

T R A N S C R I P T

I N T E G R I T Y A N D O V E R S I G H T C O M M I T T E E

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

Melbourne – Monday 8 September 2025

M E M B E R S

Dr Tim Read – Chair

Hon Kim Wells – Deputy Chair

Ryan Batchelor

Jade Benham

Eden Foster

Paul Mercurio

Rachel Payne

Belinda Wilson

WITNESS (*via videoconference*)

Gail Furness SC, Inspector, The Inspector of the Independent Commission Against Corruption, NSW.

The CHAIR: Welcome back to the Integrity and Oversight Committee's Inquiry into the Adequacy of the Legislative Framework for IBAC, and I would like to welcome Gail Furness, the Inspector of the New South Wales Independent Commission Against Corruption in New South Wales, to our inquiry.

Before you give your evidence, bear with me for this formality. Evidence taken by this 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 this privilege. Any deliberately false evidence or misleading of the Committee may be considered a contempt of Parliament.

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Thank you very much for coming along to answer our questions. Before we ask questions, do you have any brief opening comments?

Gail FURNESS: Well, firstly, thank you very much for your invitation to give evidence today. As you know, I have not made a submission, but I understand that my experience in the New South Wales ICAC and that model is of interest to the Committee, so I will make some short opening remarks. Thank you. Firstly, I have had the benefit of reading the submission of the NSW Independent Commission Against Corruption and also hearing the evidence of the Chief Commissioner, and in short, I agree with the submissions and his evidence.

In particular I agree that the ICAC's effectiveness to identify, investigate and expose corrupt conduct results in large part from three aspects of its operations. Firstly, the wide definition of 'corrupt conduct': it is not limited, as the Committee knows, to conduct constituting or involving criminal conduct. It extends further, including to breaches of codes of conduct, but importantly that extension, if you like, by comparison to IBAC, is in the context of the ICAC only being able to include in a report a finding of corrupt conduct if the conduct is serious corrupt conduct. Secondly, the Act stipulates that attention should be directed to serious and systemic corrupt conduct.

Secondly, the ICAC threshold for investigating corrupt conduct is whether, in the Commission's opinion, the allegation implies various matters relating to corrupt conduct. It is not necessary for a reasonable suspicion to have been formed. And thirdly, the ICAC can hold public inquiries if it considers that it is in the public interest to do so.

Now the Act sets out the factors that the ICAC must take into account, and there are a variety of others that it does take into account, as set out in its submissions. In addition, however, and on the basis of a reasonably recent amendment to the Act, the ICAC has, because it has to, issued guidelines relating to the conduct of public hearings to make its procedural obligations clearer.

Now if I can just quickly turn to one other matter, I note that the Committee has an interest in pork-barrelling, from the evidence given today, and it might be of further interest that the ICAC published a report in August 2022 on pork-barrelling. That report followed not a customary investigation about wrongdoing of individuals but a broader, if you like, educative investigation. The ICAC found that in certain circumstances pork-barrelling can constitute corrupt conduct. I can give further information if the Committee is interested, but the report is available on the ICAC website. I am very happy to answer any questions you have.

The CHAIR: Thank you very much. I will kick off. In the legislation ICAC New South Wales has a broader definition of 'corrupt conduct' than the Victorian IBAC. In your view, what are some advantages and disadvantages of the New South Wales Commission being able to investigate so-called grey corruption?

Gail FURNESS: The advantages include that a lot of the conduct that occurs that we consider corrupt in a general sense rather than a legal sense is conduct that is behind closed doors, necessarily in secret, but involves

matters such as nepotism or cronyism. It is not all in a paper bag with lots of cash – or an Aldi bag, in fact – it covers broad matters like misuse of information and that sort of thing. So I think that is a very good thing that the broader definition allows. In the event it was thought that the definition was too broad, in my mind, the various safeguards, if you like, that I referred to earlier deal to some extent with those concerns. That is, it is required to direct its attention to serious and systemic, and it can only make a finding if it is serious corrupt conduct.

