T R A N S C R I P T

INTEGRITY AND OVERSIGHT COMMITTEE

Inquiry into the Adequacy of the Legislative Framework for the Independent Broad-based Anti-corruption Commission

Melbourne – Monday 18 August 2025

MEMBERS

Dr Tim Read – Chair
Hon Kim Wells – Deputy Chair
Ryan Batchelor
Jade Benham
Eden Foster
Paul Mercurio
Rachel Payne
Belinda Wilson

WITNESS *(via videoconference)*

Hon John Hatzistergos AM, Chief Commissioner, NSW Independent Commission Against Corruption.

The CHAIR: I declare open this public hearing for the Integrity and Oversight Committee's Inquiry into the Adequacy of the Legislative Framework for the Independent Broad-based Anti-corruption Commission.

I would like to welcome the public gallery and any members of the public watching the live broadcast. I acknowledge my colleagues participating today. Online we have Jade Benham and Rachel Payne; from my far left, Eden Foster, Belinda Wilson, Paul Mercurio and Ryan Batchelor; me, Tim Read; and on my right, the Deputy Chair Kim Wells.

On behalf of the Integrity and Oversight Committee I acknowledge the First Nations peoples, the traditional owners of this land, which has served as a significant meeting place for the First Peoples of Victoria, and I acknowledge and pay respect to the elders of First Peoples in Victoria past and present and welcome elders and members of communities who are participating in the hearing today.

To the witness: there are some formalities to cover, so please bear with me. Evidence taken by the Committee is generally protected by parliamentary privilege. You are protected against any action for what you say here today, but if you repeat the same things elsewhere, including on social media, those comments will not be protected by privilege. Deliberately false evidence or misleading of the Committee may be considered a contempt of Parliament.

All evidence given today is being recorded by Hansard, and you will be provided with a proof version of the transcript to check once available. Verified transcripts will be placed on the Committee's website. Broadcasting or recording of this hearing by anyone other than Hansard is not permitted. For other Committee Members online: please mute your microphones to minimise interference.

I welcome, via Zoom, from the New South Wales Independent Commission Against Corruption, the Honourable John Hatzistergos, Chief Commissioner, to give evidence at this hearing. If you have got brief opening comments of 5 minutes or so, we will then follow up with questions from the committee.

John HATZISTERGOS: Thank you, Chair. Thank you for the opportunity to speak and to assist you in your deliberations. We have prepared a submission, which I trust you have received and you have had the opportunity to consider. It really addresses three issues, one going to the threshold for us to investigate, the other one going to the nature of corrupt conduct and the third being the question of the criteria which we use to go to a public inquiry. I have to say that I am not an expert, obviously, in IBAC and not as familiar with your parameters as I am with those of the New South Wales Commission. Nonetheless these three areas are areas of some contrast which it might be appropriate for the Committee to reflect on in the course of its deliberations. I will leave it at that.

The CHAIR: Thank you, Chief Commissioner. I might just start with the questions. I am interested in the relative proportion of public versus private inquiries conducted by ICAC and when you think it is important to hold private inquiries. I am also particularly interested in public hearings and whether there are times when public hearings may have given rise to reputational damage and what you consider in trying to avoid that.

John HATZISTERGOS: Well, there are a number of components to the question. If I can go briefly to our statistics for last year, I think we had about 131 compulsory examinations, but they would have spread across a number of different matters. One compulsory examination is not the equivalent of one public inquiry. There may be a collection of compulsory examinations which may be useful to go to a particular inquiry. So you are not really comparing the same by comparing just statistics as to the number of days we are sitting in compulsory examinations as compared to public inquiries. We did, I think, about 31 days in public inquiries last year, or thereabouts, and that was in one public inquiry.

