

29th May 2009

Integrity Commissioner

Mr Johan Scheffer MLC
Chair
Parliament of Victoria
Law Reform Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

Dear Mr Scheffer

Re: Review of the *Members of Parliament (Register of Interests) Act 1978*

Thank you for your letter of 17th April seeking my comments concerning your Committee's review of the above Act.

You inform me that your Committee will be considering whether the Victorian Parliament should appoint an independent officer to advise MPs about ethical issues related to the Code of Conduct or the Register of Interests. In particular, you invite me to provide information about the way my office has operated to date and any issues that Victoria should consider should it wish to adopt similar arrangements.

As far as I have been able to determine, the provisions surrounding my role and functions are unique in public administration around the world.

They are unique in the sense that the office is exceedingly low key, being created to give confidential advice, if asked. It has no proactive role and the Integrity Commissioner is bound by statute to keep secret any advice given, or material relating to that advice. On the other hand, the recipient of the advice may publish it as widely or narrowly as he or she chooses.

The appointment is a part-time one, being the equivalent of 2 days per week, and my office is staffed by one full-time person, a public service officer classification AO5 out of a classification scale out of 8, which relates to positions before senior officer and Senior Executive Service is reached.

My role is limited to advising "designated persons", who essentially are defined as Members of the governing Party and Members of Parliamentary Committees as well as senior public servants and statutory office holders. In practice, all Members of Parliament are Members of Parliamentary Committees, so that Members outside the governing Party have been able to

request advice. There are now in train amendments to the legislation to make it quite clear that all Members of Parliament will come within the umbrella of "designated person".

There is an expansion of my role in relation to the Premier, who may seek advice as to any issue involving ethics or integrity. All other "designated persons" are limited to seeking advice about a conflict of interest issue.

Any request for advice must be in writing as must the advice itself. There is a limited indemnity should any person follow that advice in that they will be immune from any disciplinary or civil proceedings.

It is important to recognise that what is provided is advice, and not a directive. There is no investigative or disciplinary power reposed in the Integrity Commissioner. What the Act does provide, is an obligation upon the Integrity Commissioner to report a matter to the Premier if, notwithstanding advice given, the recipient persists in what the Integrity Commissioner considers to be, an involvement in actual conflict of interest. The Act is silent as to any obligation upon the Premier once this report is made.

In your deliberations, I think it will be important for you to recognise that what has developed in Queensland places the Integrity Commissioner as a small cog in the Queensland system of public administration. The inability of the Integrity Commissioner to embark upon investigations or otherwise be proactive in addressing matters of conflict of interest, sits well with other organs of public administration in Queensland. In particular, the Crime and Misconduct Commission has a wide remit to investigate misconduct in public office and there is an obligation on holders of public office to report such misconduct to the CMC. This body is amply staffed, skilled and resourced to cover the field in this area and there is additional capacity in the Ombudsman in relation to complaints made as to certain aspects of public administration.

I confess that I have felt some uneasiness in relation to systems adopted elsewhere where there is a proactive capacity in the organisation that may give advice to persons in public administration. I am apprehensive about Chinese walls being constructed in such an organisation to the point that one arm may give advice one day, and the following day the investigative arm progresses the same matter in either a disciplinary or criminal context. In my experience, I have found that those who come to seek advice have greatly prized the obligation of confidentiality reposed upon the Integrity Commissioner.

It is interesting to note that the Parliamentary Debates that saw amendments which created the office of Integrity Commissioner in 1998, by amendment to *Public Sector Ethics Act 1994*, were based on a recognition that Members of Parliament lamented the low standing of politicians in the community and were enacted as a means to improve the public standing and image of Members of Parliament. It was thought that by creating the office of Integrity Commissioner in the way described, advice would be sought before blunders were made.

The first Integrity Commissioner in Queensland was appointed in 1999 and served for a period just short of five years. My term will expire on 30th June next and I would have served five years since the initial appointment. In early years, formal requests amounted to about 15 per year, eventually escalating to over 40 in the last year. There has not been any occasion when it has been necessary to report persisting conflict to the Premier as previously alluded to.

It seems to me that one of the principal challenges confronting your review is to obtain an appropriate balance between the sovereignty of the Parliament and the benefit it could gain from outside assistance. Above all, any entity that is put in place must be, and be perceived to be, independent. It should report to the Parliament, and not the Government of the day.

My predecessor and I have each been studious to avoid embarking upon any advice which relates to the processes and procedures of the Parliament. We have considered it to be appropriate for the Parliament to regulate its own affairs. Accordingly, in Queensland, conduct that relates to any Standing Orders or Parliamentary entitlements is not entertained by the Integrity Commissioner but is left to the processes of Parliament and in particular, the Members' Ethics and Parliamentary Privileges Committee.

