

INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION COMMITTEE

CLOSED PROCEEDINGS

Brisbane — 17 November 2015

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Mr Richard Bingham, Integrity Commissioner, Queensland Integrity Commissioner.

The CHAIR — I declare open this closed hearing of the IBAC Committee of the Parliament of Victoria. I welcome Richard Bingham. All evidence taken at this hearing is protected by Parliamentary privilege in accordance with the reciprocal provisions, defamation statutes in the Australian jurisdiction as if you were giving evidence in Victoria and as provided by the Victorian Defamation Act 2005, section 27, Constitution Act 1975 and the Parliamentary Committees Act 2003. Any comments you make outside the hearing may not be offered such privilege. Any reporting of these proceedings enjoys qualified privilege for fair and accurate reporting as if proceedings were in Victoria. All evidence given today is being recorded. The witness will be provided with a proofed version of the transcript in the next few weeks. Richard, could I ask you to begin with your presentation, and then the committee will ask you some questions.

Mr BINGHAM — Sure. Thanks very much for the opportunity. It's a pleasure for me to be here. I thought it would be helpful if I just gave you a little bit of a picture about my background and where I come from, then I will work through each of the eight questions that I've been provided with as being subjects that you would like to cover. My background is in legal and environmental policy. From 1994 to 2004, I was Secretary of the Department of Justice in Tasmania. Thereafter, I chaired the Electoral Commission in Tasmania. I conducted the process for compensation to people who were abused in state care in Tasmania and I acted as ombudsman and Health Complaints Commissioner in Tasmania. In 2009, I was appointed as ombudsman in South Australia, which I did for just over five years, and I've been in my current position as Integrity Commissioner here since 1 July last year.

The first of the questions that you asked was about an overview of my current work as the Integrity Commissioner. The Commissioner's responsibility is — there are two principal roles. One is to provide advice to designated persons — that's essentially the premier, ministers, members of Parliament and senior public servants — about ethics and integrity issues. Those issues can largely revolve around conflict of interest matters — that was the original genesis of the position — but they now extend to cover any sort of operational matter or any personal matter that arises during the course of somebody's job.

That can include things like post-separation employment or operational issues that come up, a human resource issue or whatever. It's a wide range of matters that I get involved in. Over the past year, I've dealt with about 75 such requests. They're obliged to come to me in writing under the Integrity Act, and I'm obliged to respond in writing to them. That level of work is consistent with what has been the experience of the office since it was — it has been in existence, which is some 14–15 years.

The second responsibility is to regulate lobbyists in this state. Queensland was the first jurisdiction to have a statutory scheme which applies to lobbyists. It only applies to those people who are conducting lobbying for reward on behalf of a third party, so it doesn't include what your jurisdictional calls government affairs directors or in-house lobbyists or people who are lobbying as something which is incidental to their principal occupation — like lawyers or accountants or town planners — those sorts of things. That has been controversial in this jurisdiction and I will move on to that when I answer your question about lobbying some more.

Another thing that my office does is to meet with MPs about matters relating to their declarations of interests. In that respect, there is some overlap with the responsibility of the clerk of the Parliament, who's the registrar of members' interests. The way that that works as a matter of practice is that the clerk provides advice to members about the matters that need to go on the register, and my office deals with what might be consequences of those things, if you like. It's just a working arrangement that we've come to, to make that split work, if you like.

The final thing that my office does is to review declarations of interest that are lodged by various statutory offices and Directors-General in the Queensland public sector. It's an odd mix of declarations that are subject to my review — some are, some aren't — and the purpose of the review

is something which is a moot point for me at the moment.

There are occasions on which it's useful to know what private interests somebody might have when they're relevant to a decision that they're making, but the mere fact of, you know, what brand of motor vehicle somebody drives is not necessarily relevant to the way in which they fulfil their public duties.

So that's a sort of snapshot overview of what the office does. There isn't an equivalent office anywhere else in the country. The closest that it comes — some of the ethics advisors and Parliamentary commissioners for standards — which there are some similarities with what I do, but no direct parallels.