The circumstances in which we go to a public inquiry are set out in our legislation, principally section 31. Whilst we do not have a threshold of exceptional circumstances, there are a number of other requirements that we are obliged to meet. The principal one is the public interest. We have to weigh the public interest in going to a public inquiry, bearing in mind of course the private interests of those who might be affected by the exposure

of the particular case or evidence. Beyond that, we have a focus in our Act on serious or systemic corrupt conduct, and generally speaking, if it is not serious or systemic, we would not go to a public inquiry. And the other requirement we have in our legislation is a requirement for the concurrence of the majority of the Commissioners, including the Chief Commissioner. So we have a structure here which comprises me as the Chief Commissioner and two part-time Commissioners. We cannot go to a public inquiry without the concurrence of a majority, which is two out of the three, and the majority has to include me. Having said that, that was introduced some 10 years ago into our Act, but I have to say that in the experience of the previous commissioners and the current Commissioners, there has not been a single instance where we have gone to a public inquiry where other than three Commissioners have all agreed that it is appropriate. Our Act requires us, as one of our purposes, to expose corrupt conduct. In circumstances where we have examined the matter in compulsory examinations, we have formed a view about the particular conduct which satisfies the test of going to a public inquiry and we get the concurrence of the majority of the Commissioners, including the Chief Commissioner, we would do so.

Obviously, if you are going to find someone corrupt, as our Act allows us to do, doing so in private, in my view, has a number of problems. People do not get to see the circumstances and form the judgement that the Commission ultimately is tasked to make in producing its report to Parliament. Secondly, if there are deficiencies in the system which need to be exposed with a view to preventing corrupt conduct from occurring, that is best advanced by showing the factual matrix which justifies and supports the case for change. Thirdly, I think the exposure does act as an impediment on corrupt conduct occurring in the sense that corrupt conduct is generally done in private, it is consensual and it is more difficult to uncover than in a traditional law enforcement process involving courts. The Commission's processes enable that to be exposed and to provide a vehicle for education of public officials more broadly.

The CHAIR: Thank you. In the interests of time I think I might hand over to my colleague Ryan Batchelor.

Ryan BATCHELOR: Thanks, Chair. Commissioner, thank you. Just further on the threshold question for determining whether a public hearing is desirable or in the public interest, one of the issues that we are having to weigh up is the adequacy of the provisions of the Act that we are tasked with inquiring into. I am just interested in whether the Commission has done any work in the New South Wales context to understand the educative impact of the public hearings. You obviously mention in the submission and in your contribution the deterrence element – that part of the benefits of conducting public hearings in this way is this educative and deterrence element. Has the Commission undertaken any work or research to understand in the minds of the people that it is seeking to educate how effective this is?

John HATZISTERGOS: Well, the current Commission has changed its approach somewhat. I think it is fair to say that previously the approach of the commission was to educate through, effectively, the process of having the public inquiry and producing the report to Parliament so that the lessons would be learned almost through a process of osmosis. That is not the approach we have taken. We have taken a very hands-on approach about going to public sector organisations, speaking to them and taking them through the various cases and dealing with the actual facts, which have led to the Commission's conclusions. So it is a very, very intense process. I see perhaps little value in simply producing reports which fade with time, unless you are prepared to harvest the lessons from them and ensure that the education that you undertake brings together those principles so that public officials understand the concepts and the lessons of the past.

Now, we have found this quite effective. I am not sure that we have done an analysis of it. We get regular requests for these sorts of sessions to be conducted. We did a lot of work in the lead-up and following the last local government election and in the lead-up and the follow-up to the last state election to ensure that the public officials who were elected to civic offices and parliamentary offices were across their obligations. In some instances we did one-on-one sessions with MPs to be able to ensure that they understood the lessons. So education is critical to ensuring that the work that we undertake has a meaningful impact long term.

Ryan BATCHELOR: Thanks, Chair.

The CHAIR: Thank you, Ryan. Kim Wells.

Kim WELLS: Thanks, Commissioner. What in your view are the advantages of the ICAC Act's broader definition of 'corrupt conduct' compared with the IBAC Act in Victoria, and are there any risks or other disadvantages with the broader definition?

