

# Parliamentary Integrity Commissioner

## Introduction

- 5.1 The Committee has been asked to examine ‘the role of the proposed Parliamentary Integrity Commissioner in upholding a code’.
- 5.2 The proposal for a Parliamentary Integrity Commissioner was included in the various agreements that led to the formation of the minority Labor Government. The agreements referred to the appointment of a Parliamentary Integrity Commissioner and to a number of roles for the Commissioner.
- 5.3 The agreement between the government, Opposition and Mr Katter MP, Mr Oakeshott MP and Mr Windsor MP stated in relation to the proposed Parliamentary Integrity Commissioner:

This commissioner would be supervised by the privileges committee from both House and Senate to provide advice, administration and reporting on parliamentary entitlements, investigate and make recommendations to the Privileges Committees on individual investigations, provide advice to parliamentarians on ethical issues and uphold the Parliamentary Code of Conduct and control and maintain the Government’s Lobbyists register.
- 5.4 The agreement between Hon Julia Gillard MP and Mr Andrew Wilkie MP and between the Australian Greens and the Australian Labor Party made reference in very similar terms to the role of a Parliamentary Integrity Commissioner (see Appendix 2 for extracts of the agreements).

- 5.5 The Committee's task is to examine the possible role for a Parliamentary Integrity Commissioner in relation to a code of conduct. Therefore, the Committee has not considered the wider possible role of a Parliamentary Integrity Commissioner in relation to the use of parliamentary entitlements or in relation to the control and maintenance of the Government's lobbyists register, other than that these issues may relate to a matter of conduct. For example, the use by a member of their parliamentary entitlements may raise questions about the economical use of public resources, even if the use was within entitlement. Similarly, contact with lobbyists could give rise to issues to do with the proper exercise of influence by members.
- 5.6 Despite the commitment made in the agreements to the appointment of a Parliamentary Integrity Commissioner, the Committee considered it should assess all possible options, including whether there should be a Parliamentary Integrity Commissioner at all.

## **Options for a Parliamentary Integrity Commissioner**

- 5.7 The Committee considered three options for a Parliamentary Integrity Commissioner.

### **Option 1 – No Parliamentary Integrity Commissioner**

- 5.8 The Committee considered firstly whether there should be a Parliamentary Integrity Commissioner at all. The presumption would be that, without a person such as a Parliamentary Integrity Commissioner, any role needing to be performed in relation to a code of conduct for members, such as advising on ethical issues or receiving and investigating complaints, could be performed by a relevant parliamentary committee.
- 5.9 Such an approach is often referred to as a 'self-regulatory' approach. It was described well in the report of the Committee of Inquiry into 'Public duty and private interest' (the Bowen Report) in 1979:
- .... the regulatory process should be one in which:
    - the desired standard is set in general terms;
    - performance against that standard is ordinarily assessed by those familiar with the context because they work there themselves; and

- to the extent that performance falls below the desired standard, they decide whether the penalty is appropriate and what the penalty should be.<sup>1</sup>

5.10 However, the Bowen Report itself noted the potential limitations of self-regulation stating:

This approach has its dangers. Self-regulation may be abused to the point that there is no regulation at all.<sup>2</sup> [and]

Further, there is the important matter of the extent to which the public is prepared to place its confidence in self-regulation.<sup>3</sup>

5.11 The Clerk of the New South Wales Legislative Assembly also referred to the limitations of a purely self-regulatory approach:

I do not think a code which is controlled by single committees of houses where decisions are taken carried enough public acceptance. It is sort of Caesar appealing to Caesar and judging your own. There probably needs to be some sort of external guide running alongside it to give it some sort of legitimacy and perhaps public confidence.<sup>4</sup>

5.12 The Committee considers that these limitations would result in any approach of pure self-regulation lacking sufficient credibility. A purely self-regulatory approach could undermine the purpose of implementing a code of conduct in that it would lack public confidence and support.

## Option 2 – Parliamentary Integrity Commissioner as ethical adviser

5.13 The second option the Committee considered was that a Parliamentary Integrity Commissioner could have a role as an ethical adviser to members, but the role would not extend to receiving and investigating complaints. This is very much the model that applies in the New South Wales Legislative Assembly and the Queensland Legislative Assembly.

5.14 The approach taken to the role of a Parliamentary Integrity Commissioner in New South Wales and Queensland was supported by Professor Gerard Carney of Bond University who proposed that the

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1 *Public duty and private interest*, Report of the Committee of Inquiry established by the Prime Minister, 15 January 1978, chaired by N.H. Bowen, AGPS, Canberra, 1979, p. 20.

