

GOVERNMENT SECTOR FINANCE AMENDMENT (INTEGRITY AGENCIES) BILL 2024

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

Reports regarding integrity agency funding arrangements

The integrity agencies, that is the Audit Office, Independent Commission Against Corruption (ICAC), Law Enforcement Conduct Commission, NSW Electoral Commission, and the Ombudsman's Office, are independent and not subject to the control or direction of the Executive Government.

Instead, the integrity agencies are generally accountable to the Parliament, including through certain parliamentary oversight committees with functions relating to monitoring and reviewing the integrity agencies.

The funding model for the integrity agencies has been examined by a series of inquiries conducted by different bodies in recent history.

The ICAC, the former Auditor-General, and the former Legislative Council Public Accountability Committee (PAC) have each published reports recommending different funding arrangements to protect the independence of integrity agencies during State budget processes.

Those reports include:

- the former Chief Commissioner of the ICAC, the Hon Peter Hall KC published reports entitled *The need for a new independent funding model for the ICAC* (May 2020) and *A parliamentary solution to a funding model for the ICAC* (November 2020)
- the former Auditor-General published a report entitled *The effectiveness of the financial arrangements and management practices in four integrity agencies* (October 2020) (**Auditor-General's Report**)
- the PAC published a report entitled *Budget process for independent oversight bodies and the Parliament of New South Wales Final report* (February 2021) (**PAC Report**).

The reports of the former Chief Commissioner of the ICAC proposed that the Presiding Officers appoint an 'eminent person' to report on the ICAC's annual funding requirements to Parliament, with Parliament approving a budget amount for the ICAC for appropriation from the Consolidated Fund.

Recommendation 1 of the Auditor-General's Report was that a new funding model for integrity agencies should be based on the following principles:

- integrity agencies are required to demonstrate their accountability as prudent managers of their financial resources
- Parliament's role in the budget process should be expanded to ensure Cabinet is provided with more independent advice on the funding requirements for the integrity agencies
- there should be transparency to Parliament and the relevant agency for decisions made about funding for the integrity agencies
- there should be structured oversight by Parliament of the performance and financial management of the integrity agencies.

The Auditor-General's Report further recommended:

- that the process used to apply efficiency dividends to integrity agencies should be reassessed (recommendation 2)
- to ensure the use of cluster-based financial management arrangements, including requests for additional funding outside the budget process and outcome budgeting, do not diminish the independence of integrity agencies (recommendation 3).

The PAC Report made a number of relevant recommendations, including that:

- the parliamentary oversight committees for the integrity agencies review the annual budget submissions of each agency and make recommendations as to funding priorities (recommendation 1)
- the annual budgets for the integrity agencies include a set contingency fund to address unbudgeted financial demands, with access to the funds governed by prescribed criteria and approval of the relevant parliamentary oversight committee (recommendation 2).

The Treasurer's Direction

On 6 August 2024 the Treasurer's Direction, entitled TD24-12 *Charter of Independence for NSW integrity agencies*, was published on the NSW Legislation website. The Direction is made under the *Government Sector Finance Act 2018 (GSF Act)* and contains a Charter of Independence for NSW integrity agencies.

The Treasurer's Direction codifies the special budget arrangements that have applied to the integrity agencies since the 2022-23 NSW Budget.

Those special budget arrangements include:

- a specialist integrity agency unit within Treasury to manage representations for budget and supplementary funding and provide the integrity agencies with information on funding outcomes
- excluding integrity agencies from central agency financial management processes and outcome reporting as part of the NSW Performance and Wellbeing Framework
- not imposing efficiency dividends on integrity agencies
- special arrangements for Expenditure Review Committee of Cabinet (**ERC**) consideration of integrity budget proposals. Integrity agencies are invited to review Treasury's advice to ERC on integrity agency funding bids and provide their own advice directly to ERC.
- the integrity agencies, and the relevant parliamentary oversight committees, are provided with funding decisions in writing, and, if relevant, reasons for variation from a funding bid
- including contingency funding for the integrity agencies in annual Appropriation Acts, in addition to appropriations for the ordinary services of the integrity agencies. The *Appropriation Act 2024* appropriated \$20 million to the Treasurer for integrity agency contingencies. Expenditure of contingency funds may be approved by the Treasurer on request, with the request and response also provided to the relevant parliamentary oversight committee.