Your second question was how the role fits within the broader integrity system in Queensland, and the answer is I'm an independent Parliamentary officer, so I operate entirely under the Integrity Act. I'm separate from the other elements of the integrity system in this state, so that, for example, in 2007, my predecessors — one of my predecessors was given Crown law advice that the obligation to report to the Crime and Corruption Commission does not apply to my office. Now, that has not been a matter with which I've had to confront, but as a matter of law, that's the situation. So the advice that I give to designated persons is totally confidential.

I can only disclose it to the premier under very limited circumstances, but it is a matter for the recipient of the advice to make a decision about how they want to use it. They're entitled to disclose it and, as a consequence, the practice is that people will approach my office and seek advice as a form of insurance, if you like, to assist them in dealing with a particular matter.

Your third question was, "What are the benefits of the role and are there any challenges?" Not surprisingly, I think it's a very useful preventative adjunct to the complaints and investigation arms of an integrity system. It's what attracted me to this position in the first place. I was aware of it through my other work and, for me, the benefit of this position is providing advice to people in circumstances in which ethics or integrity issues confront them in a practical way. And it's — the worth of the position — the essential value of the position is, I think, in giving that preventive advice and avoiding problems before they occur.

So the challenges that go with the position essentially revolve around practicalities. So far as the lobbyist regulation regime is concerned, there's no necessity for that to be done by my office. In New South Wales, for example, it's the Electoral Commission which fulfils the responsibility, and that could conceivably occur in this jurisdiction. But the advice function is one which is peculiarly within my responsibility.

The challenge that goes with it is the advice is often needed urgently, so — my office is a very small one — there's only less than four FTEs in the office to fulfil all its functions, so we need to be, you know, practically available and able to give advice quickly and often at very short notice.

Your fourth question was about the extension of the Act to include issues other than conflict of interest, and, as I said, that has been an essential component of the way in which the office operates so that matters like post-separation employment or gifts and benefits or those sorts of personal matters are also dealt with by the regime. And perhaps the only comment that I would make in this context is that, from my perspective, there are circumstances in which the range of designated persons could be broader than that which it is.

It was a matter that was addressed in a strategic review which was conducted of my office and the report was tabled in the Queensland Parliament in July of this year, but that's really the only comment that I would make in response to that question.

Your question 5 relates to the register of lobbyists and what was the rationale for providing a distinct role in relation to monitoring lobbying activities. I think the answer to that is that lobbyists were seen as significant from an ethical perspective, and the two things went together with the advice on conflict of interest and ethics and integrity issues. I think, also, it was envisaged that an independent regulator operating a statutory scheme assists in providing public confidence in relation to lobbying and who's seeking to influence government. That's certainly a view that I hold — that that's a positive thing to do.

There are some issues associated with the operation of the scheme in this state. As I said, it doesn't cover in-house lobbyists or others who engage in lobbying as part of another profession, nor does it cover things like industry associations who will say that they don't lobby on behalf of individual proponents, but sometimes get very close to that line even when they're just dealing with a policy issue. They may not be advocating for an individual proponent, but that is still lobbying under the terms of the definition under our legislation. So that has been a moot point. My predecessor and the committee — the Parliamentary committee that I report to — have both recommended that the scope of the scheme should be expanded. That was picked up by the strategic review to which I alluded earlier. I agree that the scheme, as it is at the moment, is less effectual than it could be, but I think there are different ways to address that.

And, perhaps, the model that's applied in New South Wales now, where they have a code which applies to anybody who seeks to influence a government decision — not only registered lobbyists — that operates in conjunction with the registered lobbyist scheme and, to my way of thinking, that would be a useful halfway house, without going to the administratively difficult step of working out, you know, when does a lawyer become a lobbyist or when does a town planner become a lobbyist and how do you police that as a matter of practice.