2 *Ibid*, p. 21.

3 *Ibid*.

4 Transcript of round table discussion, 21 March 2011, p. 3.

House appoint, by resolution, a Parliamentary Ethics Adviser (possibly a former Member) who would:

- monitor the code of conduct; and
- make recommendations to the House on ethical issues.<sup>5</sup>

5.15 The submission from the Clerk of the New South Wales Legislative Assembly referred to the role of the Parliamentary Ethics Adviser in New South Wales as being to advise members, on request, on the use of entitlements and the interpretation of rules relating to the use of entitlements. It had been extended to include the provision of advice to Ministers and former Ministers on post-separation employment matters. The Adviser also provides an independent point of contact for members to advise on more difficult questions relating to their responsibilities as members. The Adviser was prohibited from investigating particular complaints against members.<sup>6</sup>

5.16 The Chair of the NSW Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, Mr Paul Pearce, noted in giving evidence to a Victorian Legislative Assembly Committee that there were limitations to this role:

The role of that ethics adviser is fairly limited in that he cannot give legal advice. Consequently, the amount of work he does is fairly low. Members do inquire from time to time, but it is advice of a generic nature, rather than specified legal advice ....<sup>7</sup>

5.17 In Queensland, there is an Integrity Commissioner who has a role in providing advice on integrity and ethics issues both to members of Parliament and to senior public servants. This advice particularly is in relation to managing conflicts of interests. Under current arrangements, all government members of Parliament are required to consult with the Integrity Commissioner annually.<sup>8</sup> As in New South Wales, the Integrity Commissioner has no role in investigating complaints. Any complaints are made to the Speaker who then decides whether to refer them to the Legislative Assembly Integrity, Ethics and Parliamentary Privileges Committee for investigation.<sup>9</sup>

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5 Submission from Professor Gerard Carney, p. 2.

6 Submission from Mr Grove, op.cit.

7 Evidence to the Victorian Legislative Assembly Law Reform Committee, 17 August 2009, p. 2.

8 Submission from Mr Neil Laurie, Clerk of the Queensland Legislative Assembly, p. 3.

9 Ibid.

5.18 Having an independent person available to advise members on ethical issues would be of value to members in working within the framework of a code of conduct. Such a person also could perform a broader educative role for members in relation to ethical issues and regularly review the code. The appointment of an integrity commissioner with such an advisory role would respond in part to community expectations that a self-regulatory regime would have sufficient checks and balances and an independent perspective. However, it leaves a gap as to how to approach the receipt and investigation of complaints.

### Option 3- Parliamentary Integrity Commissioner - Receive and investigate complaints

5.19 The final option the Committee examined was a Parliamentary Integrity Commissioner whose primary role would be as an independent person who would receive and investigate complaints about breaches of the code of conduct for members. This model would broadly be along the lines of the approach in the United Kingdom House of Commons and the Canadian House of Commons.

5.20 The Chair of the United Kingdom House of Commons Committee on Standards and Privileges, the Rt Hon Kevin Barron MP, referred in his submission to the importance of an independent complaints handling process:

... it is vital that the complaints handling process is carried out with rigor, and independently of the Committee. In my view, the United Kingdom experience has shown the importance of having a strong, independent commissioner, who decides (other than in specified, exceptional circumstances) which complaints should be investigated; who carries out the investigation; and who finds whether the complaint should be upheld.<sup>10</sup>

5.21 This view was strongly supported by the Clerk of the United Kingdom House of Commons who stated that 'A robust complaints investigation process contributes to public confidence in the institution of Parliament'.<sup>11</sup>

5.22 In both the United Kingdom and Canada, the Commissioners play a broader role in relation to the codes of conduct, although the investigatory role is central.

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10 Submission from Rt Hon Kevin Barron MP, Chair of the United Kingdom House of Commons Committee on Standards and Privileges, p. 2.