John HATZISTERGOS: Well, our Act extends beyond a narrow range of criminal offences, which I understand section 4 of the IBAC Act relates to. It includes, in the case of parliamentarians, 'a substantial breach of an applicable code of conduct', which is the ministerial code or the code of conduct for members of the Assembly and the Council; it includes circumstances which give rise to reasonable grounds for dismissal; and it can include a disciplinary offence. And the range of offences is much broader, so it can be effectively any criminal offence. I think your offences are very limited to bribery and some of the other public common-law offences, so it is a much more restrictive remit than we have in our legislation.

In our submission we did give an example of circumstances where we found corruption in New South Wales, and that is in the Operation Keppel case involving the former Premier Gladys Berejiklian and the former Member for Wagga Wagga Daryl Maguire. Those circumstances arguably would not have fallen within the remit of IBAC, but the conduct itself was quite serious. I should indicate that we have an additional provision where you bring the office into disrepute, and that was found in the case of Mr Maguire. You can read the report and form your own views as to whether or not it is appropriate for that sort of conduct to be allowed to go without appropriate intervention from your corruption commission, but in our view it was important conduct and it forms a very important part of the education, moving forward, of public officials.

Kim WELLS: Just to follow that up in regard to the Premier: the vote, I am guessing, was 3–3, as you explained earlier, that it should be a public hearing rather than a private hearing?

John HATZISTERGOS: No, there are three Commissioners. The Act requires a majority of the Commissioners, including the Chief Commissioner. But in the experience of the New South Wales Commission we have never had a circumstance where it is gone to a majority. It has always been 3–0.

Kim WELLS: Okay, thanks.

The CHAIR: Righto.

John HATZISTERGOS: Now, that does not mean we do not take reputations into account. We are required to – we are required to take the private interests into account. And there are various ways in the Act that you can protect private interests, including making directions for non-publication of certain evidence and non-publication of names, and that has occurred in the time that I have been the Chief Commissioner, and I think it is also extended to the other Commissioners and the previous Commissioners. So there are various ways. Protection of reputations is not unimportant; it is extremely important, and we are very mindful of that as we move forward in our work.

Kim WELLS: Thanks.

The CHAIR: Thank you. Let us go to Belinda Wilson.

Belinda WILSON: Thank you. Thanks for meeting with us. ICAC New South Wales can investigate conduct connected with corrupt conduct that may be about to occur. Are there any risks associated with this low threshold for investigation?

John HATZISTERGOS: Well, it has got to be connected to corrupt conduct. We have recently had a case where we were dealing with contractors, or subcontractors rather, who were taking bribes – one of them took a bribe, but he was a subcontractor to a contractor who contracted to the government. Now, under our legislation we're not able to find him corrupt, but we clearly had jurisdiction to deal with the issue because his conduct was connected to the corrupt conduct which took place involving the contractor and the public officials. So there has to be a connection. We do not investigate the private sector per se, but it is at the interface where there is a connection with the public sector that we get involved.

Belinda WILSON: Yes.

The CHAIR: Thank you. Let us go to Eden Foster.

Eden FOSTER: Thank you, Chair. Thank you, Commissioner. Given ICAC New South Wales' broader investigative jurisdiction compared with IBAC, what criteria is used for ICAC to prioritise what it will investigate within its resource capacity?

John HATZISTERGOS: Okay. Our Act requires those persons who have reporting obligations under section 11 to report any corrupt conduct. The corrupt conduct does not have to be serious to be reported – any corrupt conduct. It could involve a misuse of information. It could use some elements of dishonesty or partiality, breaches of public trust, misuse of resources – those sorts of matters. Regardless of the extent of it, it should be reported to the Commission if there is a reporting obligation, and of course there is also a capacity for a person who does not have a reporting obligation to make a report under section 10. Those matters are assessed, and they go before a panel, which is headed up by one of the commissioners, either me or one of the other two Commissioners. A decision is made by the assessment panel as to where it should go.

