



Submission No. MP/4
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Law Reform Committee

Ethics and Integrity Adviser

49 Kirralee Crescent
UPPER KEDRON QLD 4055

5 May 2009

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

Dear Mr Scheffer

Review of the Members of Parliament (Register of Interests) Act 1978

I refer to your letter of 17 April 2009 seeking information about the way in which the office of Ethics and Integrity Adviser to the Members of the Legislative Assembly of the Australian Capital Territory has operated to date and any issues that Victoria should consider should it wish to adopt similar arrangements.

The position of Adviser was created by Continuing Resolution 6A of the Assembly, dated 10 April 2008, a copy of which is attached. That resolution was subsequently amended on 21 August 2008 to ensure that an appointment made under the primary resolution continues for a period of 3 months after each election and does not expire with the term of each Assembly. This was to ensure that all Members of a new Assembly would have immediate access to an Adviser upon election or re-election and would not be dependent upon the Speaker actioning a new or further appointment.

Expressions of interest in appointment as Adviser were sought through national media advertisements. I applied in response to that advertising and was subsequently interviewed by a committee comprising the then Speaker, the ACT Human Rights and Discrimination Commissioner and the Clerk of the Assembly. Should you require it, the Clerk may be able to provide you with more detail as to the selection process to which I am, of course, not privy.

At the conclusion of that merit process I was subsequently offered appointment, which was formally made by the Speaker following a period during which the Clerk, a senior officer of the ACT Government Solicitor and I consulted on the content and form of an appropriate instrument of appointment for submission to the Speaker.

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Following announcement of my appointment in the Assembly and the media, I wrote to all Members of the Assembly to provide them with my contact details and to offer to meet with them for initial discussions. Additionally, I responded to a number of media requests for interviews, including an extended live interview on the ABC Radio National program *National Interest*. Based on comments from many people I have spoken to since, there is a marked public interest in and support for the role of Adviser.

I subsequently met with the majority of Members. On the basis of these discussions I settled upon the administrative approach I would adopt in dealing with requests for advice.

My advice has since been sought on a number of occasions by Members of both the former and the current Assembly. I am of course unable to discuss the details of the matters to which those requests related. However I can say that they have extended beyond matters of conflict of interest to include broader questions of integrity of conduct. So far as I can discern, my advice has been welcomed by those to whom I have provided it.

As will be apparent from the above, the Adviser position is still very new and there is as yet no extended experience on which to form a judgment as to the practical need for and benefit of the position. Because the Adviser's advice may be used as a shield but not as a weapon, the extent to which advice will be sought will largely be dependent on the capacity of the individual Member to recognise potential issues of ethics and integrity affecting themselves before it is too late. And, of course, having recognised the potential for such an issue, their preparedness to consult any particular holder of the office of Adviser will depend upon any perceptions they may have as to the quality and usefulness of the advice they are likely to receive. To date, none of the advice I have provided has been publicly disclosed or contested and thus I have little feeling for how its quality may be perceived amongst Members more broadly.

Although it is early days, it seems that the volume of requests for advice I have received is proportionally comparable with that received by the longer established office of the Queensland Integrity Commissioner.

While final judgements about the practical impact of the office of Ethics and Integrity Adviser may not be able to be made for some time, I nevertheless believe that, as a matter of principle, the creation of the office has been a very sound initiative and one that assists to promote public confidence in the parliamentary institution. I would thus commend it to the Parliament of Victoria.

If Victoria were to go down this path, there would be a number of detailed issues to which consideration might be given. For example:

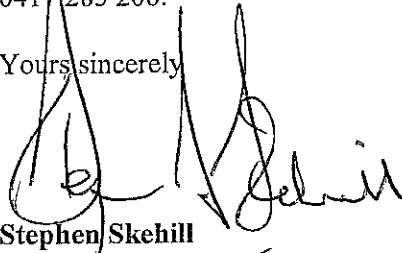
- should the position be created by resolution of the Parliament, as was done in New South Wales and the ACT, or by an Act of the Parliament, as is the case in Queensland;
- what subject-matters should be within scope - should advice be able to be sought on any issue related to ethics and integrity or should advice be limited to, say, conflict of interest (as it is in some cases in Queensland) or use of Parliamentary allowances and resources;
- which parliamentarians should be able to seek advice - should it be all Members as in the ACT or only Government Members, as in Queensland;
- should non-parliamentarians, such as statutory office holders and senior public servants, also be able to seek advice, as in Queensland;

- should the function be confined to giving advice upon request, or should advice be able to be given proactively in some circumstances;
- should there be any capacity to compel responses to inquiries that are considered to be necessary or desirable before advice is settled;
- what options, if any, should be open to the position-holder if they perceive that their advice has been publicly misrepresented by its recipient; and
- should the position-holder have any additional roles, such as the development of guidelines for, or the review of codes of conduct applicable to, Members or the promotion of ethical conduct within the public sector more broadly.

The above is not, of course, intended to be a comprehensive listing.

Should you desire any additional information, please feel free to contact me at the above address or on 0417 285 206.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Stephen Skehill', written over the typed name below.

Stephen Skehill
Ethics and Integrity Adviser
Legislative Assembly for the ACT

ETHICS AND INTEGRITY ADVISER

This resolution allows the Speaker to appoint an Ethics and Integrity Adviser.

Resolution agreed by the Assembly

10 April 2008

That this Assembly requests the Speaker to appoint an Ethics and Integrity Adviser for Members of the Legislative Assembly for the Australian Capital Territory with the following functions:

Provision of advice

- (1) Advise Members of the Legislative Assembly, when asked to do so by that Member, on ethical issues concerning the exercise of his or her role as a Member (including the use of entitlements and potential conflicts of interest).
- (2) Giving advice that is consistent with any code of conduct or other guidelines adopted by the Assembly, but does not include the provision of any legal advice.

Records

- (1) The Ethics and Integrity Adviser shall be required to keep records of advice given and the factual information upon which it is based.
- (2) The Ethics and Integrity Adviser shall be under a duty to maintain the confidentiality of information provided to him/her in exercising the function and any advice given, but may make public any advice if the person who requested the advice gives permission for it to be made public.
- (3) The Assembly shall only call for the production of records of the Ethics and Integrity Adviser if the person to which the records relate has sought to rely on the advice given in relation to paragraph (1) or given permission for the records to be produced to the Assembly.
- (4) The Ethics and Integrity Adviser is to meet at least annually with the Standing Committee on Administration and Procedure for a discussion on matters raised and possible proposals to address them.
- (5) The Ethics and Integrity Adviser shall report to the Assembly on an annual basis detailing the number of ethical matters raised with him/her and the number of Members who sought advice on any issues concerning Members' entitlements that have given rise to requests for ethics advice and suggest proposals to address these issues.
- (6) The Speaker shall, after each Assembly is elected or whenever the office becomes vacant, appoint an Ethics and Integrity Adviser for the life of that Assembly.
- (7) Before appointing an Adviser, the Speaker shall consult with the Chief Minister, the Leader of the Opposition and Crossbench Members.

- (8) The Ethics and Integrity Adviser may resign in writing to the Speaker, or may be removed from office for proved misbehaviour or mental incapacity on a resolution agreed to by the Assembly.

This resolution has effect from the date of its agreement by the Legislative Assembly and continues in force unless amended or repealed by this or a subsequent Assembly.