



Public hearings shine light on corruption

Sunlight is the best disinfectant

Briefing paper

April 2022

Summary

- Public hearings expose corruption to the public and make investigations more effective. They have been critical to recent Victorian IBAC and NSW ICAC investigations;
- NSW ICAC has exposed more corruption to the public than the Victorian IBAC, with 42 public hearings and 39 public reports compared to 8 hearings and 14 reports from 2012/13-2019/20;
- Only a fraction of initial complaints are investigated in full. From 2012/13-2019/20, NSW ICAC received 22,297 matters, conducted 297 preliminary investigations and only 95 full investigations;
- Public hearings are used in a proportion of investigations when it is in the public interest. NSW ICAC held 979 private examinations and 42 public inquiries over the examined period;
- The ability to hold public hearings when it is in the public interest will be a crucial element of a National Integrity Commission's investigations.

The role of public hearings in corruption investigations

Public hearings fulfil important functions in corruption investigations:

- 1. Public hearings expose corruption.** Exposing corruption to the public is a core objective of integrity commissions, as corruption flourishes in the dark. Without public hearings, the public would only know that an investigation had taken place once an investigation report was tabled in Parliament, or a successful prosecution occurred, sometimes years after the fact;
- 2. Public hearings are an effective investigation tool.** During public hearings, new witnesses and new information is uncovered that may be key to the investigation;
- 3. Public hearings act as a deterrent** to others that may be considering engaging in corrupt conduct;
- 4. Public hearings ensure investigations are conducted fairly** by providing public scrutiny of integrity commissions' operations, and giving individuals a public platform to speak to allegations made against them;
- 5. Public hearings increase public trust** in government and the public sector by demonstrating to the community that allegations of corruption are being properly investigated;
- 6. Public hearings educate the public sector** about corruption, which can help prevent future corrupt conduct and encourage public servants to report allegations to the integrity commission.

Public hearings held by the Victorian IBAC and NSW ICAC

Table 1: Use of public and private hearings, and investigation reports from 2012/13-2019/20

Body	Private examinations	Public inquiries	Investigation reports made public
NSW ICAC	979 examinations	42	39
Vic IBAC	Data not available	8	14

Source: Annual Reports NSW ICAC and Vic IBAC 2012-2020, data collated by Charlie McLean, UTS.

Public hearings have been critical to the success of many corruption investigations in NSW and Victoria. NSW ICAC has publicly exposed more corruption than the Victorian IBAC. NSW ICAC has held 42 public inquiries and made 39 investigation reports public from 2012/13 to 2019/20. Victoria's IBAC has held 8 public hearings and published 14 investigation reports. Some examples of successful public hearings from both agencies are highlighted below.

In October 2021 NSW ICAC commenced public hearings for Operation Keppel, an investigation into allegations that, from 2012 to August 2018, the then NSW Member of Parliament for Wagga Wagga, Mr Daryl Maguire, engaged in conduct that involved a breach of public trust by using his public office and parliamentary resources, to improperly gain personal benefit.¹ The hearing called witnesses to give evidence about Mr Maguire's personal relationship with former Premier Gladys Berejiklian and the potential impact of this relationship on the allocation of a \$5.5 million grant given to the Australian Clay Target Association in Wagga Wagga.²

During 2012 and 2013, NSW ICAC held public inquiries concerning the issuing of mining leases and licences involving former NSW Government ministers. The investigations resulted in the prosecution of Eddie Obeid and Ian Macdonald for misconduct. Public hearings were critical to uncovering the information needed to finalise the investigations. During the Operation Jasper and Operation Acacia public hearings, the NSW ICAC called 138 witnesses and in fact had to build a bigger room to hold the hearing. According to former NSW ICAC commissioner David Ipp AO QC, "*the stark fact is that Operations Jasper and Acacia could not have been undertaken without it.*"³

¹ NSW ICAC, *Operation Keppel*, accessed 15/12/2021, <https://www.icac.nsw.gov.au/investigations/current-investigations/2020/former-nsw-mp-for-wagga-wagga-operation-keppel/former-nsw-mp-for-wagga-wagga-allegations-concerning-breach-of-public-trust-to-improperly-gain-a-benefit-operation-keppel>

² ABC, 18 October 2021, <https://www.abc.net.au/news/2021-10-18/gladys-berejiklian-relationship-conflict-of-interest-icac-hears/100547024>

³ NSW ICAC (2013), *Annual Report 2012-2013*

Victoria's IBAC held public hearings in October and November 2021 into allegations of serious corrupt conduct involving Victorian public officers, including Members of Parliament. The hearings were part of Operation Watts, an investigation looking into allegations of 'branch stacking'.⁴ The hearings heard from various witnesses including a Victorian ministerial staffer who, while being paid by the taxpayer spent as much as 80% of her days doing factional work as part of a vast branch stacking operation.⁵

In 2015 IBAC held public hearings for Operation Ord, an investigation into allegations of serious corrupt conduct in the Education Department. The inquiry revealed that millions of dollars were transferred to "banker schools", supposedly for the purpose of facilitating the payment of invoices on behalf of a region or clusters of schools. The investigation showed that senior departmental officers instead used these schools as a slush fund to pay for alcohol, lavish hospitality and expensive retreats, and goods and services completely unrelated to departmental activities.⁶

The use of public hearings by NSW ICAC

NSW ICAC has the ability to use public hearings in its investigations when the Commissioner deems it to be in the public interest. Data from 2012/13-2019/20 shows that far from overuse, NSW ICAC only conducts public hearings in only a fraction of its investigations.

Over the period examined, NSW ICAC conducted 979 private examinations and 42 public inquiries.