My own view is that it is entirely appropriate for Parliament to be the master of its own procedures together with being the regulator and judge of appropriate parliamentary conduct or behaviour. It is, of course, free to consult or seek such advice as it sees fit. However, long standing tradition and experience strongly suggest that the Parliament should not delegate or abrogate the responsibility of determining its own internal governance. Perhaps the answer lies in more stringent adherence to proper standards of dignity and courtesy within the Parliament, reinforced by organs within the Parliament itself and, also, more stringent training emphasising the need for these qualities. It seems to me that rude, undignified and disrespectful conduct in parliamentary processes diminishes the standing of Parliament itself and of its Members in the eyes of the community. Much improvement could readily and quickly be achieved were Members to adopt a professional and courteous approach to any business in the Parliament, according to the institution of Parliament the dignity and respect which I am sure the community would wish to be bestowed upon it.

I do acknowledge, however, that in relation to conduct outside the House, measures to appoint some independent authority to enhance ethical behaviour are appropriate to consider, and may well prove beneficial.

During my period in office, I have been fortunate enough to have had direct contact with Monsieur Jean Fournier who is the Senate Ethics Officer for the Federal Parliament of Canada. I apprehend that it may well be of assistance to you in your research to explore his website which explains the nature and functions of his office. There may well be useful parallels to what you have in contemplation. I also happen to know that he is attending the Australian Public Sector Anti-Corruption Conference in Brisbane in late July where he will be a speaker. Perhaps there may be some opportunity to make contact with him at this time.

You would, of course, appreciate that I am not familiar in any detail with the workings of the Victorian Parliament but speak from knowledge of the local situation in Queensland and from a much more general knowledge of what obtains elsewhere.

It seems to me that there is another key issue that calls for attention in the current climate. Much discussion is now occurring about use by Parliamentarians of entitlements. My view is that, as in other employment, entitlements should be clearly spelt out as an incident of office or employment, rather than be left to some discretionary interpretation which necessarily must vary between individual and individual. Experience shows that range of opinion as to what is acceptable covers a wide compass both within the area of the office to which the entitlement relates and also amongst members of the community. Such a spread of opinion does not enhance the prospect of public respect being afforded to the office holder.

My submission is that Parliamentary entitlements ought to be determined by some knowledgeable and independent tribunal and spelt out with the utmost detail and clarity. They should be sufficiently well particularised that the answer is clear in any given case as to whether a benefit is available or not. In such circumstances, the benefit will be an incident of employment that comes with holding the office rather than placing the individual office holder in the undesirable predicament of deciding whether to accept the benefit. The decision is made even more difficult if colleagues are availing themselves of the benefit notwithstanding community concern.

In your review it may perhaps be useful to reach a conclusion as to the proper role and purpose of a Register of Interests for Members of Parliament. It seems to me that the provision of a register is to provide a reliable background document against which interests of Members can be checked should there arise any potential conflict to which these interests might be relevant. In my view, it is important to recognise that the register is not a vehicle the primary purpose of which is to enable any member of the public to access a complete account of the private affairs of a Member of Parliament. For this reason, I think that access to the register should not be at large, but procedures should be in place for the person seeking access to record his or her identification and the reason for seeking access. Perhaps this system needs some official to determine if and when access should be refused, but refusal would only be in a case where no cogent or acceptable reason was advanced.

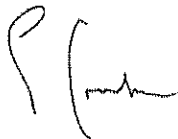
The Register, and for that matter, any Code, has necessary limitations. I see great wisdom in a regime which provides for the mandatory disclosure during proceedings, of interests by any member who is involved in such proceedings in the Parliament or in a Committee, notwithstanding that these interests would be disclosed in the Register. I think it is most desirable that the regime focuses upon the conscience of the Member as the linchpin, rather than any particular document or series of documentation. It is appropriate that whatever regime is decided upon seeks to look at the worst case situation. Provisions should be sufficiently encompassing to catch the astute. For example, it is appropriate that interests declared relate not only to spousal and immediate family members, but to any interest over which the Member has control. For example, the obligation of disclosure should be broad

enough to include property or assets held on behalf of a Member by any person subject to his or her direction or control.

You will see from the foregoing that the Integrity Commissioner in Queensland is a small piece in the larger jigsaw of public administration. There will be challenges in any attempt to transplant the same role into a system of public administration which does not contain the same proactive investigative agencies as I have previously mentioned are in place in Queensland.

Please do not hesitate to contact me if you feel I could be of further assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'G Crooke', written in a cursive style.

Gary Crooke QC
Queensland Integrity Commissioner