For the bulk of our matters, which involve relatively low levels of corruption, those matters would be dealt with by the agency. Our Act requires us to recognise the role of agencies themselves to investigate corruption and to deal with corrupt issues. So in the bulk of cases we will get a report and we will assess it. If we are satisfied that it should remain with the agency, we will ask them for a report back as to the outcome, and we will leave it with them.

If the matter is of somewhat greater seriousness or there is some other issue, we may request the agency have the matter dealt with externally – that is, investigated externally. That usually is accepted, and then we get a report back to us in relation to the outcome of that. They are usually called referrals under sections 53 and 54 of our Act. We get a report back from the agency. We may decide to accept the report. In one instance in my time we were not happy with the outcome of the report; we decided to investigate it, notwithstanding the fact that it had been investigated by the agency.

In other circumstances we may decide to take on the investigation ourselves with a preliminary investigation, and then it may ultimately extend to a full investigation. But even in those circumstances we may decide at an appropriate time that the matter should be referred back to the agency to investigate, in which case we would make a referral. We may give them the information we have acquired. We may ask for their investigation plan and the way they are going to investigate it and to get a report back.

It is only in a relatively small number of cases – less than 1 per cent – that we end up going to a public inquiry, which are the inquiries that you are probably more familiar with in terms of the New South Wales ICAC. The bulk of the matters do not get dealt with that way.

The statistics for us are important. The reports are important because they add to our information back. We may, for example, get some information which on its own is not sufficient for us to investigate, but with time, as we collect more information from other sources, in many instances, it may provide a somewhat different picture and justify our intervention.

So there is no cookie-cutter approach, if I can use that term, in terms of how we approach matters. It requires us to assess the matter and to have a decision made as to where it should go. If it is to go to an investigation by an agency oversighted by the ICAC, that usually will go to the three Commissioners, who will make that decision. If there is a disagreement, we will sit down, we will discuss it and we will work it out. But by and large we have not had any difficulties as far as the appropriate outcomes are concerned. Again, the decision in relation to going to public inquiry goes to three individuals, and I am not aware of any situation where we have had a disagreement as far as that is concerned.

Eden FOSTER: Okay. Thank you.

The CHAIR: Thanks. Let us go to Paul Mercurio.

Paul MERCURIO: Thank you. And thank you, Commissioner. I am going to chuck a hard left on the questioning. About a year ago we had hearings, and in those hearings I asked all the witnesses about the use of artificial intelligence. Since that time a year ago AI has become much more prevalent, has really developed in many ways, some of them quite exciting and some perhaps frightening. I was just wondering with ICAC – does ICAC use AI? Does it depend on it? If it does, what are the positives and what are the concerns with how it would be used?

John HATZISTERGOS: We have a Committee which is currently working out our approach in relation to AI issues. We are limited in our capacity to use it mainly because of our technology, but we are working on that. We have got an arrangement with the University of New South Wales, where we are researching corruption and AI issues. That is been granted an ARC grant, and a number of our staff are participants in that study to look in terms of the work that we are actually doing in the interface with corrupt conduct. AI has a benefit, and it also has some drawbacks. We need to be very, very careful of it, particularly as AI platforms become much more intelligent in their capacity to interface with the public sector. So it is work in progress, is all I can say, and that is the situation across the country, because we have discussed it at the National Commissioners meeting.

Paul MERCURIO: Thank you.

The CHAIR: Thanks. Let us go to Rachel Payne online.

Rachel PAYNE: Thank you Chair. Thank you, Commissioner, for presenting for us today. Can you elaborate on how ICAC New South Wales's consideration of persons interests in their reputation and privacy works in practice when considering whether the commission will hold a public inquiry?