The CHAIR: Thank you. So given New South Wales's broader definition, is there a risk of corrupt conduct under that definition running into the New South Wales Ombudsman's maladministration jurisdiction?

Gail FURNESS: To the extent that there is a risk, it can be ameliorated by the Act. But firstly, looking at the Ombudsman's jurisdiction, generally speaking it deals with unfair conduct or treatment – unreasonable conduct – and it is certainly the case that it has to make a report whether conduct is effectively what is defined commonly as maladministration. However, there are provisions in the legislation that, firstly, the Ombudsman must notify the ICAC if it has an allegation that could possibly be corrupt conduct, and secondly, the ICAC have various provisions in the Act which permit oversight by it of any Ombudsman investigation. So were it to be the case that it was thought that some of the allegations that might fit one jurisdiction also fitted the Ombudsman, there are provisions to ensure that there would be a discussion about that and the appropriate body would handle it.

The CHAIR: Has this ever happened in your experience? Have you encountered issues of a jurisdictional clash between the two bodies?

Gail FURNESS: Look, I have not, but it is easy to imagine that it might occur. But it would be resolved, in my experience, quite quickly by a discussion between the two bodies. And if in fact it was systemic and serious and involved one or more of the components of the definition, it would go to the ICAC. If it was at a lower end, for example, it may well stay with the Ombudsman, with the ICAC having oversight if it wished to of that investigation.

The CHAIR: Thanks. Paul Mercurio has got some questions.

Paul MERCURIO: Thank you, Chair. ICAC New South Wales can investigate conduct connected with corrupt conduct that may be about to occur. Do you think there are any risks associated with this low threshold for investigation?

Gail FURNESS: I do not think there are any risks, because the ICAC is constituted by a full-time Chief Commissioner and two deputies, and if it was thought that a public inquiry was required, the Chief Commissioner and at least one of the Commissioners is required to agree to that, and I am sure that is not a problem. I think Mr Hatzistergos has given evidence to that effect. So there are safeguards in the legislation that would, in my mind, not permit a minor or relatively insubstantial allegation to be investigated, and certainly not in public. It may well be preliminary inquiries are undertaken, but it would have to reach a much higher threshold, in my experience, to be a public inquiry.

Paul MERCURIO: Okay. Thank you. So ICAC New South Wales is able to hold public inquiries, if it is satisfied it is in the public interest to do so, while considering factors including that the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned. How does this balance work in practice when considering whether the Commission will hold a public inquiry?

Gail FURNESS: The Commission takes into account many factors, some of which are mandatory and others are not, to decide whether to hold a public inquiry, and I think the Commission has set out its criteria in quite some detail in its submission. It includes the seriousness of the allegation and it includes the seniority or standing of the person, the level of sophistication or organisation, but also it considers the need to educate the public and also encourage others to come forward. I think an important component that does not often get voiced is that it provides a transparent mechanism for public officials and others to know what the Commission is doing. So there is a range of necessarily competing factors, and prejudice to a person's reputation is a significant factor to take into account. But there are others, and it will always be a balancing exercise which will almost always depend upon the facts. But they are the sort of matters to be taken into account and weighed in a decision.

Paul MERCURIO: Okay. Thank you. You talked about education and transparency as part of your response then. What in your view are the benefits of ICAC New South Wales having published guidelines for holding public inquiries?

Gail FURNESS: I think it is of enormous benefit, and it came about through an inquiry and ultimately an amendment to the legislation that concerned the use of exculpatory evidence by the Commission. But it is much broader than that. I think it is very important for people and their lawyers to understand what their rights are going into a hearing and what the Commission's obligations are so that they can ask for information or opportunities which they may well not otherwise know are available to them, and it holds the ICAC to account for what are published guidelines that they have to comply with. So it is an excellent idea.

Paul MERCURIO: Thank you.

The CHAIR: Eden Foster has some questions.

Eden FOSTER: Thank you, Chair. Thank you, Inspector. Some stakeholders have suggested that anti-corruption commissions should be authorised to hold public hearings or inquiries for purely educative and preventative purposes unconnected with an investigation. What is your view on this?

