

Integrity in government: Recent issues and developments

Key Issues for the 58th Parliament

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Key points

- Integrity in government has been a key issue in NSW for decades. In recent years, there have been several controversies and recommendations to strengthen the integrity framework. These have led to some reforms, with more to be implemented.
- In 2022, in response to several inquiries, the government introduced a new funding model for integrity agencies. The new Labor government has committed to introducing legislation to guarantee independent funding for the ICAC.
- In 2018 new laws were introduced in relation to political donations, including requiring more timely disclosures. In recent years, there have been discussion and High Court cases on third-party campaigner expenditure caps.
- In 2022 the ICAC recommended changes to the rules on disclosures of pecuniary interests by members of parliament. The *Constitution Act 1902* was amended to allow regulations to implement these, but regulations have not yet been made.
- In 2021 the ICAC made 29 recommendations to improve the regulation of political lobbying in NSW. The government's response supported all the recommendations, but legislation has not yet been introduced.
- In 2022 the government issued a revised guide on grants administration and the *Government Sector Finance Act 2018* was amended to make certain parts of the guide enforceable. The new Labor government has committed to further reforms.
- In 2022 the government introduced legislative reforms in relation to public sector appointments. It also said it would prevent ministers applying for related public sector agency positions within 18 months of leaving office.

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1. Introduction

Integrity is a cornerstone of a system of sound public governance. It assures citizens that the government is working in their interest, not just for the select few, and is vital for the economic prosperity and well-being of society as a whole.¹

Integrity in government has been a key issue in NSW and nationally for decades. While NSW has had an independent corruption watchdog since 1989 (the Independent Commission Against Corruption, ICAC) various scandals involving politicians and public officials (often exposed by the ICAC) have led to ongoing community concerns.

An earlier briefing paper by the parliamentary research service outlined various integrity reforms that were introduced in NSW between 2008 and 2015 including new laws regulating political donations and political lobbying.² The paper noted surveys from 2014 showing low levels of public trust in government. Since then, there have been several controversies and recommendations to strengthen the integrity framework, which have led to some further reforms.³ Surveys continue to show low levels of public trust in government. A 2018 survey found that 'levels of trust in government and politicians in Australia are at their lowest levels since times series data has been available'.⁴ Similarly, a 2022 survey reported that only 30% of Australians had trust in government.⁵ These results indicate that integrity remains an ongoing issue for Australian parliaments.

This paper examines a range of topical issues including the funding model for integrity agencies, political donations, lobbying, and pork barrelling. It focuses on developments at state government level in NSW in the period from 2015 to 2023. Key recommendations not implemented by the government in the last parliamentary term are identified, as are commitments made by the new Labor government. The paper does not cover developments at the federal or local government levels.⁶

¹ OECD, [Public integrity](#), accessed 18 May 2023. See also OECD, [OECD Recommendation of the Council on Public Integrity](#), 2017, accessed 18 May 2023.

² G Griffith, [Integrity in government: issues and developments in New South Wales 2011-2015](#), NSW Parliamentary Library Research Service, Briefing Paper No 1/2015, January 2015.

³ For recent controversies involving NSW politicians, see [ICAC finds former NSW Labor MP Ernest Wong corrupt](#), *Sydney Morning Herald*, 28 February 2022; A Smith, [Perrottet calls for Sidoti to resign his seat after ICAC corruption finding](#), *Sydney Morning Herald*, 21 July 2022; J Noyes and H Alexander, [Ex-MP Daryl Maguire charged with criminal conspiracy over visa scheme](#), *Sydney Morning Herald*, 29 November 2022, accessed 3 May 2023.

⁴ G Stoker, M Evans, and M Halupka, [Trust and Democracy in Australia: Democratic decline and renewal](#), Democracy 2025, Report No.1, December 2018, p 9. See also

⁵ I McAllister, S Jackman, and J Sheppard, [The 2022 Australian Federal Election: Results from the Australian Election Study](#), Australian National University and Griffith University, December 2022, p 28. See also Governance Institute Australia, [Ethics Index 2022](#), November 2022.

⁶ For discussion of integrity at the national level, see for example A J Brown et al, [Australia's National Integrity System: The Blueprint for Action](#), Transparency International Australia and Griffith University, National Integrity System Assessment, Australia, November 2020. See also Attorney-General's Department, [National Anti-Corruption Commission](#), accessed 3 May 2023. The new commission will commence on 1 July 2023.

2. Integrity agencies

2.1 Funding of integrity agencies

NSW has several independent statutory bodies that fulfil integrity functions, including the ICAC, the Law Enforcement Conduct Commission, the Ombudsman, and the Auditor-General.⁷ Following concerns about funding levels, in October 2019 the Legislative Council's Public Accountability Committee established an inquiry into the budget process for integrity agencies and the Parliament of NSW.⁸ Shortly after the inquiry was established, the Special Minister of State, Don Harwin MLC, asked the Auditor-General to examine the funding arrangements of 4 integrity agencies.

The committee's first report in March 2020 noted that integrity agencies follow 'a budget process that is substantially the same as the process for determining the funding for normal government departments.'⁹ It concluded that these arrangements were 'not consistent with transparent and accountable government.'¹⁰ The committee recommended various reforms including that parliamentary oversight committees conduct a public review of the annual budget submissions of integrity agencies.¹¹ Each oversight committee would table a report in both the Legislative Assembly and the Legislative Council recommending the annual appropriation for the agency. If the government did not support the recommendation, it would table a statement of reasons in parliament.¹² The committee's final report in February 2021 reiterated its earlier recommendations.¹³

The Auditor-General's report in October 2020 recommended that the NSW Government 'implement a funding model for the integrity agencies that addresses potential threats to their independence while ensuring their accountability.'¹⁴ The funding model should be based on 4 principles, including expanding parliament's role in the budget process to

⁷ T Bathurst and N Wootton, [The Courts And Integrity Bodies: Constitutional Conundrums](#), NSW Bar Association News, 2018, 93, accessed 24 March 2023.

⁸ See C Knaus, [NSW accused of starving icac and integrity watchdogs of funding](#), *The Guardian*, 25 June 2019, accessed 24 March 2023; and A Smith, [ICAC's 'ability to fight corruption' under threat by funding cuts](#), *Sydney Morning Herald*, 24 October 2019, accessed 24 March 2023.

⁹ Legislative Council Public Accountability Committee, [Budget process for independent oversight bodies and the Parliament of New South Wales: First Report](#), NSW Parliament, March 2020, p viii.

¹⁰ Legislative Council Public Accountability Committee, [Budget process for independent oversight bodies and the Parliament of New South Wales: First Report](#), NSW Parliament, March 2020, p 35.

¹¹ Legislative Council Public Accountability Committee, [Budget process for independent oversight bodies and the Parliament of New South Wales: First Report](#), NSW Parliament, March 2020, p viii.

¹² Legislative Council Public Accountability Committee, [Budget process for independent oversight bodies and the Parliament of New South Wales: First Report](#), NSW Parliament, March 2020, p 35-36.

¹³ Legislative Council Public Accountability Committee, [Budget process for independent oversight bodies and the Parliament of New South Wales: Final Report](#), NSW Parliament, October 2020, p vii.