11 Submission from Dr Malcolm Jack, op. Cit, p. 2.

- 5.23 In the United Kingdom, the Parliamentary Commissioner for Standards also advises the Committee on Standards and Privileges and individual members on the interpretation of the code and on questions of propriety, and monitors the code and makes recommendations for change. The latter responsibility usually involves a review of the code each Parliament (roughly every five years). In providing confidential advice to members, the Commissioner is very conscious of the possibility of a conflict of interest if subsequently there is to be an investigation of a member. The Commissioner normally would decline to give advice if the matter is likely to give rise to a complaint.<sup>12</sup>
- 5.24 Finally, the Commissioner also is responsible for maintaining the Register of Members' Financial Interests.
- 5.25 The Commissioner is appointed for a single five year non-renewable term. The appointment is made by the House of Commons Commission following a rigorous selection process.
- 5.26 In Canada, a Conflict of Interest and Ethics Commissioner is appointed as an independent officer of Parliament, primarily to investigate allegations of breaches of the code of conduct of Members of the House of Commons. A inquiry can be initiated by the Commissioner:
- on the written submission of a Member that there has been a breach and the Commissioner has reasonable grounds to believe an infraction has occurred;
  - following a motion of the House of Commons referring a matter to the Commissioner; or
  - on his or her own initiative if there is reasonable grounds for believing an infraction has occurred.<sup>13</sup>
- 5.27 The Commissioner also:
- provides confidential advice to Members about conflict of interest and ethical matters;
  - prepares and maintains a public summary of the confidential disclosure statements made by Members;
  - submits an annual report to Parliament on the administration of the code; and

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12 Submission from Mr John Lyon, Parliamentary Commissioner for Standards.

13 Submission from Ms Audrey O'Brien, Clerk of the Canadian House of Commons, p. 2.

- is mandated to organise educational activities for members and the general public about the code and the role of the Commissioner.<sup>14</sup>
- 5.28 The Commissioner is appointed by the Governor in Council for a seven year term following consultations with the leaders of political parties and a resolution of the House. The appointment can be renewed for one or more terms of up to seven years.
- 5.29 Both the United Kingdom and Canadian frameworks provide a wide ranging and robust role for their respective parliamentary standards or ethics commissioners. The role centres on one of the receipt and investigation of complaints, but extends to providing advice, reviewing the code and conducting awareness raising and educational responsibilities relating to the code.

## Observations

- 5.30 The Committee considers that the implementation of an independent and rigorous process for the receipt and investigation of complaints under a code of conduct for members would be essential to ensuring the credibility of the code. Although the Committee can see merits in both the purely self-regulatory option and the option for a parliamentary integrity commissioner in the role of an ethics adviser, it considers that neither option may provide the credibility required properly to support the code in the mind of the public.
- 5.31 Thus if a code of conduct were to be adopted, the Committee would see value in the appointment of an independent Parliamentary Integrity Commissioner whose central role would be to receive and investigate complaints under the proposed code of conduct. In the next chapter, the Committee will discuss in detail a possible complaints procedure.
- 5.32 In addition to a central role of receiving and investigating complaints of breaches of a code, the Committee considers a Parliamentary Integrity Commissioner could have related roles of:
- providing advice to members on matters relating to the code of conduct and ethical issues generally, subject to such advice not creating a potential conflict with any possible investigations;
  - periodically (every Parliament) reviewing the code of conduct and reporting to the relevant House Committee; and

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<sup>14</sup> Ibid, pp. 4-5.

- undertaking an educative role for Members in relation to the code and ethics matters generally.

## **Appointment of a Parliamentary Integrity Commissioner**

- 5.33 The Committee would see it as desirable that a Parliamentary Integrity Commissioner be seen to be independent of government and the political parties. The arrangement for a Commissioner, including the process of appointment and functions, should be established by resolution of a House.
- 5.34 The process to select a Commissioner should be overseen by the relevant Committee of a House given responsibility for the arrangements for the code of conduct (in this House, possibly the Committee of Privileges, Ethics and Members' Interests – see Chapter 7). Were an appointment to be made, the Commissioner and associated staff and other resources should be funded from the budget of the Department of the House of Representatives with the necessary additional appropriation for the Commissioner being provided to the Department. The Commissioner should be appointed as an Officer of the House by resolution of the House following a recommendation to the House to be made by the proposed Committee of Privileges, Ethics and Members' Interests. The Commissioner should be appointed for a non-renewable term of seven years ensuring the independence of the position. The Commissioner should only be able to be removed from office by resolution of the House following a report from the Committee of Privileges, Ethics and Members' Interests to the House that the Commissioner is unfit to hold the office or is unable to carry out the duties of the office.
- 5.35 It is unclear what the extent of responsibilities of a Parliamentary Standards Commissioner would mean in terms of workload until the position commenced and complaints were made. However, the Committee envisages that such a role might only be a part time one, although a Commissioner would require some supporting resources. The Committee considers such supporting resources would not be extensive.