Gail FURNESS: Well, I think it is a good idea, because the role of an ICAC is not just to expose, it is also to prevent and to educate, and the pork-barrelling report I referred to earlier is an example of how an investigation not being related to the conduct of an individual can have that preventative role. That report provides an insight into the circumstances in which, within the confines obviously of the ICAC Act, conduct known as pork-barrelling might be corrupt conduct. So that is a very good example of why it is a good idea for the power to be had but also for it to be exercised in a way like the pork-barrelling investigation and report.

Eden FOSTER: On that, would you recommend submissions by invitation or as a requirement, a subpoena?

Gail FURNESS: Well, what they did in the pork-barrelling report was they invited a number of experts and there was effectively a public round table. But a submission process is always of value when you are making administrative decisions that may affect people, and I am sure the ICAC would consider seeking public submissions to assist it in its decision-making and consideration of issues, again, such as pork-barrelling.

Eden FOSTER: Okay. Thank you. In its reports ICAC New South Wales can make findings of serious corrupt conduct but cannot include findings of guilt or recommend prosecution. In your view, Inspector, does this strike the right balance for the interests of the public and the interests of individuals?

Gail FURNESS: I think it does, because a finding of serious corrupt conduct, yes, has consequences for reputations but also has strong deterrent value. But it is properly balanced by the Commission not being able to include a finding or an opinion that somebody is guilty or even a finding or opinion that somebody should be prosecuted. That to me is an appropriate balance that the legislation provides in relation to the finding of serious corrupt conduct.

Eden FOSTER: Okay. Thank you.

The CHAIR: Great. Let us go to Rachel Payne.

Rachel PAYNE: Thank you, Chair, and thank you, Inspector, for presenting for us today. Can you outline how ICAC New South Wales maintains its secrecy provisions while still considering the welfare of witnesses and staff?

Gail FURNESS: Well, as you might know, the welfare of witnesses has been a particular interest of mine, and I produced a report some time ago on it. It seems to me, and this is by way of observation as well as understanding what happens behind the scenes, that the Commission uses its secrecy provisions to make non-publication orders when it is appropriate to do so in relation to the welfare of witnesses. It makes them quite routinely, to my observation, and to good effect. It can cover the name of the person, the image of the person and the evidence that they give. And in terms of what I hear from complainants, the main issue is really whether they have got an opportunity to make a submission. Generally, when I get a complaint of that type, I look at the transcript and correspondence, and I think in every case an opportunity had been given and they had or had not taken that opportunity up. So I think for welfare purposes, the section is appropriate. But also, if I

might say, relatively recently the ICAC trialled assistance dogs or comfort dogs, which included, for some reason, a beagle but also Labradors, and to my observation, the ICAC are serious about looking after the welfare of people involved in their investigations while still properly carrying out their functions. And in my view, it is certainly going down the right path.

Rachel PAYNE: Thank you, Inspector. It is amazing how much animals can provide that comfort, isn't it? So thank you for sharing that. Given your roles as both Inspector of NSW ICAC and Inspector of NACC, do you have any observations on the two jurisdictions and in particular what works well?

Gail FURNESS: Well, I think it is early days for the National Anti-Corruption Commission. I think it has only produced one report, so it is difficult to see publicly how it would deal with, for example, the exceptional circumstances requirement for a public hearing. The jurisdiction is similar and different. I think you have had a number of submissions that set out the similarities and the differences. It is certainly the case that it is less constrained than the ICAC and IBAC in terms of the definition of 'corrupt conduct'. It is not limited by reference to discipline or criminal conduct, but otherwise the definition is similar. Look, I think it is too early days. The ICAC has been going for 30 years, and we have had the benefit of dozens and dozens of reports and a range of different Commissioners to see how the functions could be exercised. But the National Anti-Corruption Commission – I think it is a little bit early to say much about the way in which they view their powers.

Rachel PAYNE: Thank you. Thanks, Chair.

The CHAIR: All right. Ryan Batchelor.