¹⁴ Audit Office NSW, [The effectiveness of the financial arrangements and management practices in four integrity agencies](#), Special Report, 20 October 2020, p 9, Rec 1.

ensure Cabinet is provided with more independent advice, and ensuring transparency to parliament and the agency for decisions made about funding.¹⁵

In May 2022 the NSW Government announced that it would implement new funding arrangements consistent with the principles outlined in the Auditor-General's report.¹⁶ The new funding model has several elements including:

- Removing integrity agencies from the cluster financial arrangements
- Allowing integrity agencies to review Treasury's advice, and provide its own advice to the Expenditure Review Committee of Cabinet on funding bids
- Providing integrity agencies and parliamentary oversight committees with reasons for any variations from a funding bid.¹⁷

Premier Perrottet acknowledged that the model was 'not completely in line' with the ICAC's preferred model.¹⁸ The Premier also stated that 'we will adjust the level of funding in the 2022–23 State budget to better reflect current and future resourcing needs in advance of a broader re-baselining exercise.'¹⁹ The 2022–23 budget allocated \$34.6 million to the ICAC in recurrent funding, a \$3.8 million increase on the previous year.²⁰ The Treasurer was also allocated \$20 million for contingencies in relation to the integrity agencies.²¹

The new Premier, Chris Minns, has committed to introducing legislation to guarantee independent funding for the ICAC.²² The new Labor government supports:

- A standing Parliamentary Committee to inquire into and make recommendations into the quantum of the annual ICAC budget decision.
- Public reporting by the Executive where it departs from that Committee's recommendation in respect of such funding.
- The establishment of a contingency fund comprising an additional 25 per cent of annual funding available for access by the ICAC for unexpected matters arising that require urgent attention.²³

¹⁵ Audit Office NSW, [The effectiveness of the financial arrangements and management practices in four integrity agencies](#), Special Report, 20 October 2020, p 9, Rec 1.

¹⁶ M Speakman, [Further Government response to a report of the Public Accountability Committee](#), NSW Government, 9 May 2022.

¹⁷ M Speakman, [Further Government response to a report of the Public Accountability Committee](#), NSW Government, 9 May 2022.

¹⁸ D Perrottet, [Independent Commission Against Corruption funding](#), NSW Hansard, 10 May 2022.

¹⁹ D Perrottet, [Independent Commission Against Corruption funding](#), NSW Hansard, 10 May 2022. See also M McGowan, [Independent funding for NSW's Icac rejected on 'philosophical' grounds](#), *The Guardian*, 11 May 2022.

²⁰ NSW Budget 2022-23, [Agency Financial Statements](#), Budget Paper No. 2, 2022, p 6-1.

²¹ [Appropriation Act 2022](#)

²² C Minns, [I've seen what happens when Labor and the Liberals ignore integrity. I want to bring it back as premier](#), *Sydney Morning Herald*, 22 August 2022, accessed 10 May 2023.

²³ M Daley, [NSW Labor 2023 Law Society State Election Platform Response](#), 17 February 2023, accessed 17 May 2023.

2.2 Jurisdiction and powers of the ICAC

The 2015 briefing paper discussed reforms to the *Independent Commission Against Corruption Act 1988* enacted in 2011 and 2013.²⁴ These included clarifying the ICAC's powers to gather and assemble evidence for the prosecution of a person for criminal offences, and enabling employers of public officials to take disciplinary proceedings against public officials on the basis of corruption findings.

2.2.1 High Court decision and reforms

In 2015, the High Court decided that the ICAC did not have jurisdiction to investigate Crown Prosecutor Margaret Cunneen's alleged misconduct because it was not 'corrupt conduct' as defined in the Act.²⁵ The ICAC was investigating an allegation that Ms Cunneen and her son counselled the son's de facto partner to pretend to have chest pains to prevent police officers from obtaining evidence of the de facto partner's blood alcohol level at the scene of a motor vehicle accident. The alleged conduct did not concern the exercise of Ms Cunneen's official functions as a crown prosecutor.

Following the court decision the NSW Government commissioned an independent panel to examine the jurisdiction of the ICAC. The panel's recommendations resulted in amendments being made to the Act in 2015.²⁶ These included amending the definition of 'corrupt conduct' to include certain conduct of any person that could impair public confidence in public administration (such as collusive tendering), and restricting the ICAC's power to make findings of corrupt conduct to cases where there is *serious* corrupt conduct. As recommended by the panel, 'serious' was not defined in the Act.

Reports were also published by the Inspector on the ICAC and the Parliamentary Committee on the ICAC.²⁷ Their recommendations resulted in further reforms being enacted in 2016 in relation to the ICAC's structure and powers:

- The ICAC was restructured as a three-member Commission
- The ICAC's power to conduct public inquiries must be authorised by the Chief Commissioner and at least one other Commissioner

²⁴ G Griffith, *Integrity in government: issues and developments in New South Wales 2011-2015*, NSW Parliamentary Library Research Service, Briefing Paper No 1/2015, January 2015, p 40-42.

²⁵ *ICAC v Cunneen (2015) CLR 256 CLR 1*

²⁶ M Gleeson and B McClintock, *Independent Panel – Review of the Jurisdiction of the Independent Commission Against Corruption – Report*, NSW Government, 30 July 2015. See also *Independent Commission Against Corruption Amendment Act 2015*.

²⁷ Inspector of the Independent Commission Against Corruption, *Report to the Premier: The Inspector's Review of the ICAC*, 12 May 2016; and Committee on the Independent Commission Against Corruption, *Review of the Independent Commission Against Corruption: Consideration of the Inspector's Reports*, NSW Parliament, October 2016.

- Before making an adverse finding in a report, the ICAC must give affected persons a reasonable opportunity to respond and include a summary of this response in the report where requested.²⁸

In 2022, in response to a recommendation in an ICAC report, the ICAC Act was amended to clarify that the Ministerial Code of Conduct is a prescribed code of conduct for parliamentary secretaries.²⁹ A substantial breach of the code by a parliamentary secretary can therefore be 'corrupt conduct' under the Act.

2.2.2 Recommendations about reputational impact

In November 2021 the Parliamentary Committee on the ICAC published a report about reputational impact for an individual who has been adversely named in an investigation.³⁰ The report made 9 recommendations including that the ICAC should publish with each report a table of persons involved in that inquiry, with the indication that the person was the subject of an adverse finding, a corruption finding or was a witness only; and that it should update the investigation page on its website following a judicial proceeding. The committee did not recommend introducing an 'exoneration protocol'.³¹ The committee also undertook to examine some broader related issues.

In December 2022 the committee published a report on some of these related issues, namely time standards to finalise investigations, the powers of the Inspector of the ICAC, and the existing mechanisms of judicial review.³² The committee recommended that:

- The Act be amended to require the ICAC to develop and publish time standards for completing reports under s 74 of the ICAC Act
- The ICAC's next annual report provide an update on whether the increased funding made available in the 2022–23 Budget shortened the time in which investigations are undertaken and reports finalised
- Consideration be given to amending the Act to give the Inspector of the ICAC broader power to investigate maladministration, and to require the ICAC to respond to the Inspector's recommendations.

The government has not yet responded to this report.

²⁸ [Independent Commission Against Corruption Amendment Act 2016](#). See also ICAC, [History and development of the ICAC Act](#), accessed 27 March 2023.

²⁹ [Integrity Legislation Amendment Act 2022](#)

³⁰ Committee on the Independent Commission Against Corruption, [Reputational impact on an individual being adversely named in the ICAC's investigations](#), NSW Parliament, Report 4/57, November 2021.

³¹ An exoneration protocol would mean that where there is no criminal conviction arising from any prosecution relating to the ICAC's finding of corrupt conduct, the person against whom the finding was made could apply to the Supreme Court to expunge the records of the ICAC or to have the findings set aside.

³² Committee on the Independent Commission Against Corruption, [Review of certain aspects of the Independent Commission Against Corruption Act 1988](#), NSW Parliament, Report 6/57, December 2022.

3. Political donations and expenditure

The 2015 briefing paper discussed the regulation of political donations and expenditure, including reforms introduced between 2008 and 2014.³³ These reforms included:

- Requiring disclosure of political donations and electoral expenditure
- Prohibiting donations from certain types of donors (such as property developers)
- Introducing caps on political donations
- Introducing caps on electoral expenditure including for third-party campaigners.

The 2015 briefing paper noted that a property developer, Jeff McCloy, had initiated a High Court challenge to some of these reforms. It also summarised key recommendations of a December 2014 expert panel report on political donations. This panel was established in response to ICAC hearings relating to alleged breaches of electoral funding laws and increasing concerns about the influence of political donations in NSW.³⁴

3.1 Political donations

In its 2015 decision in *McCloy*, the High Court upheld the validity of the caps on political donations and the prohibition on donations by property developers.³⁵ The provisions did not breach the implied freedom of political communication in the Australian Constitution.

In 2015 the NSW Government referred the expert panel's report to the Joint Standing Committee on Electoral Matters for its consideration. In June 2016 the committee published its report, which supported most of the expert panel's recommendations in principle.³⁶ The government subsequently accepted all the committee's recommendations in full or in principle.³⁷

In 2018 the government introduced a new *Electoral Funding Act 2018*, which replaced the *Election Funding Expenditure and Disclosure Act 1981*. The new Act included changes to the regulation of political donations in response to the expert panel and committee reports. These changes included requiring more timely disclosure of political donations.

³³ G Griffith, *Integrity in government: issues and developments in New South Wales 2011-2015*, NSW Parliamentary Library Research Service, Briefing Paper No 1/2015, January 2015, p 29-34.

³⁴ Panel of Experts, *Political Donations Final Report*, December 2014, Volume 1, p 18.

³⁵ *McCloy v NSW (2015) 257 CLR 178*

³⁶ Joint Standing Committee on Electoral Matters, *The Final Report of the Expert Panel – Political Donations and the Government's Response – Final Report*, Report 1/56, June 2016.

³⁷ NSW Government, *Inquiry into the Final Report of the Expert Panel – Political Donations and the Government's response – NSW Government Response*, December 2016.

In 2020 a limit of \$100 for cash donations was introduced in response to an ICAC investigation into political donations facilitated by Chinese Friends of Labor.³⁸ Donations of higher amounts must be paid electronically or by cheque. This limit aimed to 'make it harder to mask the source of a significant political donation.'³⁹

In December 2022 Rob Stokes MP, then Minister for Infrastructure, Cities and Active Transport, advocated that NSW should ban donations to political parties from registered clubs with poker machines.⁴⁰ As registered clubs are not-for-profit organisations, they are exempt from the existing prohibition that applies to 'gambling industry business entities.'⁴¹ The new Premier, Chris Minns, committed to banning donations from clubs with poker machines.⁴² On 11 May 2023, the new government introduced a bill into the Legislative Council to impose this ban.⁴³

3.2 Electoral expenditure

In addition to the changes on political donations, the new [Electoral Funding Act 2018](#) also made some changes to regulation of electoral expenditure in response to recommendations of the 2014 report by the expert panel and the 2016 report of the Joint Standing Committee on Electoral Matters.⁴⁴ Some significant changes were made to the expenditure cap on third-party campaigners. Third-party campaigners are individuals or organisations such as trade unions and business groups that contribute to electoral expenditure including for advertising and the production of electoral material.⁴⁵

Caps on third-party campaigners: Prior to 2018 the base amount of the electoral expenditure cap was \$1.05 million for a registered third-party campaigner.⁴⁶ The *Electoral Funding Act 2018* reduced this cap to \$500,000, as recommended in the 2014 expert panel's report.⁴⁷ Unions NSW successfully challenged the lower cap under section 29(10) in

³⁸ Section 50A, inserted by the [Electoral Funding Amendment \(Cash Donations\) Act 2019](#) which commenced on 1 January 2020. See also ICAC, [Political donations – allegations concerning ALP NSW branch officials, Chinese Friends of Labor and others \(Operation Aero\)](#), accessed 18 April 2023.

³⁹ Electoral Funding Amendment (Cash Donations) Bill 2019, [Second Reading Speech](#), Hansard, Legislative Council, 19 October 2019.

⁴⁰ A Smith, ['An outrageous loophole': Stokes calls for end to clubs' political donations](#), *Sydney Morning Herald*, 22 December 2022.

⁴¹ [Electoral Funding Act 2018](#), section 53.

⁴² S Hutchinson, [Labor to stop accepting club donations](#), *Australian Financial Review*, 17 January 2023, accessed 5 May 2023.

⁴³ [Electoral Funding Amendment \(Registered Clubs\) Bill 2023](#)

⁴⁴ Panel of Experts, [Political Donations Final Report](#), December 2014; and Joint Standing Committee on Electoral Matters, [The Final Report of the Expert Panel – Political Donations and the Government's Response – Final Report](#), Report 1/56, June 2016.

⁴⁵ Section 4 defines third-party campaigners as incurring electoral expenditure exceeding \$2,000 for a state election during the capped state expenditure period, or being registered as a third-party campaigner. Section 7 defines electoral expenditure. The NSW Electoral Commission maintains a [register](#) of third-party campaigners.

⁴⁶ Indexed for inflation, this amount was \$1,288,500 at the March 2015 election.

⁴⁷ Panel of Experts, [Political Donations Final Report](#), December 2014, Rec 31. See also Joint Standing Committee on Electoral Matters, [Inquiry into the Final Report of the Expert Panel – Political Donations and the Government's Response](#), Report 1/56, NSW Parliament, June 2016, p 49, Rec 7.

the High Court on the basis that it breached the implied freedom of political communication in the Australian Constitution.⁴⁸ The government introduced a temporary regulation which restored the higher cap for the 2019 state election.⁴⁹ The higher cap was also adopted for the 2023 state election, consistent with a 2020 committee recommendation.⁵⁰

Third-party campaigners acting in concert: Section 35 of the 2018 Act made it unlawful for a third-party campaigner to act in concert with another person to incur electoral expenditure exceeding the applicable cap. In June 2022, Unions NSW commenced a challenge to the validity of section 35 in the High Court.⁵¹ However, prior to the hearing, section 35 was repealed because of a successful Labor amendment to the Electoral Legislation Amendment Bill 2022. Despite the repeal, Unions NSW applied to the High Court to declare that the provision was invalid for the period it had been in force. However, the court declined, finding it no longer had jurisdiction.⁵²

Caps on third-party campaigners in by-elections: In a report published in November 2022 the Joint Standing Committee on Electoral Matters found that the current cap of \$20,000 (base amount) on third-party campaigners under section 29(11) for state by-elections was inadequate.⁵³ The committee recommended that the cap be increased to \$198,750, representing 75% of the applicable cap for a Legislative Assembly candidate in a by-election.⁵⁴ In February 2023, the High Court declared that the \$20,000 cap for by-elections was invalid as it breached the implied freedom of political communication in the Australian Constitution.⁵⁵

⁴⁸ [Unions NSW v New South Wales \(2019\) 264 CLR 595](#)

⁴⁹ [Electoral Funding Amendment \(Savings and Transitional\) Regulation 2019](#), which expired on 31 December 2019.

⁵⁰ [Electoral Legislation Amendment Act 2022](#); and Joint Standing Committee on Electoral Matters, [Administration of the 2019 NSW State Election](#), Report 1/57, NSW Parliament, October 2020, p 20 (Rec 6).

⁵¹ [Unions NSW v New South Wales \[2023\] HCA 4](#)

⁵² [Unions NSW v New South Wales \[2023\] HCA 4](#)

⁵³ Joint Standing Committee on Electoral Matters, [Caps on third-party campaigners' electoral expenditure in s 29\(11\) and s 35 of the Electoral Funding Act 2018](#), Report 2/57, November 2022, at 2.19.

⁵⁴ Joint Standing Committee on Electoral Matters, [Caps on third-party campaigners' electoral expenditure in s 29\(11\) and s 35 of the Electoral Funding Act 2018](#), Report 2/57, November 2022, Rec 4./

⁵⁵ [Unions NSW v New South Wales \[2023\] HCA 4](#)

4. Disclosures by members of parliament and code of conduct

4.1 Disclosures

Members of parliament must comply with the pecuniary interest disclosure regime established under section 14A of the [Constitution Act 1902](#) and the [Constitution \(Disclosure by Members\) Regulation 1983](#). A report from the ICAC in July 2022 into the conduct of John Sidoti MP recommended reforms including requiring members to disclose a broader range of pecuniary interests (such as details of interests in trusts), and to update disclosures of interests within 28 days rather than every 6 months.⁵⁶ The ICAC report also recommended that the regulation provide for the mandatory registration of conflicts of interest by members of parliament via the creation of a register.⁵⁷

In November 2022 the Act was amended to enable the use of regulations to give effect to the recommendations.⁵⁸ The government noted that it had:

...instructed the Parliamentary Counsel's Office to draft changes to the disclosure regulation to require: members of Parliament to disclose expanded pecuniary interests, including interests in trusts and the interests of immediate family members, on an ongoing basis; members of Parliament to disclose conflicts of interest; and the Clerks to publish the disclosures of members of Parliament electronically.⁵⁹

The regulations have not yet been amended to implement the recommendations.

In 2022 the NSW Government also stated that it intended to introduce a requirement for all members of parliament to publish diary disclosures on a routine basis.⁶⁰ An amendment was made to section 14A(1a) of the *Constitution Act 1902* to allow a regulation to be made to this effect, but a regulation has not yet been made.⁶¹

4.2 Code of conduct

As noted in the 2015 briefing paper, the Legislative Assembly and the Legislative Council each adopted a code of conduct for members in 1998.⁶² In March 2020, both Houses

⁵⁶ ICAC, [Investigation into the conduct of the local member for Drummoyne](#), July 2022, Rec 1.

⁵⁷ ICAC, [Investigation into the conduct of the local member for Drummoyne](#), July 2022, Rec 4.

⁵⁸ [Integrity Legislation Amendment Act 2022](#)

⁵⁹ A Henskens, [Integrity Legislation Amendment Bill 2022](#), *NSW Hansard*, 9 November 2022.

⁶⁰ D Perrottet, [NSW to implement strongest lobbying integrity measures in Australia](#) [media release], NSW Government, 19 July 2022.

⁶¹ [Integrity Legislation Amendment Act 2022](#).

⁶² G Griffith, [Integrity in government: issues and developments in New South Wales, 2011-2015](#), NSW Parliamentary Research Service, Briefing Paper 1/2015, January 2015, p 23.

amended their codes, based on a series of committee inquiries and negotiation between the Privileges Committees of both Houses.⁶³ The key changes were:

- A new prohibition on members improperly using their influence to seek to affect decisions by public officials to further the member's private interests or the private interests of their family or business associates
- A new clause requiring members to fulfil conscientiously the requirements of the Register of Disclosures
- Expanded provisions relating to conflicts of interest including a new requirement for members to draw attention to any conflicts between their private interests and the public interest in any proceeding of the House or committees or in communications with public officials
- Commentary on particular provisions, including information on sources of advice.⁶⁴

In March 2022 the Legislative Council amended its code to refer to the new Independent Complaints Officer's role in investigating minor breaches of the code (cl 9) and to add a new clause on bullying, harassment, and sexual harassment (cl 10).⁶⁵ The Legislative Assembly did not adopt the same changes to its code of conduct.⁶⁶

In 2022 the Privileges Committees of both Houses conducted their regular four-yearly review of the codes of conduct. The Legislative Assembly's committee report stated, 'on the whole, the Committee considers that the new Code is appropriate and does not require significant amendment'.⁶⁷ However, the committee noted some areas for consideration including the scope and format of the Pecuniary Interests Register, the regulation of conflicts of interest, and member conduct concerning bullying, sexual harassment and sexual misconduct.⁶⁸ The Legislative Council Privileges Committee report made 9 recommendations, including one change to the code, namely that it includes a definition of conflict of interest that takes into account the views of the ICAC.⁶⁹

⁶³ Legislation Assembly Standing Committee on Parliamentary Privilege and Ethics, [Review of the Code of Conduct for Members](#), NSW Parliament, Report 4/57, December 2022, p iv.

⁶⁴ Legislative Council Privileges Committee, [Review of Members' Code of Conduct \(2022\)](#), NSW Parliament, Report 90, November 2022, p 4.

⁶⁵ P Primrose, [Parliamentary Independent Complaints Officer](#), *NSW Hansard*, 23 November 2021; and [Parliamentary Independent Complaints Officer](#), *NSW Hansard*, March 2022.

⁶⁶ See Legislation Assembly Standing Committee on Parliamentary Privilege and Ethics, [Review of the Code of Conduct for Members](#), NSW Parliament, Report 4/57, December 2022, p v.

⁶⁷ Legislation Assembly Standing Committee on Parliamentary Privilege and Ethics, [Review of the Code of Conduct for Members](#), NSW Parliament, Report 4/57, December 2022, p iv.

⁶⁸ Legislation Assembly Standing Committee on Parliamentary Privilege and Ethics, [Review of the Code of Conduct for Members](#), NSW Parliament, Report 4/57, December 2022, p iv – vi.

⁶⁹ Legislative Council Privileges Committee, [Review of Members' Code of Conduct \(2022\)](#), NSW Parliament, Report 90, November 2022, Rec 3.

4.3 Independent Complaints Officer

As noted in the 2015 briefing paper, in 2013 the Clerk of the Parliaments, David Blunt, proposed the establishment of a Parliamentary Commissioner for Standards, based on a model in place in the UK Parliament, and the ICAC subsequently recommended that the Privileges Committees of both the Legislative Assembly and the Legislative Council consider the establishment of this position.⁷⁰

Following reports by their Privileges Committees, in March 2022 both Houses passed resolutions to establish the Independent Complaints Officer.⁷¹ The officer can investigate complaints about minor alleged breaches of the codes of conduct regarding the use of allowances and entitlements and the pecuniary interests disclosure scheme.⁷² The officer can also investigate allegations of bullying, harassment, and inappropriate behaviour.⁷³ In August 2022 Ms Rose Webb was appointed to the role.

4.4 Broderick review of parliamentary workplaces

In August 2022, the *Independent Review of Bullying, Sexual Harassment and Sexual Misconduct in NSW Parliamentary Workplaces* by Elizabeth Broderick was published.⁷⁴ The review made several findings, including that bullying is a significant issue, sexual harassment and everyday sexism occur at unacceptable rates, and women and men had reported experiences of actual or attempted sexual assault. The review set out a framework for action across 6 domains, including prevention and early intervention, addressing cultural factors, and creating a safe reporting environment. The Parliamentary Executive Group issued a statement in which it committed to consult with the parliamentary community and work on the implementation of an effective action plan.⁷⁵ A detailed implementation plan has been developed and work is progressing.

⁷⁰ G Griffith, *Integrity in government: issues and developments in New South Wales, 2011-2015*, NSW Parliamentary Research Service, Briefing Paper 1/2015, January 2015, p 25.

⁷¹ For the Legislative Assembly, see [Independent Complaints Officer](#), NSW Hansard, 29 March 2022. For the Legislative Council, see [Parliamentary Independent Complaints Officer](#), NSW Hansard, 22 March 2022.

⁷² NSW Parliament, [Independent Complaints Officer](#), accessed 27 February 2023.

⁷³ NSW Parliament, [Independent Complaints Officer](#), accessed 27 February 2023.

⁷⁴ Elizabeth Broderick and Co, *Leading for Change: Independent Review of Bullying, Sexual Harassment and Sexual Misconduct in NSW Parliamentary Workplaces 2022*, NSW Parliament, August 2022. See also P Goward, *Review of policies and procedures for Ministerial offices – bullying, harassment, and sexual misconduct*, NSW Government, April 2021.

⁷⁵ NSW Parliamentary Executive Group, [NSW Parliamentary Executive Group Statement on the Broderick Review](#), August 2022.

