

The Hon Jeremy Buckingham MLC
Chair
Budget Estimates Committee
NSW Parliament

Via email: BudgetEstimates@parliament.nsw.gov.au

12 March 2024

Our Ref: A24/0065

Dear Chair,

BUDGET ESTIMATES – ICAC RESPONSES TO QUESTIONS ON NOTICE

Further to my appearance before the committee on 21 February 2024, I write to provide responses to questions taken on notice.

On the issues raised by the Hon Damien Tudehope MLC, I confirm:

1. Relevant performance measures can be found in the Commission's Annual report.
2. The letter from the Hon John Graham MLC dated 24 October 2023 outlining 2023-4 Budget and New Integrity Agency Funding Arrangements is **attached (1)**.

On the issues raised by Ms Abigail Boyd MLC, I confirm:

3. The Commission has examined lobbying practices in the past, most recently in its 2021 *Investigation into the regulation of lobbying, access and influence in NSW* (Operation Eclipse). Operation Eclipse did examine the use of lobbyists' passes but its final report did not include any commentary or recommendations about the issue and use of parliamentary passes.

In many ways, it is preferable for MPs to hold meetings (including with lobbyists) in an office setting rather than in a social environment. Several of the Commission's investigation report shows that interactions between public officials, and those who seek to influence them, occur in cafes, restaurants, residences, or even overseas locations.

Under the *Lobbying of Government Officials Act 2011* (LOGO Act), MPs are not included within the definition of a "Government official". Consequently, there is no requirement for lobbyists to comply with that legislation and the associated code of conduct when interacting with MPs.

OFFICIAL: Sensitive - NSW Government

However, if there is a concern, it is that passholders could lobby MPs without first making an appointment, disclosing their interests, or explaining the nature of their representations (as required by the lobbyists code of conduct). Or alternatively, that passholders are perceived as having some sort of special access. The Commission has not obtained enough evidence of this to suggest that it is a serious problem and has not recommended that MPs be brought within the definition of "Government official" in the LOGO Act.

Despite that, I am interested in MP education and it may be productive for MPs to be briefed on some of the risks associated with lobbying. I would be happy to assist if this is of interest.

With respect to the matter raised by Ms Boyd regarding the Treasurer's direction and disposal of assets, this question was raised at the estimates hearing on 7 September 2022. My response is **attached (2)**.

Should you require further information, please do not hesitate to contact me via

Yours sincerely,

The Hon John Hatzistergos AM
Chief Commissioner

The Hon John Graham MLC

Special Minister of State, Minister for Roads, Minister for the Arts,
Minister for Music and the Night-time Economy, Minister for Jobs and Tourism,
Deputy Leader of the Government in the Legislative Council



Our ref: TA23/1122

The Hon. John Hatzistergos AM
Commissioner
Independent Commission Against Corruption
icac@icac.nsw.gov.au

Re: 2023-24 Budget and New Integrity Agency Funding Arrangements

Dear Mr Hatzistergos

Thank you for your agency's participation in the 2023-24 Budget.

The 2023-24 Budget process included a submission dedicated to funding bids for the integrity agencies. Approved proposals for the Independent Commission Against Corruption from this submission, including the financial impacts, are outlined in **Attachment A**.

In the 2023-24 Budget, the budget and forward estimate years do not contain any savings measures for advertising, consultant, travel, legal expenditure, or for the reduction in the number of senior executive service employees for your agency.

ERC also approved the continuation of the budget management model for integrity agencies for the 2023-24 Budget and future budgets, specifically:

- a) The integrity agencies are removed from the Premier Department and the Cabinet Office cluster financial management processes.
- b) Exclusion of integrity agencies from efficiency dividends.
- c) The specialist integrity agency unit within Treasury continues to manage representations for budget and supplementary funding and provides the integrity agencies with information on funding outcomes.
- d) Integrity agencies are invited to review Treasury's advice to the Expenditure Review Committee (ERC) on integrity agency funding bids and provide their own advice directly to ERC.
- e) The integrity agencies, and the relevant Parliamentary oversight committees, will be provided with funding decisions in writing, and if relevant, reasons for variation from a funding bid.
- f) Access to contingency funding, noting that access to contingency funding is to be approved by the Treasurer on request, with the request and response also provided to the relevant Parliamentary oversight committee.

Should you have any questions, please contact Mr Ziggi Lejins, Director, Policy and Budget, on

Sincerely

The Hon. John Graham MLC

Special Minister of State, Minister for Roads, Minister for the Arts,
Minister for Music and the Night-time Economy, Minister for Jobs and Tourism,
Deputy Leader of the Government in the Legislative Council

Date: 24/10/23

Encl. Attachment A - Independent Commission Against Corruption
CC: Treasurer

Attachment A: Independent Commission Against Corruption

- Figures are General Government Sector Eliminated for Revenue, Expense, Budget Result, Capex and Net Lending
- All figures are presented on in \$'000,000
- For budget result and net lending, a positive figure improves, a negative figure worsens.
- Planning Years refers to the six years from 2027-28 to 2032-33 inclusive.
- For items listed below with nil eliminated impact, any uneliminated impacts will be reflected in the PRIME financial system.
- Note that the submission included both new policy proposals and parameter and technical adjustments.