John HATZISTERGOS: Well, if I look at the public inquiries we have had so far, all of them have been systemic conduct, I think, which means pattern conduct extending over a significant period of time involving multiple public officials and in some instances the private sector. It is not the sort of activity that can be easily explained and presented in the course of a normal criminal process, if you understand it, because it is multifaceted and complex. In prosecution, you are really looking at the conduct of an individual or individuals and you are bound by rules of evidence, and you are in an adversarial process. We are doing more than that. We are not only trying to uncover the corrupt conduct, but we are trying to uncover the deficiencies in the system and put forward recommendations for addressing those deficiencies. Now, we have had instances where we have had presented to us circumstances of alleged corrupt conduct or disciplinary offence conduct which, although it might be corrupt, it was really not appropriate for the Commission itself to manage, in which case we have sent it to the agency to be able to deal with. Of course, if they are taking action themselves, there will be a disciplinary outcome in normal circumstances; sometimes it can be a criminal outcome. But you will be able to see the conduct in the context of a criminal case. That is less likely to be able to be done satisfactorily if it is systemic conduct. Does that answer your question?

Rachel PAYNE: Yes, I think so. It makes sense that it is case-by-case. Yes.

John HATZISTERGOS: So it is a case-by-case thing. If a case came across and it was fairly clear it could be dealt with through the criminal process and there was nothing particularly exceptional about it, we would normally allow that process to follow. Our Act does require, however, that it has to be either serious or systemic. In some instances, I am not ruling out the fact that if it was serious corrupt conduct and there were issues that justified our intervention, then we would deal with it. But it is a case-by-case matter.

Rachel PAYNE: Thank you, Commissioner. Just following, in your view, what are the benefits of ICAC New South Wales having published guidelines for holding public inquiries?

John HATZISTERGOS: Sorry, published guidelines? We have procedural fairness guidelines. Is that what you are talking about? I am not quite sure what you are talking about.

Rachel PAYNE: Yes, I guess it is just –

John HATZISTERGOS: We have our Act and it requires us to focus on serious and/or systemic corrupt conduct. Now, in terms of systemic, that is reasonably clear. That is pattern-type behaviour extending usually over a period of time. Our Act also requires us, however, to focus on serious corrupt conduct. The question of what is serious is not defined in our Act. However, we have, in a case involving the Member for Newcastle Mr Crakanthorp, a finding that there was no reasonable likelihood of reaching that threshold. We set out in our report what we regarded as the indicia of serious, and that is quoted in the submission that I have. You can view that. So ultimately it is a question of the public interest, and the public interest is not one-dimensional. It can include other factors, including sometimes private factors – welfare of witnesses and matters of that nature. Private interest, obviously, is something that has to be balanced in the equation. We form a view about it, and ultimately we make that decision. I should just indicate that in making that decision we will send our report to

the inspector. We have been doing that during the course of the last three years, and of course the Inspector, although it is not part of her obligations, is welcome to make any observations she wishes in relation to that matter and the decision that we have taken.

Rachel PAYNE: Thank you.

The CHAIR: Thank you. Before we move on, just on the question that Rachel raised earlier about reputation, I just wonder, Commissioner, whether there have been episodes you can recall where there has been a public inquiry, a public hearing perhaps, and at the end of it you have formed the view that it probably should not have been public – that perhaps the reputational damage outweighed the public interest in having a public inquiry – once the thing was done and you had had an opportunity to reflect.

John HATZISTERGOS: Not in my time. You would probably be aware that I was the chair of the Joint Parliamentary Committee for the ICAC when I was a member of Parliament in my first term between 1999 and 2003 – it is quite some time ago now. In those days I was critical of some of the decisions to go to public inquiry. I was quite public. In one case I do recall there was an issue involving the railways where the commission went out public. It was not a particularly serious case. It could have been dealt with through the criminal process. After they went public, they then said, 'Well, it's now up to the police to go and charge these people if they so choose.' Now, I was quite critical of that case. But what has happened since then is there has been a lot of legislative reform and a lot of examination of this issue, and I think we are all the wiser now for the experience that we have had since that time. I certainly am, because I have reflected on some of those events very seriously in the course of the work that we undertake here.