The special budget arrangements codified by the Treasurer's Direction respond to many of the concerns raised in the Auditor-General's Report and the PAC Report.

The Government Sector Finance Amendment (Integrity Agencies) Bill 2024

The Government Sector Finance Amendment (Integrity Agencies) Bill 2024 (**Bill**) complements the Treasurer's Direction by proposing amendments to the GSF Act to:

- require the Treasurer to write to the head of each of the integrity agencies, copying the relevant parliamentary oversight committee for that integrity agency, confirming the amounts to be appropriated in the annual Appropriation Act for the services of each

integrity agency, and providing reasons, if relevant, for varying from an integrity agency's budget proposal, within 7 days after the introduction of the Appropriation Bill to Parliament

- require the relevant parliamentary oversight committee to examine and report on the appropriation to Parliament and the Treasurer within 3 months
- require the Treasurer to then respond to the committee's report within 3 months after receiving it
- provide the matters that the Treasurer must consider before deciding an application by an integrity agency for contingency funding, including the independence of the integrity agency, and whether refusing the application would cause the integrity agency to be unable to fulfil a statutory function.

Objectives: What is the policy's objective couched in terms of the public interest?

Integrity agencies play an important role in investigating potential wrongdoing and misconduct and defending the public interest. The Government is committed to ensuring that the integrity agencies receive appropriate funding to undertake their important work, and that the funding arrangements for integrity agencies do not impede or undermine their statutory independence.

The objective of the Treasurer's Direction and the Bill is to safeguard the independence of integrity agencies and provide enhanced transparency and oversight of funding decisions made by the Government about integrity agencies.

Options: What alternative policies and mechanisms were considered in advance of the bill?

Careful consideration was given to the alternative integrity agency funding models detailed above, including the proposal contemplated in the Auditor-General's Report, and the PAC Report, that parliamentary oversight committees would play a role in recommending or advising on appropriations for the integrity agencies.

The Government considers that the integrity agencies are best able to advise ERC on their funding needs. The Treasurer's Direction and the provisions of this Bill will preserve important principles of Cabinet confidentiality and responsible government, while providing a meaningful improvement in transparency and oversight of integrity agency funding.

Careful consideration was also given to the 'eminent person' model proposed the former Chief Commissioner of the ICAC.

The Government has consulted with the current Chief Commissioner of the ICAC, the Hon John Hatzistergos AM, who requested that the Government formally codify the budget management model for integrity agencies using a Treasurer's Direction.

Analysis: What were the pros/cons and benefits/costs of each option considered?

Please see the information provided above.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The Treasurer's Direction has been made by the Treasurer.

If enacted, the Bill will commence on a day to be appointed by proclamation.

These arrangements will therefore apply to the next State Budget. Relevant staff in Treasury, The Cabinet Office and the integrity agencies are aware of the arrangements and are ready to implement them ahead of the next budgeting cycle.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

The special budget arrangements for integrity agencies codified by the Treasurer's Direction were developed following extensive consultation with the integrity agencies and were also informed following consideration of the reports of the Auditor-General and the PAC described above.

Substantial changes were made to the Treasurer's Direction in response to integrity agency feedback. Following those changes, all integrity agencies have indicated their support for the Treasurer's Direction.

The Bill, which complements the arrangements in the Treasurer's Direction, was also prepared in consultation with the integrity agencies. The integrity agencies were invited to provide feedback on two drafts of the Bill with issues raised addressed in the drafting of the Bill that has been introduced.