



Mark Speakman
Attorney General

A5315585

Ms Helen Minnican
Clerk of the Legislative Assembly
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Ms Minnican,

**Government response to the Independent Commission Against Corruption entitled
*Reputational impact on an individual being adversely named in the ICAC's investigations***

I refer to Report No. 4/57 of the Committee on the Independent Commission Against Corruption (the **ICAC Committee**) entitled *Reputational impact on an individual being adversely named in the ICAC's investigations* (the **Report**) and your letter dated 25 November 2021 in relation to the Report.

In accordance with Standing Order 303A of the Legislative Assembly, I enclose the Government's response to the Report.

I would be grateful if you could arrange for the enclosed to be tabled as the Government's response to the Report in compliance with the Standing Orders.

Yours sincerely

Mark Speakman

Encl: Government Response ref A5315585

24 May 2022



Government Response to the Report of the Committee on the Independent Commission Against Corruption – *Reputational Impact on an Individual Being Adversely Named in the Independent Commission Against Corruption’s Investigations* (Report 4/57 – November 2021)

The report of the Committee on the Independent Commission Against Corruption (the **Committee**) entitled *Reputational Impact on an Individual Being Adversely Named in the Independent Commission Against Corruption’s Investigations* was tabled on 25 November 2021.

The Committee made nine recommendations aimed at responding to concerns about unwarranted and unfair reputational impact on persons named in the Independent Commission Against Corruption’s (**ICAC’s**) investigations that may not be fully addressed by available remedies.

Recommendations directed to the Government

Recommendations 4 and 7 relate to legislative provisions in the *Independent Commission Against Corruption Act 1988* (NSW) (the **ICAC Act**) and are, therefore, addressed to the Government.

The Government **notes recommendation 4**. The ICAC Act does not provide for the statutory review of the Act and the recommendation does not call for a review. The recommendation can be considered as part of any future review of the Act.

The Government **does not support recommendation 7**. The Government supports the continued operation of Part 13 of Schedule 4 to the ICAC Act as inserted by the *Independent Commission Against Corruption Amendment (Validation) Act 2015* (the **Validation Act**).

The individuals referred to in recommendation 7 have fully exercised their review and appeal rights in this matter. The Government does not consider there to be a compelling case to amend the ICAC Act to alter the operation of the provisions inserted by the Validation Act.

The Government will not tolerate corruption in New South Wales and continues to support the Validation Act. Findings made by the ICAC within what was understood to be the ICAC’s jurisdiction at the time should continue to stand.

The Government is committed to upholding integrity in public administration and a strong ICAC plays a vital role in investigating, exposing, and preventing corruption.

The High Court of Australia decision in *Independent Commission Against Corruption v Cunneen* [2015] HCA 14 (*Cunneen*) raised important issues regarding the ICAC’s jurisdiction. Those issues were subsequently considered by the Independent Panel’s Review

of the Jurisdiction of the Independent Commission Against Corruption in July 2015 and dealt with by the Parliament in the *Independent Commission Against Corruption Amendment Act 2015*.

Without the amendments made by the Validation Act, the *Cunneen* decision could well have affected a significant number of past ICAC investigations and findings of corrupt conduct, reaching back to 1989 when the ICAC was established. The Validation Act ensures that the *Cunneen* decision does not provide those who have done the wrong thing in the past with a loophole.

Recommendations directed to the ICAC

Recommendations 1, 2 and 5 are directed to the ICAC. The ICAC is an independent statutory body and is not subject to the direction or control of any Minister or the Government.

While the Government is not obliged to respond and acknowledges that it is not possible or appropriate for the Government to direct the ICAC, the Government supports the Committee's recommendations that are addressed to the ICAC.

Recommendation 1 regarding consideration of an introduction of a mental health protocol for individuals, recommendation 2 regarding publishing in each report a table describing the nature of an individual's involvement with an investigation (and specifically whether the individual is the subject of a finding or was involved only as a witness), and recommendation 5 regarding updating of the ICAC's website following judicial proceedings are sensible recommendations. They are practical steps to clarify how an investigation conducted by the ICAC relates to an individual and how that is communicated to the public.

The Government considers these recommendations fair and reasonable and would support the ICAC considering their implementation.

Recommendations directed to the Committee

Recommendations 3, 6, 8 and 9 are directed to the Committee and concern future lines of inquiry and review for the Committee.

Although the recommendations are not directed to the Government, the Government supports the Committee continuing to explore and report on the issues raised in the recommendations, specifically:

- the threshold for the conduct of a public hearing applying to similar bodies
- standards or requirements for the time taken to conduct and finalise investigations
- the powers of the Inspector of the ICAC
- the existing mechanisms of judicial review.