The CHAIR: Thank you very much. Let us go to Jade Benham online.

Jade BENHAM: Thank you, Chair. And thank you, Chief Commissioner. You touched on witness welfare earlier in your response to Ms Payne's questions, and I do want to touch on the 2023 report from the Inspector of ICAC New South Wales on the audit of welfare of witnesses in part in response to some persons who had suicided. In your view, what are the lessons identified in this report? How has your agency responded to it? And as you also touched on before, the lessons that are learned from all of these reports – how are they then being implemented into the future?

John HATZISTERGOS: Well, I think we have improved our capacity to identify welfare issues significantly since the Inspector's report. We now have a Witness Welfare Officer. Our staff have had mental health training – I have done it myself – to identify circumstances where there may be welfare issues. In the course of our investigations, when matters come up to the investigations and management committees, any circumstance which involves a witness welfare issue is identified and the Witness Welfare Officer is brought on to the matter. We have an agency where referrals can be made. We are not obviously a health agency, but we do have a responsibility to be able to provide assistance with navigating where services can be provided. In one instance in a matter that I presided in, when I was presented with evidence I made a non-publication order in relation to the witness's name during the course of the public inquiry as a way of managing the concerns that had been raised. There are a whole series of changes that have been made since the Inspector's report. We have discussed this issue nationally. We have got a paper that has drawn together the responses of agencies across Australia, so we are looking at what the best practice is nationally to try and improve our capacity to be able to address witness welfare concerns.

Jade BENHAM: Obviously it is a very large concern, and there is a balance to be found here, particularly if some of those options are closed-session hearings and those non-publication orders. Have you found that in any of the cases since that has compromised transparency, or have any of those witness welfare protections conflicted with your duty to fully expose corruption? And how do you go about balancing that?

John HATZISTERGOS: Not so far. We did have one case where I made a non-publication order during the course of the public inquiry. There was a request that that be extended into the reporting to Parliament, but I took the view that that was not appropriate, even if it was permitted, because the Commission was making recommendations in that instance to refer matters to the DPP and made a finding of corrupt conduct, and it was not a situation where the objectives of the legislation could be met by preventing the publication of the name. However, that did not mean that we were not mindful of the potential for adverse impacts, and action was taken to manage those, principally with the lawyers who were representing the person concerned. Look, we do our

best; it is at the forefront of our mind. And we are now in our next strategic plan going to be focusing on whistleblower protections, because sometimes the witness welfare issues can intersect with whistleblowers and their concerns. It is an area of continuing work for us and of continuing importance in order to ensure that we get accurate evidence and we are able to fulfil our job but we are not in any way endangering the welfare of the individual.

Jade BENHAM: Thank you. Just one more quick one, if I can, Chair, just on whistleblowers, seeing the Chief Commissioner has brought it up: has it been in your experience found that those safeguards have encouraged whistleblowers to come forward? Or is there any anecdotal, perhaps, evidence that they may deter some that would have substantial evidence of corrupt conduct?

John HATZISTERGOS: We have got a new *Public Interest Disclosures Act*, which only came in in October 2023. It is still early days, so it is difficult for me to be able to form a long-term view of it. It is work in progress. Some people are very frightened to come forward, for understandable reasons, and we try and manage that process very carefully. In some instances there may be grounds for us to intervene rather than to send it back to the agency to investigate if there are whistleblower concerns. That is one of the factors we take into account in the public interest. It is a variable issue. It is a case-by-case matter, but we are mindful of the potential impacts and how we can minimise them.

Jade BENHAM: Thank you.

The CHAIR: Thank you. Thank you very much, Chief Commissioner, for your contribution today. Thanks very much for answering our questions and for taking the time to appear and for your submission. At this point I am going to suspend the hearing for a 5-minute break, and we will move to our next witnesses.

Witness withdrew.