Your sixth question was about the Commissioner's role in promoting public integrity standards — “Is this education and prevention role beneficial?”. Well, at the risk of being thought heretical, I'm going to say that I don't think it's as important as some people suggest that it is. In other words, its importance shouldn't be overstated. My view is that ethics and integrity issues are not in themselves rocket science. It's basically the application of common sense. What is more important than another contribution to the already voluminous number of ICAC produced corruption prevention materials is leadership and almost permission for people to exercise common sense in relation to these matters.

One of the learnings, I think, from the experience in Queensland — from the history here — I've only been here for 18 months, but I've been impressed by the way in which integrity issues are at the forefront of peoples' mind here to a greater than was my experience either in South Australia or Tasmania. But there is sometimes, I think, a tendency to over-engineer these solutions and the Callinan and Aroney Review in this state made those comments to some extent. And whilst there is much in that review that I don't agree with, I do agree that the regime should be kept as simple as possible.

The other comment that I would make about the public awareness function of my office is that my statutory mandate is limited to making public comment or public awareness about matters that are relevant to my functions, so I don't have a broad mandate to make comment about any integrity issue.

Bearing in mind that the principal purpose of the officer is to provide advice to people, I've been very hesitant about making public comment because I don't want to do anything which is likely to inhibit peoples' preparedness to consult me. One of my predecessors had an experience which he reported on in an annual report, which did seem to have the consequence of raising questions about whether people would still be prepared to seek advice and I've been hesitant as a consequence of that. There are precedents in other places for things like the publication of anonymised case summaries of what I do. Ontario does that where there is an office not dissimilar to mine but that sort of function is not permitted by the confidentiality obligations which exist under my legislation. So the view that I have

about that public awareness function is very much constrained by the operation of the Act that I'm responsible for administering.

Question 7 is what makes an effective integrity system and we will be here for a very long time I think if we wanted to go into all of the detail about that. I will just observe that my office is partnering in an ARC linkage grant application for another instalment in the National Integrity System assessment which was undertaken in the middle of last decade using the Transparency International framework. This grant application which has been led from Griffith University will be seeking to research and make recommendations about what is the form that a comprehensive and efficient integrity system should take into the future and that will focus on things like that I think this question is getting at so I will just acquaint you with that.

So far as my overall views about the elements which characterise a successful integrity system, they are things like transparency which I think is fundamental to it. I have that at the top of list of criteria, if you like. But also things like keeping it simple so that you minimise overlap between the jurisdictions of the various bodies. I don't think it works where you have referrals backwards and forwards. I think you should be giving responsibility to one body and trusting it to do the job properly and to refer it on if the nature of the matter changes. I don't think you should have situations in which one body oversees investigations by another.

I think the different focuses of things like anticorruption commissions and ombudsman mean that the two should be kept separate to do their own jobs. If one body believes that something needs to be addressed, then it's up to it to sort out the resourcing implications of that, not to expect that somebody else will do the job which — and they oversee it. In my experience, it's a very inefficient way to run an integrity system.

Similarly, I think you shouldn't rely on those who are being investigated to conduct internal investigations. I'm very sceptical about the extent to which those sort of internal investigations contribute anything substantial to the successful operation of an integrity system.

I prefer external or at least some distance from it. And I also think that issues like more open disclosure of political donations, stronger parliamentary support for and oversight of integrity agencies in some jurisdictions, not in this one. I think the parliamentary committee system in this parliament works very well. I'm very conscious of my close relationship with the parliamentary committee here which I think is a positive and instructive thing. That wasn't my experience in some other places. Like I say, I could talk for a long time about that one but I will — it's in both our interests, I think for me to stop there.

In response to your last question about the lessons that Victoria can learn from my experience as Integrity Commissioner in Queensland, I hesitate before preaching to anybody about what they should learn from anywhere else. I think that's a matter for your judgment but, as I've said, I think the history in this state has meant that there has been a big focus on integrity issues. I think that the system is more mature here than it has been in my experience in other places. I think that to some extent, there are lessons which could be learned and a second generation, if you like, would try to simplify the system whilst not throwing babies out with bathwater. So I hope that's a hopeful overview and I hope I've answered your questions.