5. Political lobbying

The background to the regulation of lobbying in NSW is outlined in the 2015 briefing paper.⁷⁶ In summary, the Lobbyists Code of Conduct and register came into operation in 2009. The [Lobbying of Government Officials Act 2011](#) introduced changes including prohibiting success fees for lobbyists and prohibiting former ministers engaging in lobbying activities in the area of their ministerial portfolio within 18 months after ceasing to hold office. Further amendments to the Act in 2014 made the NSW Electoral Commission the independent regulator of lobbyists, applied a set of ethical standards to all third-party lobbyists and other organisations that lobby government, and required ministers to publish quarterly diary summaries of scheduled meetings with external organisations.

In 2021 the ICAC published a report on the regulation of lobbying, access and influence in NSW.⁷⁷ The ICAC referred to its 2010 report on lobbying and explained that the catalysts for its current investigation were:

...a minimalist legislative approach to the regulation of lobbying in NSW, in particular in relation to lobbying in a transparent and accountable way, combined with declining levels of public trust in government officials to conduct their duties and obligations.⁷⁸

The report made 29 recommendations for reform in areas relating to:

- **Public officials:** renaming the Lobbyists Code of Conduct as the 'Lobbying Code of Conduct' and imposing standards and obligations on public officials about how lobbying proposals are received, considered and determined (Recs 1-4)
- **Recordkeeping:** Empowering the lobbying regulator to develop minimum standards for recordkeeping, and requiring all public sector agencies subject to the Act to adopt policies and procedures that conform to minimum standards (Recs 5-6)
- **Lobbyists register:** Requiring in-house lobbyists⁷⁹ to register, and requiring registered lobbyists to disclose information about lobbying communications (such as date, time, and a description) on the lobbyists register (Recs 7-11)
- **Ministerial diaries:** Requiring ministers and parliamentary secretaries to publish diaries on a monthly basis, in a searchable document or database, and to indicate the purpose of each meeting using a pre-set menu of options (Recs 12-13)

⁷⁶ G Griffith, [Integrity in government: issues and developments in New South Wales, 2011-2015](#), NSW Parliamentary Research Service, Briefing Paper 1/2015, January 2015, p 10-19.

⁷⁷ ICAC, [Investigation into the regulation of lobbying, access and influence in NSW](#), June 2021.

⁷⁸ ICAC, [Investigation into the regulation of lobbying, access and influence in NSW](#), June 2021, p 8.

⁷⁹ In contrast to a third-party lobbyist, an in-house lobbyist is an employee, or permanent staff member, of the organisation for which s/he carries out lobbying activities.

- **Post-separation employment:** Introducing a cooling-off period of 12 months for ministerial and parliamentary secretary advisers, and introducing a cooling-off period of 6 months for key public officials (Recs 14-17)
- **Oversight by regulator:** Creating a dedicated NSW Lobbying Commissioner and clarifying the functions of the lobbying regulator (Recs 18-22)
- **Gifts and secondary employment:** Prohibiting lobbyists from offering or giving gifts to a public official who is or has been lobbied and extending the scope of the prohibition on members of parliament doing paid advocacy (Recs 23-27).

The NSW Government's July 2022 response supported all recommendations. Legislation has not yet been introduced to implement them.⁸⁰

⁸⁰ D Perrottet, [NSW to implement strongest lobbying integrity measures in Australia](#) [media release], NSW Government, 19 July 2022; and NSW Government, [NSW Government response to the June 2021 Independent Commission Against Corruption report entitled Lobbying and the NSW public sector - the regulation of lobbying, access and influence in NSW \(Operation Eclipse\)](#), July 2022. Note that 2 recommendations were directed to the NSW Parliament: Rec 23 about training for members and Rec 27 to amend the Members Code of Conduct.

6. Grants and pork barrelling

In recent years, government grants have been in the spotlight in NSW, particularly with regards to the use of grant programs for partisan political purposes (known as 'pork barrelling'). Some political leaders have acknowledged that this practice is commonplace.⁸¹

6.1 Legislation and guidelines

Until recently, there was no NSW legislation that specifically regulated grants administration.⁸² The *Government Sector Employment Act 2013* set out core values of the government sector (section 7), and a Code of Ethics and Conduct for NSW Government Sector Employees was made pursuant to the Act. The *Government Sector Finance Act 2018* also set out values and principles to be guided by when exercising financial management functions (sections 3-7). In 2010, the Department of Premier and Cabinet published the *Good Practice Guide to Grants Administration*, but this guide had no legal effect.⁸³ As discussed below, changes have recently been made to legislation and the guide.

6.2 Inquiries and reviews

There have been several inquiries and reviews into grants administration in NSW, including a parliamentary committee inquiry, a NSW Government review and an ICAC investigation.⁸⁴ There have also been a range of Commonwealth inquiries, which are not covered here.⁸⁵

6.2.1 Parliamentary committee inquiry

In 2020 the NSW Legislative Council's Public Accountability Committee commenced an inquiry into the integrity, efficacy and value for money of NSW Government grant programs. The committee examined a range of grant funds, including the Stronger Communities Fund (SCF) tied grants round and bushfire relief grants.

The committee's first report in March 2021 found that 95% of the \$252 million SCF went to projects in coalition-held or marginal electorates and this allocation had been a clear abuse of the grants process.⁸⁶ Grants had also been provided to certain councils without a clear

⁸¹ A Dale, [Pork barrelling: past its use-by date?](#) *LSJ Online*, March 31, 2021

⁸² ICAC, [Report on investigation into Pork Barrelling in NSW](#), ICAC, August 2022, p 35-36

⁸³ ICAC, [Report on investigation into Pork Barrelling in NSW](#), ICAC, August 2022, p 35-36

⁸⁴ See also State Archives and Records Authority (SARA), [Record keeping assessment matter raised by Mr Greg Warren MP: Alleged non-compliant disposal of records relating to the Stronger Communities Fund](#), SARA, 21 January 2021; NSW Auditor-General, [Integrity of grant program administration](#), 8 February 2022; and NSW Auditor-General, [Bushfire recovery grants: performance audit](#), 2 February 2023.

⁸⁵ See for example: Joint Committee of Public Accounts and Audit, Report 484: [The Administration of government grants: inquiry into Auditor-General's reports 5, 12, and 23 \(2019-20\)](#), Parliament of the Commonwealth of Australia, December 2020; and Select Committee on Administration of Sports Grants, [Select Committee on Administration of Sports Grants: final report](#), The Senate, March 2021.

⁸⁶ Legislative Council Public Accountability Committee, [Integrity, efficacy and value for money of NSW Government Grant programs](#), NSW Parliament, Report No. 8, March 2021, p 43.

process or merit assessment. The committee made 12 recommendations directed to the government, including that it:

- Review and update the *Good Practice Guide to Grants Administration*, ensuring that it includes publication of guidelines, clear chains of authority and decision-making, adequate record keeping, guidelines around the role of members of parliament and discretion of ministers and other decision makers
- Ensure that key requirements of the guide are made enforceable
- Create and maintain a central website for all grant applications, including guidelines, objectives, and eligibility
- Increase the powers and remit of the Auditor-General to include 'follow the dollar' powers⁸⁷ and to conduct more regular performance audits on the design and guidelines of government grants programs
- Ensure all grant programs have at a minimum certain legally binding and mandatory elements. These would include: a designated decision maker, eligibility criteria, a process for identifying and assessing proposed projects against the criteria, and program guidelines that are clear, detailed and publicly available.⁸⁸

The NSW Government's response in June 2022 supported 7 of the 12 recommendations in full or in principle, and the other 5 were noted.⁸⁹ In relation to most recommendations listed above, the government referred to a revised grants administration guide.