SC2023-0046: Integrity Agencies' Urgent Funding Proposals – July 2023

| Proposal ID - Name | 2022-23 | 2023-24 | 2024-25 | 2025-26 | 2026-27 | 5-year total | Planning years |
|--|------------|-------------|-------------|-------------|-------------|--------------|----------------|
| Expenses | -0.7 | 5 | 5.1 | 5.2 | 5 | 19.6 | 29.2 |
| ICAC re-baselining funding | 0.0 | 4.3 | 4.4 | 4.5 | 4.3 | 17.5 | 26.8 |
| ICAC re-baselining funding (software amortisation) | 0.0 | 0.7 | 0.7 | 0.7 | 0.7 | 2.8 | 2.4 |
| ICAC Minor Works Provision PTA converting recurrent to capital expenditure | -0.7 | 0.0 | 0.0 | 0.0 | 0.0 | -0.7 | 0.0 |
| Budget Result | 0.7 | -5.0 | -5.1 | -5.2 | -5.0 | -19.6 | -29.2 |
| Capital | 0.7 | 1.5 | 2.1 | 2.2 | 1.1 | 7.5 | 3.0 |
| ICAC rebaselining funding | 0.0 | 1.5 | 2.1 | 2.2 | 1.1 | 6.8 | 3.0 |
| ICAC Minor works provision PTA converting recurrent to capital expenditure | 0.7 | 0.0 | 0.0 | 0.0 | 0.0 | 0.7 | 0.0 |
| Net Lending | 0 | -5.8 | -6.5 | -6.7 | -5.4 | -24.3 | -29.8 |

Budget Estimate Inquiry – Portfolio Committee No. 1 - Premier and Finance
Wednesday 7 September 2022
Independent Commission Against Corruption answers to Questions taken on notice

QUESTION (page 98):

Ms ABIGAIL BOYD: Perhaps I could ask the ICAC officials, because in the Report on investigation into pork barrelling in NSW—which some of us have read very carefully—on page 44 there is a reference to potential ways that we could perhaps boost the Government Sector Finance Act. There is a reference there, in the paragraph just above where it says "Recommendation 2", where it's talking about a Commonwealth provision but saying that that kind of provision in New South Wales:

... would be useful if attempts were made to provide funding in a way that avoided the proposed grants framework.

It strikes me that being able to give a gift of \$9,000 to somebody in the six months prior to an election could have the potential to fall foul of something along those lines. Can I have your view?

JOHN HATZISTERGOS: I'd have to take that on notice. I don't have the detailed information. I don't have the memorandum. I don't know if you've seen it, Philip?

PHILIP REED: Yes, well, I was only made aware of it by listening to the hearing earlier today. I think, like the Auditor-General has said, we would have signed off saying that there had been no gifts on that basis. That's all that I'm aware of at this time.

ANSWER:

I have now had an opportunity to familiarise myself with the terms of the Treasurer's Direction (TD) 22-27, entitled "Gifts of government property" which is dated 31 August 2022 and that commenced on 5 September 2022.

TD22-27 states that "This direction makes provision for and with respect to the circumstances in which a person handling government resources can make a gift of government property, for the purposes of section 5.6(1)(c) of the Government Sector Finance Act 2018." Further, TD22-27 defines government property as having the same meaning as in section 1.4 of the Government Sector Finance Act 2018. Section 1.4 of the GSF Act 2018 states:

government property means all property held by, for or on behalf of the State or a GSF agency (whether or not it is held on trust) except—

- (a) government money or related money, or
- (b) property held on trust for the benefit of an entity other than a GSF agency.

The section of the ICAC report on investigation into pork barrelling in NSW to which you refer contains a recommendation on page 44 as follows:

RECOMMENDATION 2

That the Government Sector Finance Act 2018 be amended to mirror s 71 of the Commonwealth Public Governance, Performance and Accountability Act 2013 by including 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 the expenditure represents value for money.

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As a gift which is the subject of TD22-27 and made under the Government Sector Finance Act 2018 cannot be money, it would not fall within the terms of the recommendation made by the ICAC in the report on investigation into pork barrelling in NSW.

I am informed that the ICAC's Corruption Prevention team was consulted by NSW Treasury in 2021 about potential amendments to TD21-04, the precursor to TD22-27, and advice was provided in relation to areas of risk. The Corruption Prevention team did not raise concerns with the amendments then being considered by NSW Treasury.