The CHAIR — Thanks, Richard.

Mr BINGHAM — Happy to answer any more that you might have.

The CHAIR — Just if your role is to talk to senior public servants and others about the ethics and integrity issues, I guess one of the issues that has come up a number of times during our evidence that we're seeking today has been about preventative and the educational part of preventing corruption. I

guess, it gets back to question number 6 a little bit because the CCC believe it should be them that's doing the education and preventative work. The Public Service Commissioner would argue that they should be doing it and yet part of your role is to set out ethics and integrity issues with the public service so how come it's not you?

The CHAIR — Because my legislation says all I can do is undertake public awareness in relation to matters relevant to my functions and the functions are giving of advice, conduct of the lobbyist register so I don't interpret that mandate as permitting me to have a broader responsibility for education and prevention about integrity issues generally, and that — I think I take a narrower view than perhaps some of my predecessors but the limited extent of that scope has been acknowledged by my predecessors as well. The history of the education and prevention functions so far as the CCC is concerned, I'm sure they will have taken you through the amendments of their legislation in 2014 and the limit which was put on that.

My office picked up some small functions following that and we started to publish some of the materials on our website that had previously been on theirs, for example. But the simple fact of the matter is that subject to this overwhelming consideration, as I say, that you need to be clear about exactly why you're educating and what you're trying to do. You know, it's more about leadership than it is producing another training manual sort of thing. Then I believe that it should be mainstreamed. It's the responsibility of every manager to know about integrity issues and to ensure that those people for whom he or she is responsible have them at the forefront of their minds.

Mr HIBBINS — I did — thanks for that presentation. I thought it was very fascinating. So you said — it was interesting that your office is unique in its kind in Australia.

Mr BINGHAM — Yes.

Mr HIBBINS — Yes. Okay. Well, certainly, I think it's an office we should be considering down our way. I wanted to ask in regards to conflict of interest and you touched on political donations. Do you see conflict of interests arising from political donations, ie, the accepting of or acting on bodies or people that have provided political donations?

Mr BINGHAM — Well, let me just be clear that the confidentiality obligations that I'm under so far as my legislation is concerned means that I can only talk about the detail of matters which have been put into the public domain by recipients. So I can't make any comment about any other matters that I might have dealt with, touched on those sorts of issues. Conflict of interests can arise, as you know, in lots of different ways and that's one of the reasons why I think it's imperative that people should have access to advice in the particular circumstances of a matter that concerns them and they shouldn't just be looking at a factsheet that's on a website, for example. There's no doubt that the influences which or the private interests which people may have can be accrued in lots of different ways.

There's no — not necessarily any problem in a conflict of interest. There's nothing inherently wrong in there being a private interest which conflicts with a public duty. What is important is how that's managed and the attitude which has been taken in this state is that declaration of interests and management of them is what needs to be rigid and robust as opposed to avoiding the interest in the first place. I know in South Australia, I used to go around to rural and regional councils talking about conflicts of interests and the people that I was speaking to who are the people who make decisions on the council that are also the people who run the ANZAC Day committees and are on the football club committees and all of those sorts of things.

We want to encourage elected representatives to have strong links to their communities. We don't want to discourage that but we have to recognise that it gives rise to difficulties in some sorts of situations.

The CHAIR — Okay. Just a couple more questions. What is the size of your office and your overall budget?

Mr BINGHAM — 3.8 FTEs, about \$780,000.

Mr HIBBINS — Okay. Terrific. And there has never been — because obviously, I think, comparable roles in other countries, it moves beyond an advisory role to I guess an investigative role and a reporting role. Has it ever been suggested that that function sits with you?

Mr BINGHAM — No, it hasn't and I'm of the school of thought that thinks there are risks in doing that. I know it's a consistent theme. Parliamentary commissioners, for example, often have an advisory role as well as a complaint investigation role. The principle benefit of having an office such as mine is that people feel free to approach it. If they fear that I'm going to be investigating them or dealing with them in some way, if they raise something with me, then I fear that's going to inhibit them contacting me. So my view about that is it hasn't been suggested but if it were suggested, I would say, no, it's not appropriate to mix the advisory and investigative roles in that way even though I know a lot of places do do that.