Table 2: NSW ICAC use of public hearings 2012/13 – 2019/20

Matters received	22,297
Preliminary investigations	297
Full investigations	95
Private examinations	979
Public hearings	42

Source: Annual Reports NSW ICAC and Vic IBAC 2012-2020, data collated by Charlie McLean, UTS.

⁴ IBAC, *Operation Watts*, accessed 15/12/2021, <https://www.ibac.vic.gov.au/investigating-corruption/IBAC-examinations/operation-watts>

⁵ The Guardian, 12 October 2021, <https://www.theguardian.com/australia-news/2021/oct/12/ibac-branch-stacking-inquiry-told-publicly-funded-staffer-spent-80-of-time-on-factional-work>

⁶ IBAC, *Operation Ord*, accessed 15/12/2021 <https://www.ibac.vic.gov.au/investigating-corruption/IBAC-examinations/operation-ord>

The data also shows that allegations made to NSW ICAC are assessed on merit and only a small percentage proceed to a full investigation. Of the 22,297 matters received over the period, only 95 full investigations were undertaken.

NSW ICAC's ability to hold public inquiries had been considered and supported in at least two reviews of ICAC's operations, first by Bruce McClintock SC in his 2004-5 review and secondly in the 2015 review conducted by the Hon. Murray Gleeson AC and Mr McClintock. This review by the Independent Panel was established in response to the Cunneen case, and found that:

public inquiries, properly controlled, serve an important role in the disclosure of corrupt conduct. They also have an important role in disclosing the ICAC's investigative processes. The Panel is not attracted to the idea that the powers of the ICAC should all be exercised in private.⁷

The report also noted that the Chief Commissioner is the best person to make the decision as to whether to open the inquiry, and that this process has led to predominantly good decisions:

The decision whether to conduct a public inquiry is an operational decision made for the purposes of the particular investigation. It is a decision best made by the Commissioner who is apprised of all the relevant facts and in the best position to weigh the public interest. There has, in fact, been little criticism brought to the Panel's attention (with one exception) of the ICAC's decisions to hold public inquiries, as distinct from the manner in which such inquiries are conducted. The exception is, of course, the decision to hold the public inquiry in [in the matter of Margaret Mary] Cunneen. That is an insufficient basis to recommend a change.⁸

Endorsement of public hearings

The use of public hearings has been endorsed by former Chief Justices of the High Court, and former IBAC and ICAC Commissioners. In the Royal Commission into the Builders Labourers Federation (BLF) in the 1980s, the issue of public hearings was raised in the High Court. Then Chief Justice Anthony Mason stated that an order that a commission proceed in private:

... seriously undermines the value of the inquiry. It shrouds the proceedings with a cloak of secrecy; denying to them the public character which to my mind is an essential element in public acceptance of an inquiry of this kind

⁷ Gleeson and McClintock (2015), *Report – Independent Panel Review of the Jurisdiction of NSW ICAC*

⁸ Gleeson and McClintock (2015), *Report – Independent Panel Review of the Jurisdiction of NSW ICAC* pp 60-61

and of its report. An atmosphere of secrecy readily breeds the suspicion that the inquiry is unfair or oppressive. ...

The denial of public proceedings immediately brings in its train other detriments. Potential witnesses ..., lacking knowledge of the course of proceedings, are less likely to come forward. And the public, kept in ignorance of developments which it has a legitimate interest in knowing, is left to speculate on the course of events.

... Here the ultimate worth of the Royal Commission is bound up with the publicity that the proceedings attract and the public has a substantial and legitimate interest in knowing what is happening before the Commissioner.⁹

Former Victorian IBAC Commissioner Stephen O'Bryan QC has said that public hearings are key to exposing corruption:

Public examinations are vital to IBAC in fulfilling its primary function of exposing public sector corruption and police misconduct. I consider them an invaluable tool for informing the public sector and the community about the detrimental impacts of corruption and police misconduct, and highlighting ways in which it can be prevented. Public examinations also help deter further wrongdoing, not only for potentially corrupt individuals, but also for public sector agencies which are prompted to examine their own processes and activities.¹⁰

Former NSW ICAC Assistant Commissioner Anthony Whealy QC has said:

There are many people out there in the public arena who will have information that's very important to the investigation. If you conduct the investigation behind closed doors, they never hear of it and the valuable information they have will be lost.¹¹

Former NSW ICAC Commissioner David Ipp AO QC has said that:

Its main function is exposing corruption; this cannot be done without public hearings.¹²

⁹ In *Victoria v Australian Building Construction Employees and Builders Labourers Federation* (1982) 152 CLR 25 at 97.

¹⁰ Independent Broad-based Anti-corruption Commission (2015), *Annual Report*

¹¹ Gerathy (2016), *ICAC inspector calls for end to public hearings to stop 'trashing of reputations'*, <http://www.abc.net.au/news/2016-05-12/icac-inspector-david-levine-calls-for-end-to-public-hearings/7409126>

¹² *Ibid.*

Recommendation

After preliminary private hearings, a National Integrity Commission requires the ability to open hearings to the public. This ability may be used in cases where the Commissioner believe it is in the public interest to do so, and will be make the investigation to which it relates more effective.

1. For the purposes of an investigation, the Commission may, if it is satisfied that it is in the public interest to do so, conduct a public inquiry.
2. Without limiting the factors that it may take into account in determining whether or not it is in the public interest to conduct a public inquiry, the Commission may consider the following:
 - a) the benefit of exposing to the public, and making it aware, of corrupt conduct,
 - b) the seriousness of the allegation or complaint being investigated,
 - c) whether conducting a public inquiry will make the investigation to which it relates more effective,
 - d) any risk of undue prejudice to a person's reputation (including prejudice that might arise from not holding an inquiry),
 - e) whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned.