

Baird must establish a parliamentary investigator

With its powers newly defined, the Independent Commission Against Corruption's investigations into Liberal Party rorting of donations laws and the activities of the Obeid family-linked Australian Water Holdings are assumed to be imminent.

Despite the furore and fallout over the watchdog's failed pursuit of Crown prosecutor Margaret Cunneen, its reports into Operations Spicer and Credo, as they are respectively known, are likely to recommend consideration of criminal prosecutions.

They may also brand some politicians and businessmen as officially "corrupt".

Cue the howls of outrage and vows to fight the findings in the courts.

Brace for the increasingly desperate band of former politicians, businessmen and select agenda-driven journalists that constitutes the small but vocal anti-ICAC lobby to renew their calls for its abolition.

Watch for the reheated demands that ICAC commissioner Megan Latham resign or, alternatively, for the analysis to be rolled out that her behaviour in the Cunneen affair has tainted her findings.

It's all a bit predictable.

What you won't hear from the anti-ICAC crowd is the fact that these reports will probably be the most well

Sean Nicholls



considered and legally robust ever tabled in the NSW parliament by the corruption fighting agency.

Their findings will be guided by no lesser an authority than the High Court of Australia, following its pronouncements on the scope of ICAC's powers in the wake of the Cunneen affair.

The recent intense scrutiny of ICAC has left us with a corruption fighting agency that deserves the support and confidence of the public and the state government more than ever.

In particular, we can now be assured that ICAC will only pursue cases of serious corruption – a category into which the pursuit of Cunneen is now widely agreed to have not fallen – as was originally intended by its architects.

So it's a watershed moment. The clarity and certainty the recent saga over ICAC's powers and scope has provided should be welcomed.

But it also creates a problem: who will now investigate our elected politicians accused of wrongdoing deemed not serious enough to warrant ICAC's involvement?

Who's going to dig into the alleged conflicts of interest in decision making, failure to declare business interests to the parliament or misuse of public resources and entitlements?

You will not have heard a lot about it, but Premier Mike Baird has the answer sitting on his desk in the form of a recommendation to establish a dedicated, independent parliamentary investigator.

The idea was floated in July 2013 in a speech by the clerk of the Upper House, David Blunt.

It gained momentum when it was recommended by ICAC later that year as part of a report into corruption prevention commissioned by then premier Barry O'Farrell.

O'Farrell asked the two parliamentary committees charged with investigating ethical issues to conduct an inquiry into this and other key recommendations in ICAC's report.

The first of these, the Legislative Council privileges committee, reported back in June 2014 and strongly supported the move.

It supported the establishment of a commissioner for standards in NSW, similar to those existing in the British parliament and the ACT Legislative Assembly.

The committee suggested that "less serious allegations of misconduct" against MPs could be resolved more

easily by the commissioner.

Its role would be to investigate complaints against MPs not serious enough for ICAC. The committee concluded such an office "would increase the transparency with which the parliament deals with complaints against members, with appropriate information on investigations made public."

The following month, the Legislative Assembly standing committee on parliamentary privilege and ethics recommended a slightly different and less transparent model – an ethics commissioner.

It said the new office could encompass the advisory role of the current ethics adviser but have additional responsibilities to investigate complaints against MPs.

However, crucially, the committee recommended the commissioner use "discretion to keep findings confidential or report findings to the House with recommended sanctions for breaches."

Clearly the first option would provide optimum transparency and is vastly preferable to the closed door model put forward by the Legislative Assembly committee.

Either way, 18 months on, Baird has yet to announce any movement on the issue.

The clarification of ICAC's powers and role means now is the time to do so.

These reports will probably be the most well considered and legally robust ever tabled in the NSW parliament by the corruption fighting agency.

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