner prepared and delivered a report to the Premier in October 2019 entitled *New South Wales Independent Commission Against Corruption Report to the Premier - The New ICAC at the Funding Crossroads*.

This report addresses a funding model developed by the Chief Commissioner for an independent and comprehensive funding system for the ICAC. This report:

1. Is consistent with the legislative intent and the provisions of the ICAC Act, that Parliament alone has authority to determine and sanction the funding resources of the Commission;
2. Empowers an independent eminent and well-qualified person in the community who would have the support of an assistant assessor, as required, to assess, to advise and to recommend to Parliament the necessary appropriations for funding of the ICAC; and
3. States that this eminent person's functions would include, so far as assessment is concerned, receiving the Commission's budget case and support material for the forthcoming financial year. That person would have an advisory function, recommending to Parliament the amount of the appropriations by Parliament, and secondly, the amount of a provisional fund available to be drawn down by the Commission in the forthcoming financial year on application.

I support the recommendations made by the Chief Commissioner and encourage this Inquiry to adopt them for the varied reasons given in this submission.

We must give the ICAC every opportunity to do its job well. We must ensure that it has access to sufficient funding, determined independent of the executive government it is tasked with investigating.

I encourage you to consider the contents of this submission carefully. Should you wish to discuss any of the above anything contained within please contact me either on 9660 7586 or at [jamie.parker@parliament.nsw.gov.au](mailto:jamie.parker@parliament.nsw.gov.au)

Yours sincerely,

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