

Director – Budget Estimates Secretariat
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Dear Director

Please find attached the Commission's answers to supplementary questions arising from the Portfolio Committee No.1 hearing on 26 February 2025 for the portfolio of Premier.

A hard copy of the answers to supplementary questions will be delivered to your office shortly.

There are no transcript corrections.

Yours faithfully



The Hon John Hatzistergos AM
Chief Commissioner

18 March 2025

OFFICIAL

BUDGET ESTIMATES 2024-2025

ANSWERS TO SUPPLEMENTARY QUESTIONS

- 1. What concerns were raised at ICAC with Mr. Moy about his performance prior to his resignation?**

No complaints of misconduct or poor performance were raised with Mr Moy by the Commission.

- 2. What reasons did Mr. Moy give for his resignation?**

Please refer to the answer given by the Chief Commissioner when asked this question at the Committee meeting on 26 February 2025:

"I am not going to go to that. He left of his own volition. He made a successful contribution in the time he was there, and he leaves with our best wishes."

- 3. Is the Chief Commissioner confident that the probity checks on Mr. Moy were adequate given subsequent events and what the Chief Commissioner now knows?**

As stated to the Committee on 26 February 2025, *"Mr Moy went through a full probity check with the Commission"*.

- 4. Which meetings did the Chief Commissioner have with Mr. Moy about:**
a) his performance and
b) his prior employment record (once discovered)?

The Commission does not accept the premise of question 4b. As a matter of practice, the Chief Commissioner has regular meetings with the Chief Executive Officer to discuss matters pertaining to the operation of the Commission and the work of the Chief Executive Officer. It is not appropriate to divulge the content of those discussions. As noted in the evidence given to the Committee on 26 February 2025, Mr Moy *"made a successful contribution"* to the Commission during his term as Chief Executive Officer. As with all new Commission employees, Mr Moy's employment was subject to a six-month probation period. Based on a review of that probationary period, the Chief Commissioner confirmed Mr Moy's substantive appointment to the position. No further performance review was required during the balance of Mr Moy's employment.

- 5. Which complaints did ICAC receive about Mr. Moy and what did they involve? In each case, what action did the Chief Commissioner take?**

See the response to Question 1 above.

- 6. Under oath, does the Chief Commissioner stand by his statement that Mr. Moy left ICAC voluntarily?**

Yes.

- 7. Why did the Chief Commissioner refuse to openly answer questions about Mr. Moy at the Committee given his responsibility for employing Mr. Moy as CEO?**

The Chief Commissioner did not refuse to openly answer questions concerning Mr Moy. The Chief Commissioner's answers are a matter of record as set out in the transcript of the Committee's proceedings of 26 February 2025.

8. How can ICAC demand transparency and integrity from other public agencies and officials if it refuses to be transparent about the use of public money and responsibility in employing Mr. Moy as CEO in what was obviously a mistake?

This question implies that it was a "mistake" to employ Mr Moy. The Commission does not accept the premise of the question.

9. To show it has nothing to hide, will ICAC now provide to the Committee, on a confidential/privileged basis, Mr. Moy's full employment records and file?

The Commission does not consider it appropriate to provide the Committee with the employment records or file of any Commission officer.

10. Is ICAC subject to the SO52/Call for Papers power of the NSW Legislative Council and how has it, in the past, responded to this power?

The first part of this question is in the nature of seeking legal advice, which it is not the role of the Commission to provide.

The Commission has not been subject to a SO52 call for papers.

The Commission notes that concerns relating to failure by the Commission to comply with the law, abuse of power, impropriety, misconduct, and maladministration come within the jurisdiction of the Inspector of the Commission (see Part 5A of the *Independent Commission Against Corruption Act 1988*).

11. I refer to the Chief Commissioner's comment at the hearing:

There is a difference between campaigning and making a promise and then implementing it, and being in power and running a program when you're seeking applications for grants and deciding that you're going to make a grant and doing it for a purpose which is disconnected from public interest – that is, for electoral purposes.

Isn't the Local Small Commitments Allocation Program (LSCAP) in the latter category?

If there is any concern that any conduct associated with the LSCAP could involve corrupt conduct, then the matter should be formally reported to the Commission so that the relevant conduct can be assessed.

12. Given his confusion at the Committee in articulating the nature of LSCAP, has the Chief Commissioner now studied the details of the program and, if so, what conclusions has he drawn?

The premise of this question is not accepted. The Chief Commissioner's answer did not reference a specific factual scenario. The Commission refers to the answer to question 11.

13. Would a Member of Parliament distributing funds to local organisations without any competitive process or conflict of interest declaration flag some of the concerns identified by the Commission in its 2022 Report on Pork Barrelling (the Jersey Report)?

a) Are there further concerns raised with respect to such distribution of funds where those funds are distributed to an organisation run by that same Member of Parliament's staff?

It would depend on the specific nature of any legislation, program or policy underpinning the funding, as some programs do not require a competitive process or public advertisement. It would also depend on factors such as the amount of funding, the nature of any bureaucratic advice and any evidence of the types of conduct set out in s 8 of the ICAC Act.

All MPs are bound by a code of conduct which includes a clause relating to conflicts of interest:

Members must take reasonable steps to avoid, resolve or disclose any conflict between their private interests and the public interest. The public interest is always to be favoured over any private interest of the Member. Members shall take reasonable steps to draw attention to any conflicts between their private interests and the public interest in any proceeding of the House or its Committees, and in any communications with Ministers, Members, public officials or public office holders.

Alleged breaches of the code could raise concerns but on its face, a failure to make a conflict of interest declaration may not be indicative of corrupt conduct. However, information that a conflict of interest had been concealed, under-disclosed, or abused is more likely to attract the Commission's attention.

The answer to the second part of the question depends on the circumstances amounting to a conflict of interest or partial decision-making. However, it does not necessarily follow that the funding would involve corrupt conduct or would warrant investigation by the Commission. It would not be unusual for the staff of MPs to be involved in worthy organisations that might be eligible for public funding. However, the relevant risks can often be addressed by disclosing any conflicts of interest and removing or limiting the involvement of any conflicted personnel.

14. At Page 39 of the Jersey report, quoting the Hon Paul Finn, the report notes "But equally we should not forget, as a media-driven Australian public opinion seems in danger of doing, that the processes of the democratic, representative and party-based system to which we have committed ourselves, are based, in part at least, upon the striking of compromises, upon securing and using influence, upon obtaining advantages for constituents, and - let it not be gainsaid -for Members of Parliament and for Ministers." On the findings of the report, can it be said that funding is always legitimate and free from pork barrelling simply because it is announced as an election commitment?

a) What about if the same amount is spent in every electorate – is it therefore legitimate and free from pork barrelling?

The answer to the first question is “no”. The Operation Jersey report makes it clear that pork barrelling *“is often associated with promises and announcements made during election campaigns. But it is not necessarily limited to campaigning and can arise in any part of the electoral cycle”* (p. 14). However, as is explained in some detail in Chapter 3 of the report, pork barrelling would only amount to corrupt conduct in certain circumstances.

In relation to the second question, page 14 of the Operation Jersey report notes that *“As a general rule, pork barrelling entails targeting electors on a geographical basis. That is, targeting electorates that a political party wants to win or retain. A typical hallmark of pork barrelling is disproportionate allocation of funding to marginal electorates”*.

15. Does the Jersey report identify concerns with, more broadly, the concept that funding can be announced for projects for political gain before an assessment process or eligibility criteria exists?

Yes. This issue is addressed in the Chief Commissioner’s letter of 4 March 2025 to the Chair of the Committee.