The committee's final report in February 2022 made critical findings about the allocation of funding under the Bushfire Local Economic Recovery Fund and the Arts and Cultural Grants program.⁹⁰ It made 12 recommendations to the government, including that:

- All grant schemes follow a mandatory set of guidelines which detail the process for awarding the grant, the criteria considered and the requirements for public reporting. Such guidelines should provide different streams for different grant processes, with all grants subject to common requirements of integrity, transparency and prioritising the public good

⁸⁷ As noted in the report, 'follow the dollar' powers means auditing the use of taxpayers money once it passes into the hands of non-government entities.

⁸⁸ Legislative Council Public Accountability Committee, *Integrity, efficacy and value for money of NSW Government Grant programs*, NSW Parliament, Report No. 8, March 2021, p xii-xiv, Recommendations 1-5. Government members of the committee issued a dissenting statement at p 181.

⁸⁹ NSW Government, *Government response to the final report of the Public Accountability Committee on its inquiry into the integrity, efficacy and value for money of NSW Government grant programs*, NSW Government, June 2022

⁹⁰ Legislative Council Public Accountability Committee, *Integrity, efficacy and value for money of NSW Government Grant programs*, NSW Parliament, Report No. 10, February 2022, p viii-xi

- Where the decision maker for a grant program is a public servant, the government should strengthen its processes to ensure that ministers and ministerial staff do not attempt to influence the decisions
- When a minister who is a decision maker for a grants process does not agree, in whole or in part, with a written recommendation of the agency administering the grants program, the minister should be required to set this out in writing, and such decision should be made public.⁹¹

The NSW Government supported 6 of the 12 recommendations in full or in principle, and the other 6 were noted.⁹² The government considered that the revised grants administration guide addressed the 3 recommendations listed above.

6.2.2 NSW Government review

A NSW Government review into grants administration was conducted by the NSW Productivity Commissioner and the Department of Premier and Cabinet. The final report was published in April 2022, making 19 recommendations to bring grants administration into line with best practice.⁹³ It recommended:

An updated Grants Administration Guide. The draft Guide...provides principles-based guidance and includes mandatory requirements for officials, Ministers, and ministerial staff. The Review recommends that the Guide be issued as a Premier's Memorandum and that compliance with the Guide is a legislative requirement...

Enhanced probity requirements. To ensure compliance with the draft Guide, the Review recommends agencies identify and task relevant officials within the organisation with providing support and advice to grant administrators on the design and implementation of grants. For all complex, high risk, or high value grant programs, officials should be required to seek probity advice...

A Community of Practice. The Review recommends bringing together officials experienced in grants administration to support the development of skills and expertise across government. The Community of Practice will promote compliance with the Guide and improve the professionalism of grants administration...

A whole-of-government website that makes up-to-date information on grants available to the public...The Review recommends that agencies be required to publish end-to-end information on all grant programs, including open and upcoming opportunities, details of grants awarded, the use of ministerial discretion, and program evaluations.

⁹¹ Legislative Council Public Accountability Committee, *Integrity, efficacy and value for money of NSW Government Grant programs*, NSW Parliament, Report No. 10, February 2022, p xii-xiii, Recommendations 10-12

⁹² NSW Government, *Government response to the final report of the Public Accountability Committee on its inquiry into the integrity, efficacy and value for money of NSW Government grant programs*, NSW Government, June 2022

⁹³ NSW Productivity Commissioner and the Department of Premier and Cabinet, *Review of Grants Administration in NSW: Final report*, NSW Government, April 2022.

The response of the NSW Government in June 2022 supported all recommendations in full or in principle.⁹⁴

6.2.3 ICAC investigation

In August 2022 the ICAC released its final report following an investigation into pork barrelling.⁹⁵ The ICAC found that pork barrelling could constitute corrupt conduct in certain circumstances, and it made 21 recommendations to help prevent or better regulate pork barrelling. These were intended to supplement recommendations from the government review recommendations and included:⁹⁶

- Issuing any whole-of-government grant guidelines as a statutory regulation
- Amending the *Government Sector Finance Act 2018* to include obligations that a minister must not approve expenditure of money unless satisfied that the expenditure would be an efficient, effective, economical, and ethical use of the money and that it represents value for money
- Amending the wording of clause 6 of the Ministerial Code of Conduct to help prevent ministers from acting dishonestly, and to require them to act in the public interest and not for private benefit for themselves or another person.⁹⁷

The government's response considered that the reforms it was implementing were consistent with many of the ICAC's recommendations.⁹⁸ For example, the government noted that the amendment it made to the *Government Sector Finance Act 2018* ensures that compliance with the guide is a legislative requirement. The government did not agree with the second recommendation listed above but did support the third.

6.3 NSW Government reforms

In June 2022 an amendment was enacted to the *Government Sector Finance Act 2018*, stating that a minister, a minister's staff member, or an employee of a government sector agency, must not knowingly breach a mandatory requirement contained in the grants administration guide.⁹⁹ In September 2022 a revised grants administration guide was issued (discussed below). In November 2022 legislation was enacted to implement 'follow

⁹⁴ D Perrottet, [NSW Government responds to grant review recommendations \[media release\]](#), NSW Government, 7 June 2022, accessed 3 May 2023.

NSW Government, [Government response to the final report of the Public Accountability Committee on its inquiry into the integrity, efficacy and value for money of NSW Government grant programs](#), NSW Government, June 2022

⁹⁵ ICAC, [Report on investigation into Pork Barrelling in NSW](#), ICAC, August 2022.

⁹⁶ ICAC, [Investigation into Pork Barrelling \(Operation Jersey\)](#), accessed 16 March 2023, Recommendations 1-3,5

⁹⁷ ICAC, [ICAC finds pork barrelling could be corrupt, recommends grant funding guidelines be subject to statutory regulation \[Media release\]](#), 1 August 2022

⁹⁸ NSW Government, [Government response to the Report on Investigation into pork barrelling in NSW by the Independent Commission Against Corruption](#), NSW Government, [2022]

⁹⁹ [Treasury Legislation Amendment \(Miscellaneous\) Act 2022](#), which inserted a new clause 31 into Schedule 1 of the *Government Sector Finance Act 2018*.

the dollar' powers for the NSW Auditor-General.¹⁰⁰ The Ministerial Code of Conduct has not yet been amended.¹⁰¹

6.3.1 Revised grants administration guide

The revised grants administration guide applies to ministers, ministerial staff and government sector employees and was issued under a Premier's Memorandum.¹⁰² The guide requires ministers and officials to be familiar and comply with the principles of grants administration and the mandatory requirements for grants administration processes.

The guide sets out 7 key principles of grants administration:

1. Robust planning and design
2. Collaboration and partnership
3. Proportionality
4. An outcomes orientation
5. Achieving value with relevant money
6. Governance and accountability
7. Probity and transparency.

The guide refers to pork barrelling in relation to the principle of probity and transparency, stating that such conduct 'may be unlawful where it amounts to, for example, corruption, bribery, maladministration, or records mismanagement/destruction'.¹⁰³

In relation to grant administration processes, the guide states that ministers must comply with the following mandatory requirements:

- Ministers who are involved in the grants administration process must administer the grant in accordance with the grant guidelines
- A Minister must not approve or decline a grant without first receiving written advice from officials on the merits of the proposed grant or group of grants (there are exceptions for some non-competitive grants)
- A Minister (or other decision-maker) who approves or declines a grant must record the decision in writing, including the reasons for the decision (and any departure from the recommendation of officials), having regard to the grant guidelines and the key principle of achieving value for money, and manage these records in accordance with the requirements of the *State Records Act 1998* (there are some exceptions for non-competitive grants)

¹⁰⁰ [Government Sector Audit and Other Legislation Amendment Act 2022](#)

¹⁰¹ The Ministerial Code is set out in the [Independent Commission Against Corruption Regulation 2017](#)

¹⁰² NSW Premier & Cabinet, [M2022-07 Grants Administration Guide](#), NSW Government, 2022.

¹⁰³ Premier and Cabinet, [Grants Administration Guide](#), NSW Government, September 2022, p 23

- A Minister (or delegate) may approve the awarding of a grant, or opening of a grant opportunity, using a method other than a competitive, merit-based assessment process. The decision-maker must have regard to the advice of officials and must document the reasons for selecting the alternative process.¹⁰⁴

There is a different set of mandatory requirements for officials. For example, they must publish information on the decisions made in relation to grants awarded on the NSW Government [Grants and Funding Finder website](#) within 45 days, subject to exceptions.

6.4 New Labor Government policies

The new Premier, Chris Minns MP, committed to ending pork barrelling in government grants.¹⁰⁵ On 11 May 2023 the new government introduced a bill into the Legislative Council, which would amend the Act to state:¹⁰⁶

- (2) A Minister must not approve a grant to which the Grants Administration Guide applies unless satisfied that the grant—
 - (a) is an efficient, effective, economical and ethical use of money, and
 - (b) achieves value for money.
- (3) When approving or declining a grant to which the Grants Administration Guide applies, a person must have regard to the key principles of grants administration specified in the Guide.

The new government has also committed to introducing new requirements for disaster relief grants. The new Special Minister of State, John Graham MLC, said:

We committed that if we formed government, we would ensure that all major natural disaster relief packages are automatically referred to the Auditor-General. All grants will be forwarded for review within three months, and fast-track grants will also be subject to performance reviews. That was a key recommendation from the ICAC.¹⁰⁷

6.5 Stakeholder reform proposals

The Grattan Institute has outlined 3 key areas for creating stronger processes and oversight to prevent pork barrelling:¹⁰⁸

- All grants should be allocated through an open, competitive, merit-based process
- Ministers should establish grant programs, and define their purpose and selection criteria, but should not be involved in choosing grant recipients

¹⁰⁴ Premier and Cabinet, [Grants Administration Guide](#), NSW Government, September 2022, p 9

¹⁰⁵ A Smith, [Minns vows to ban pork-barrelling in bid to rebuild trust with voters](#), *Sydney Morning Herald*, 16 October 2022, accessed 24 March 2023.

¹⁰⁶ [Government Sector Finance Amendment \(Grants\) Bill 2023](#)

¹⁰⁷ J Graham, [Government Sector Finance Amendment \(Grants\) Bill 2023](#), *Hansard*, 11 May 2023.

¹⁰⁸ D Wood, K Griffiths, A Stobart, [New Politics: preventing pork barrelling](#), Grattan Institute, August 2022, p 3.

- Compliance with grant rules should be overseen by a multi-party standing parliamentary committee. Funding for auditors-general should also be increased.

The Centre for Public Integrity has proposed a 3-part approach to enhance grants administration at the Commonwealth level.¹⁰⁹ This includes:

- Clear criteria: merit selection criteria and program guidelines to be published, or, if the grants program is worth more than \$100 million, set out in legislation
- Robust reporting: including requiring ministers to report to parliament quarterly in respect of expenditure decisions that deviate from departmental advice
- Augmented accountability: including a dedicated parliamentary committee, and improved enforceability of the existing legislative framework.

¹⁰⁹ The Centre for Public Integrity, [Seal the barrel: a new robust system for the administration of government grants](#), The Centre for Public Integrity, April 2022, p 1-2.

7. Public sector appointments

There was considerable controversy over Investment NSW's appointment in June 2022 of Mr John Barilaro (former Deputy Premier and Minister for Trade) as the Senior Trade and Investment Commissioner to the Americas.¹¹⁰ Issues included why another candidate who had received a verbal offer for the position was not then appointed to it, whether any conflict of interest arose with public servants, and whether there was improper influence by relevant ministers. Mr Barilaro subsequently withdrew from the role.

The Department of Premier and Cabinet commissioned a review of the appointment by the former Public Service Commissioner, Graeme Head. Mr Head's report in August 2022 found that Investment NSW generally followed the legislative requirements as they related to process.¹¹¹ However, this was largely because the regulations required 'a less prescriptive approach' for these particular roles than for recruitment processes that were based on the Government Sector Employment Rules.¹¹² The report also found that certain matters were not 'managed fully in keeping with the requirements of the Code of Ethics and Conduct'.¹¹³

The report made 13 recommendations including for legislative reform and changes to recruitment practice and guidance. The legislative recommendations related to the [Government Sector Employment Act 2013](#) and its subordinate legislation, and included:

- Adding a specific reference in the Act that a secretary or agency head is not subject to the direction of a minister in respect of any of their employer functions
- Including a statement in the Act on the role and responsibilities of secretaries
- Amending the Act to legislate a code of ethics and conduct for the public sector
- Applying a full Government Sector Employment Rules-based process to the future selection of senior trade and investment commissioners
- A new Parliamentary Joint Committee to monitor and review the exercise of the Public Service Commissioner's functions.

The government's response supported 12 of the 13 recommendations and legislative reforms were introduced through the [Government Sector Employment Amendment Act 2022](#).¹¹⁴ The government did not support a recommendation to change the Ministerial Code

¹¹⁰ See for example A Smith, L Cormack and T Rabe, [NSW Labor moves to block Barilaro appointment to New York role](#), *Sydney Morning Herald*, 22 June 2022.

¹¹¹ G Head, [DPC Inquiry: Appointment of Senior Trade and Investment Commissioner to the Americas](#), Department of Premier and Cabinet, 12 August 2022, p 6-8.

¹¹² G Head, [DPC Inquiry: Appointment of Senior Trade and Investment Commissioner to the Americas](#), Department of Premier and Cabinet, 12 August 2022, p 6-8.

¹¹³ G Head, [DPC Inquiry: Appointment of Senior Trade and Investment Commissioner to the Americas](#), Department of Premier and Cabinet, 12 August 2022, p 6-8.

¹¹⁴ D Perrottet, [Response to Graeme Head Inquiry \[media release\]](#), NSW Government, 16 August 2022.

of Conduct to state that ministers should not seek to influence secretaries in relation to their employer functions. The government announced some additional reforms including amending the Ministerial Code of Conduct to prevent, for a period of 18 months, ministers from accepting any offer of employment within a public sector agency that reported to them within the last 2 years of office.¹¹⁵ The ministerial code has not yet been amended.

The Legislative Council's Public Accountability Committee also conducted an inquiry into the appointment and considered the appointment of other senior trade and investment commissioners. The committee found that Mr Barilaro's appointment had 'all the trademarks of a "job for the boys" position.'¹¹⁶ The committee also found that Mr Barilaro inappropriately interfered in the selection process for the Agent General UK position.¹¹⁷ The committee did not make any recommendations for changes to legislation or guidelines. Coalition members of the committee disagreed with the committee's findings, claiming the inquiry was a 'politically motivated hit job...weeks out from an election.'¹¹⁸

In March 2023, the ICAC announced that its investigation into Mr Barilaro's appointment did not identify any evidence of corrupt conduct.¹¹⁹

¹¹⁵ D Perrottet, [Response to Graeme Head Inquiry \[media release\]](#), NSW Government, 16 August 2022.

¹¹⁶ Legislative Council Public Accountability Committee, [Appointment of Mr John Barilaro as Senior Trade and Investment Commissioner to the Americas – Interim report](#), NSW Parliament, February 2023, p 45.

¹¹⁷ Legislative Council Public Accountability Committee, [Appointment of Mr John Barilaro as Senior Trade and Investment Commissioner to the Americas – Final report](#), NSW Parliament, February 2023, p 23.

¹¹⁸ Legislative Council Public Accountability Committee, [Appointment of Mr John Barilaro as Senior Trade and Investment Commissioner to the Americas – Interim report](#), NSW Parliament, February 2023, p 94; and Legislative Council Public Accountability Committee, [Appointment of Mr John Barilaro as Senior Trade and Investment Commissioner to the Americas – Final report](#), NSW Parliament, February 2023, p 31.