Ryan BATCHELOR: Thanks, Chair. Inspector, thanks so much. I asked this sort of rambling question of Transparency International earlier about pork-barrelling and where the boundaries were, so I might try it again with you. One of the things that strikes me is that we are looking at – and I have just had a quick squiz at ICAC's report from 2022 in the course of the hearings – where the line is, in an expanded definition of 'grey corruption' to include a range of other activities that do not constitute a criminal offence or an indictable criminal offence, between the cut and thrust and negotiation of a political environment and political decision-makers needing to get a piece of legislation through the Parliament, having to negotiate an outcome, horsetrading, doing deals. Where that sits there is a V where a line is crossed when decisions are made about the allocation of public funds that people would describe as pork-barrelling. I am just wondering how you think that sits together, or separately, in jurisdictions, whether it be in New South Wales, where there is a more expanded definition, and how the horsetrading of politics, particularly where we do not have majority governments, for example, sits with a broader definition of what may constitute grey corrupt conduct.

Gail FURNESS: Well, firstly, under the ICAC's definition it has to be a substantial breach of ministerial conduct to constitute corrupt conduct. So that is one barrier, if you like. But secondly, it is useful to have a look at the ICAC's report, because it focuses on dishonest or partial, which I think is the key difference between what you are describing as discussions among publicly elected officials about legislation or policy and the like, because if that does not involve anything that is dishonest or impartial, it is less likely to fall within the definition. Let me just give you a couple of examples from their report: if a Minister, for example, influences a public servant to exercise decision-making powers vested in that public official or servant, such as providing assessment on the merits of grants in a dishonest or partial way, or applies pressure to influence a public servant in a way that is a breach of the public trust, and also conducts a program which is not merits-based and has a component of dishonesty or partiality. I do not know if that assists you, but that to me takes it away from the argy-bargy or cut and thrust of indeed politicians considering legislation or policy and the like.

Ryan BATCHELOR: Yes. Yes, it is interesting. It is just something that has been on my mind, because whether it is negotiating to provide guarantees of confidence and supply or debating merits of a particular piece of legislation, there is often a back and forth that members of Parliament engage in in order to secure legislative outcomes, which I think is part of, in essence, what the democratic project is all about. How and where that gets to a line I think is something that I am trying to explore here about what conduct in the course of a negotiation about a piece of legislation or about confidence in supply would then move beyond that which is reasonable in a negotiation between elected officials and get to a point of saying we need to do more. I will not pursue it more, but it is just something that has been on my mind because the expansion of the definition of what might constitute grey corruption I think is something that is clearly before this Committee and something that needs to

be explored, but it is not always just within the confines of actions that are taken by ministers in terms of how decisions get made.

The other thing I just – and I raised this with the Law Institute –

Gail FURNESS: It might – I am sorry; I missed that.

Ryan BATCHELOR: No, no. Please go on.

Gail FURNESS: I was just going to give you the summary of the pork-barrelling report, which might help. It says ‘those who exercise public or official powers’ – which are members of Parliament; they have got public and official powers – ‘in a manner inconsistent with the public purpose for which those powers were conferred’. So if one was to think that the powers of members of Parliament are provided in order to discuss robustly legislation and policy, they would then only be an issue if they were inconsistent with the powers which were conferred and betrayed public trust. So the betrayal of public trust and the notion of dishonesty and partiality, from my reading of this report, if not essential, are definitely criteria that one would carefully look for.

Ryan BATCHELOR: Thank you. We will have a further read of that; I think it will be an interesting document. I do not know how I am going for time.

The CHAIR: I think we have got a bit of time.

Ryan BATCHELOR: The other thing I raised with the Law Institute, separately to this – and ICAC’s experience here will be useful to understand – is that in expanding the jurisdiction of IBAC we would be bringing into it a larger number of matters that could constitute corrupt conduct. The question I put to the Law Institute was how IBAC would go about making determinations on what matters it sought to then investigate, noting that we have had, in previous evidence to us, some quite consistent critique of IBAC’s operations with respect to its police oversight jurisdictions, where the decisions that it is making about which matters are investigated and which matters are not investigated and referred back to the Professional Standards Command of Victoria Police – there is not a lot of transparency about the rationale for those decision-making metrics on how many are done and how many are referred; there are not detailed decisions taken. In an environment where we expand the scope of the matters that come across IBAC’s desk, for example, are there any insights or guidance you might have from experience as to how the decision-making that then occurs as to what gets investigated and what does not is measured, how that is reported and how there is oversight, scrutiny or guidance given to the decisions that the Commission has to make about what it pursues in the context of not infinite resources?

