

ICAC'S EXTRAORDINARY POWERS MUST BE CURBED

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In 1988, when Nick Greiner established the NSW Independent Commission Against Corruption his motive was admirable.

The then-premier was dealing with an extraordinary situation: NSW had become the most corrupt state in the nation, so in order to weed out the bad guys Greiner equipped his new commission with extraordinary powers.

No rules of evidence meant ICAC could base its findings on material that would never pass muster in a real court. Limited appeal rights meant the merits of adverse findings could never be tested.

Those were tragic mistakes.

They paved the way for public show trials that stripped people of their normal procedural rights, destroyed reputations and tainted jury pools long before the case against a person could be tested in a real court.

Greiner's system removed the checks and balances on power that, in the mainstream courts, minimise the risk that state power will be used to punish the innocent.

There might have been a case for unleashing a strong but temporary commission to deal with the extraordinary surge in corruption that afflicted this state in the 1980s.

But Greiner's real mistake was to make ICAC permanent – which meant a permanent erosion of the checks on power. This shifted the balance between the state and individuals.

Without those safeguards, it was inevitable that innocent people would eventually be caught up in this organisation's rough and ready system of quasi-justice. And that is exactly what happened.

After 36 years of ICAC, the current NSW Premier, Chris Minns, is confronted

with growing disquiet in parliament and the media about the injustice this system has inflicted on people who, according to the real courts, have done nothing wrong.

At the moment, Minns seems determined to follow the example of the Coalition, which was content to allow innocent people to suffer in order to protect the standing of this deeply flawed institution.

The plight of ICAC's innocent victims has long featured in this space. But Minns is now being confronted with broader calls for justice.

Rod Roberts, an independent, raised some of these issues in the Legislative Council during the week.

Why does Labor now support a law enacted by the Coalition that had the effect of changing the outcome of a court case mid-hearing in order to prevent the NSW Court of Appeal from finalising a ruling that ICAC unlawfully pursued four men?

Why is it that Labor, when in opposition, signed off on a unanimous parliamentary report that said these men deserved a remedy, but has now changed its mind?

It does not end there.

Even the more thoughtful parts of the ABC have focused on the dreadful treatment of John Maitland, a former union leader, who spent two years in prison for a crime he did not commit. Maitland was pilloried at one of ICAC's show trials but was eventually acquitted of ICAC-related charges in 2022 – long after he had been stripped of his Order of Australia.

If Minns believes these injustices will simply fade away, he should consider this:

Sydney broadcaster Ben Fordham has been using his top-ranking program on radio 2GB to outline another ICAC-linked injustice – one that affects – thousands of innocent shareholders in mining company NuCoal Resources.

Ten years ago these people saw their investments wiped out when the Coalition government of Barry O'Farrell pre-empted the courts and relied on "facts" as found by ICAC to cancel NuCoal's exploration licence – its main asset – without compensation. NuCoal did nothing wrong. Nobody associated with the company has a conviction against their name. ICAC made no accusations against this company and even suggested innocent parties could be compensated.

NSW paid \$362m to Shenhua, a company owned by the Communist Party dictators of China, when it cancelled a similar licence. But it refuses to compensate Australians and Americans.

NuCoal has established a website, [victimsoftheicac](http://victimsoftheicac.com), that tells the story of how this company and its shareholders were unjustly stripped of private property without due process or compensation.

That point was taken up by Fordham on February 29.

He told his listeners that the NuCoal precedent meant “the NSW government can take away your assets and pay you nothing simply by passing a law”.

“ICAC admitted that NuCoal and its shareholders were innocent parties. They were never accused of wrongdoing. They were innocent parties. But NuCoal was still destroyed,” Fordham said.

Those concerned about the ICAC system in this state now extend all the way to the United Nations Human Rights Committee which ruled last year in favour of businessman Charif Kazal.

His rights under the International Covenant on Civil and Political Rights had been breached by his treatment in NSW.

Kazal’s victory was secured after human rights lawyer Geoffrey Robertson KC took up his case. Yet this country’s federal government – a party to that treaty – has done nothing.

How many more voices need to be raised against injustice before Labor – federally and in NSW – decides to listen?

Yes, wrongdoing has been brought to light by ICAC. But the number of public officials who have been exposed by this commission does not compare to the thousands of innocent people, predominantly in the private sector, who have suffered collateral damage.

The courts are the arbiters of wrongdoing. But successive NSW governments have come under the thrall of a commission whose inquiries are not governed by checks and balances.

Ill-advised statutory change has stripped people of property and access to justice in a way that should never be tolerated in a state that is supposed to respect the rule of law.

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