¹¹⁹ ICAC, [Statement regarding the appointment of John Barilaro as Senior Trade and Investment Commissioner to the Americas \[media release\]](#), 6 March 2023.

8. Whistleblower protections

The [Public Interest Disclosures Act 1994 \(NSW\)](#) provides for the reporting and investigation of allegations of serious wrongdoing within the NSW public sector, and contains protections for public officials who make such disclosures.

As outlined in the 2015 briefing paper, various amendments were made to the Act between 2010 and 2014, including extending protections to independent contractors of public authorities, and requiring each public authority to provide 6-monthly data to the Ombudsman on its compliance with the Act.¹²⁰

In October 2017 the Joint Parliamentary Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission tabled its review of the Act, making 38 recommendations for reform.¹²¹ These included simplifying the disclosure process and enhancing the protections around detrimental action. The committee also recommended that the Act be redrafted to simplify it.

In November 2017 the Committee on the ICAC tabled a report on people who make voluntary disclosures to ICAC. The report made 10 recommendations including that the ICAC Act be amended to protect people who make voluntary disclosures to the ICAC against criminal, civil and disciplinary liability for doing so.¹²²

The NSW Government supported both sets of committee recommendations.¹²³ A new [Public Interest Disclosures Act 2022](#), which will replace the existing Act, was enacted in April 2022 and is due to commence by October 2023. In a special report on the bill, the NSW Ombudsman confirmed that both sets of committee recommendations were substantially implemented by the bill, except for a recommendation to lower the threshold for external disclosures to members of parliament and journalists.¹²⁴

¹²⁰ G Griffith, [Integrity in government: issues and developments in New South Wales 2011-2015](#), NSW Parliamentary Library Research Service, Briefing Paper No 1/2015, January 2015, p 39.

¹²¹ Parliamentary Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission, [Review of the Public Interest Disclosures Act 1994](#), NSW Parliament, October 2017.

¹²² Committee on the Independent Commission Against Corruption, [Protections for People Who Make Voluntary Disclosures to The Independent Commission Against Corruption](#), NSW Parliament, November 2017, Rec 1.

¹²³ NSW Government, [Government response to report of the Committee on the Ombudsman, the Law Enforcement Conduct Commission and Crime Commission: Review of the Public Interest Disclosures Act 1994](#), April 2018; and NSW Government, [Government response to report of the Committee on the Independent Commission Against Corruption](#), April 2018.

¹²⁴ NSW Ombudsman, [Special report by the NSW Ombudsman on the Public Interest Disclosures Bill 2021](#), 19 October 2021, p 7.

9. Access to government information

The [Government Information \(Public Access\) Act 2009](#) facilitates public access to government information by encouraging the proactive public release of government information by agencies and giving members of the public a right to access government information, subject to certain exceptions.

In July 2017 the NSW Department of Justice completed its 5-year statutory review of the Act, which concluded that the Act's objectives were valid, and its terms were appropriate for securing those objectives.¹²⁵ The review made 18 recommendations to:

- Modernise some aspects of the Act (for example, giving agencies greater discretion to accept access applications electronically)
- Reduce compliance burdens for agencies (for example, in relation to open access information)
- Provide more certainty for applicants in how their access applications will be handled (for example, reducing circularity in review processes).¹²⁶

In 2018, amendments were enacted to give effect to the recommendations.¹²⁷

The Information Commissioner monitors public sector agency compliance with the Act and publishes annual reports. Key findings from 2020–21 were:¹²⁸

- 85% of agencies complied with mandatory proactive release requirements
- Departments had low compliance with 'additional open access requirements' such as listing major assets and acquisitions
- Agencies received 22,349 valid formal applications (a 30% increase on 2019–20)
- Almost all formal applications (92%) were decided within the statutory time frames
- Access was granted to the information in 73% of cases (30% access in full and 43% access in part). The release rate was lower (57%) for applications by MPs
- Most external reviews of agency decisions by the Information Commissioner (64%) recommended the agency reconsider its decision. In contrast, most external reviews by the tribunal (71%) upheld the agency's decision.

¹²⁵ Department of Justice, [Statutory Review: Government Information \(Public Access\) Act 2009 and the Government Information \(Information Commissioner\) Act 2009](#), NSW Government, July 2017, p v.

¹²⁶ Department of Justice, [Statutory Review: Government Information \(Public Access\) Act 2009 and the Government Information \(Information Commissioner\) Act 2009](#), NSW Government, July 2017, p v-vi.

¹²⁷ [Government Information \(Public Access\) Amendment Act 2018 No 89](#)

¹²⁸ Information and Privacy Commission NSW, [Report on the operation of the Government Information \(Public Access\) Act 2009: 2020-2021](#), 2022, p 12-13.

10. Truth in political advertising laws

Two Australian jurisdictions have truth in political advertising laws – South Australia (since 1985) and the ACT (since 2020).¹²⁹ The laws make it an offence for a person to authorise the publication of an electoral advertisement which contains a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent. It is a defence if the person took no part in deciding the content of the advertisement and could not reasonably have expected to have known that the statement was inaccurate and misleading. The Electoral Commissioner can apply to the Supreme Court for an order that the person not disseminate the advertisement again or publish a retraction.

In its 2020 report on the administration of the 2019 NSW election, the NSW Parliament's Joint Standing Committee on Electoral Matters noted that some party stakeholders had suggested that laws should be introduced in NSW prohibiting negative campaigning or promoting truth in advertising.¹³⁰ However, the committee did not recommend that such laws be introduced. The committee noted that these laws raise issues about who is to adjudicate the 'negativity' or 'truth' of a statement and how they do so. In addition, the committee said that it did not want to put constraints on legitimate political debate. The Australian Parliament's Joint Standing Committee on Electoral Matters came to the same conclusion in its report on the 2019 Federal Election.¹³¹

In contrast, in a 2021 report on the impact of social media on elections, the Victorian Parliament's Electoral Matters Committee recommended that the government introduce truth in political advertising laws.¹³² The report commented that the South Australian model 'offers a way to reduce the impact of inaccurate information without unduly restricting freedom of political communication.'¹³³ The government supported this recommendation in principle, noting that it would consult with the Electoral Commission and the Department of Justice and Community Safety regarding the appropriate means for overseeing inaccurate advertising.¹³⁴ No laws have yet been introduced in Victoria.

¹²⁹ [Electoral Act 1985](#) (SA), s 113; [Electoral Act 1992](#) (ACT), s 297A. Note also that the Commonwealth introduced similar laws in 1983, but these were repealed in 1984: see G Williams, [Truth in Political Advertising Legislation in Australia](#), Commonwealth Parliamentary Library, Research Paper 13 1996-97, 1997.

¹³⁰ Joint Standing Committee on Electoral Matters, [Administration of the 2019 NSW State Election](#), NSW Parliament, Report 1/57, October 2020, p 16.

¹³¹ Joint Standing Committee on Electoral Matters, [Report on the conduct of the 2019 federal election and matters related thereto](#), Australian Parliament, December 2020. Note, however, that Labor and Greens Senators issued a dissenting statement in the report in relation to this issue.

¹³² Electoral Matters Committee, [Inquiry into the impact of social media on Victorian elections and Victoria's electoral administration](#), Victorian Parliament, September 2021, Rec 11.

¹³³ Electoral Matters Committee, [Inquiry into the impact of social media on Victorian elections and Victoria's electoral administration](#), Victorian Parliament, September 2021, p 124.

¹³⁴ Victorian Government, [Government response to the recommendations made by the Electoral Matters Committee in its 2021 report on its Inquiry into the impact of social media on Victoria's State elections and electoral administration](#), 23 March 2022, p 2-3.

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