Mr HIBBINS — Thank you.

The CHAIR — Just following up on Sam's question about the political donations, do you do a reconciliation between the Queensland register of lobbyists and political donations?

Mr BINGHAM — We haven't done to this point — what we do to test the validity of the lobbyist register is link it back to what the government agencies or the government representatives tell us has happened. In this state, ministers publish their diaries, they do that at the end of each month for the preceding month so that they're relatively up to date and the genesis of the lobbyist regime here was that when it was first set up, all of the obligations were put on the government agencies and as a result of which they established processes to keep diaries of contacts with lobbyists and so on. That's no longer the case that they have that obligation. Their obligation is only to keep records in accordance with public record legislation and the obligations to record those contacts now sit with lobbyists. But the legacy, if you like, of the previous regime means that there is good quality information which we can go back and check what the lobbyists have put on the register of contacts with what's on the ministerial diaries for example or what's in a council record of contact with lobbyists.

The CHAIR — So if there was a donation of half a million dollars from a lobbyist, would you — would that raise a red flag with you —

Mr BINGHAM — Well, that —

The CHAIR — In the work you do?

Mr BINGHAM — I would hesitate before saying it would raise a red flag. It would certainly raise an amber flag, if you like. I would be interested to find out about the circumstances of that sort of donation and to look to see whether there's anything that ought to be — but the way that the two regimes operate in this state is that there's no necessary connection between the two at all. You know, one is run through the Electoral Commission and the registration of political donations. The other is run through my office and I think we are alone in actually registering contacts. Not only do lobbyists have to be registered but they've got to lodge through my office a log of contacts that they have with individual government representatives and opposition representatives as well. So the two systems operate separately, if you like.

The CHAIR — Tim.

Mr RICHARDSON — Just a quick question about the advice that you provide. Is there an ability for that advice that's provided in writing for the individual concern to use that in the public domain?

Mr BINGHAM — Yes.

Mr RICHARDSON — So they can — and the circumstance I'm thinking of is you've given your advice and there's independent legal advice to the contrary from a competing (indistinct) party, does that place your office in any degree of concern at all?

Mr BINGHAM — I make it clear in the advice that I give that I don't provide legal advice. It's not legal advice. It's advice on ethics and integrity issues and it is a matter entirely for the recipient as to what they want to do with the advice. If they were to get legal advice which says, you know, the integrity commissioner doesn't know what he's talking about and of course you're okay and all the rest of it, well, fine, put that into the public domain and that seems to me to be a healthy process. People can make their judgments about what's good advice and what's not.

Mr RICHARDSON — That's right. Thank you.

Mr BINGHAM — Yes.

The CHAIR — No other questions? If not, we close the hearing and we thank you very much for coming forward with your evidence.

Mr BINGHAM — Pleasure.

The CHAIR — It's been interesting especially in Victoria not having one and working out it all fits with all the other integrity bodies. So thank you very much for your time.

Mr BINGHAM — It's a pleasure.

Mr HIBBINS — Sorry, can I just ask, do local government councillors fit under your jurisdiction?

Mr BINGHAM — Only insofar as the lobbying —

The CHAIR — We will open the hearing again for a second.

Mr HIBBINS — Or it can be off the record. I'm not sure it's not —

Mr BINGHAM — Only for the lobbying function. The local government association in Queensland has a position which is analogous to mine, if you like, Joan Sheldon, who's a former deputy premier here fulfils that role but it was an issue that was addressed in the strategic review that I referred to about whether the scope of it — my personal view about it is that I can't see any real reason why the office shouldn't have that expanded scope, resourcing issues to one side, but others take the view that it's better for the two to continue to be separate.

Mr HIBBINS — Thanks.

The CHAIR — I will close the hearing. Thank you.

Mr BINGHAM — Thanks.

Witness withdrew.

Committee adjourned.