Gail FURNESS: The ICAC has a structure in place whereby one or more of the Commissioners or the Chief Commissioner is responsible for looking at all complaints that come in. They undergo an assessment process, and then ultimately they come to a Commissioner or the Chief Commissioner to decide what to do with them. That is, at a very high level decisions are made, and then decisions as to what to do thereafter – to make it into a formal investigation or the like – are also made at that high level. That is the structural component of the matters you are raising. The more qualitative component is probably similar to the matters that are taken into account to determine whether there is a public hearing. You would look at the seniority of the person involved, how much money might be involved, how complex or sophisticated it is and how many people are involved. Those sorts of balancing matters that one does in respect of whether to have a public inquiry can also be used to determine whether to investigate. In addition to priorities, commissions will have priorities from time to time – for example, pork-barrelling, recruitment, procurement and the like – so there would quite properly be a decision as to how it fits within the priorities and what [Zoom dropout]

Ryan BATCHELOR: In terms of reporting and accountability mechanisms, how effective do you think that ICAC’s reporting and accountability mechanisms to the Parliament are, for example, on that question about how they are making determinations about what they pursue?

Gail FURNESS: As I understand it, their annual report is quite detailed – it has to be, in compliance with the Act but also it is on a voluntary basis, if you like – and sets out the numbers of matters that come in, who they are from, what they are about and which ones go forward and then what happens to those that go forward in terms of preliminary investigations, investigations and the like and those that are referred to other agencies,

and if so, the outcome of those referrals, if indeed that is the part of the referral itself. So the annual report I think is the answer to accountability, and the ICAC's annual report is very detailed about what it does with matters that come in the door and what are the outcomes of those matters. In my view, that is an appropriate accountability mechanism.

Ryan BATCHELOR: That is really useful. We might have to have a look at the New South Wales ICAC's annual report and compare how they report versus how IBAC reports, because it is a matter that has come up a number of times; people find it a bit opaque, what happens down here in terms of the reporting. I will leave it there. Thanks, Chair.

The CHAIR: Thank you, Ryan. Just briefly, we have already touched on the welfare of witnesses, but I wonder if I could just take you back to the report on the audit of the welfare of witnesses from 2023, which was in part in response to some suicides. What in your view are the lessons identified in that report?

Gail FURNESS: I think the lessons include the need to have a specially designated person who is separate from the investigation arm of the Commission available to assist people who need it. Another lesson is that the policies and procedures need to be very clear about what people's responsibilities are and to train them to make sure they know their responsibilities. It should never be the case that the Commission becomes a treatment provider. That is not the point. It is not set up to do that, nor should it do it. In the ICAC's case, they have set up a separate counselling system from their own internal counselling system, which I think is a good thing. It enables the person who may well be seriously caught up in an investigation to feel that what they are saying is safe and secure, and I have seen from the various documents that come across my desk from the Commission that in each investigation, as it moves towards a public stage and even earlier, there is a standing item of witness welfare – to identify people and to put in place whatever is necessary for that particular person. And so I think lessons have been learned that you have responsibility for these people. You cannot just treat them as collateral. You have to take care of them to the extent you can and within your functions. I think they are doing that, and I will just give another plug for the beagle as well.

The CHAIR: Thank you very much. Well, unless there are further questions from the Committee, then I will thank you. But before you go, any final comments that you would like to make for us?

Gail FURNESS: I think the ICAC is an appropriate model for a corruption commission in Australia.

The CHAIR: All right. Gail Furness, thank you very much for taking the time to respond to our questions.

We will suspend the public hearing now and take a short break before we return with our next witness.

Witness withdrew.