

CORRECTED VERSION

LAW REFORM COMMITTEE

Inquiry into review of the Members of Parliament (Register of Interests) Act

Melbourne — 29 June 2009

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Ms J. Lindell, MLA, Speaker of the Legislative Assembly of Victoria.

The CHAIR — Thank you very much for coming, Speaker. I welcome you to this hearing of the Law Reform Committee’s review of the Members of Parliament (Register of Interests) Act 1978. All evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and further subject to the provisions of the Parliamentary Committees Act 2003, the Defamation Act 2005 and, where applicable, the provisions of reciprocal legislation of the other Australian states and territories. Any comments you make outside the hearing may not be afforded such privilege. I think you have received or would be very familiar with the guide for witnesses giving evidence to a committee at a public hearing.

As you know, Speaker, Hansard will be recording today’s proceedings, so it is important that you make sure that you use the microphone at all times. Thank you for your submission, which we received and read. I would just like to make time available for you to perhaps make some opening remarks, and then we, of course, have got some questions and matters that we would like to pursue with you. Over to you, thank you.

Ms LINDELL — Thanks very much. It is a pleasure to be here today. I think one of the most frustrating things from my point of view with the current act is its narrowness; its sole purpose seems to be around the register of interests. While there is a code of conduct in part 1 of the act, it very narrowly sets out that the primary role for a member of Parliament should be as a member of Parliament. This act was written in 1978 when many members actually had full-time occupations as well as being members of Parliament, but over time that has resolved itself, and I think now members of Parliament generally are full-time members of Parliament. The only guidance it gives members about members’ conduct is that the conduct should not be such as to bring discredit upon the Parliament. Over time what seems to have happened is that while we know that the institution of Parliament is quite well regarded by the general public, certainly members of Parliament are not well regarded, and I would have thought that a better way of going about actually putting on display and up-front what members of Parliament should do would be to incorporate a whole range of values in that code so there is an expectation about how members should behave.

The initial letter that came out from the committee asked me what was the public expectation; for me, it is totally dual. It was really timely, because the email that I forwarded to you was sent to me within a couple of days of getting the letter. To me as a member of Parliament I find that it is really disappointing that a common view among the public is that members of Parliament are only in it for what they can get out of it, whereas I think we all know most members of Parliament actually work very hard, very honestly and with a lot of integrity. They keep people’s confidentiality, and they are there to serve their electorate.

Sometimes I wonder whether the problem is not in the very protection of the Parliament itself when things go awry and we have an incident of an MP behaving badly. It is the reaction of the Parliament and our processes that protect the overall Parliament and tend to cover and not deal openly with the individual incident that may cause discredit. Then that just flows into the perception, ‘They are all just there looking after each other. Not only are they there just for their own self-interest, but they are there in the men’s club, the old boys club, just looking after one another’. I just wonder whether we cannot shift the whole dynamic by having a really clear code of conduct that members are meant to adhere to and then by actually openly disclosing and putting on the internet what we believe we should aim for, all of our business dealings and indeed all of the allowances that we get paid via the regulations. So if anyone comes along and says, ‘Hang on, what’s all this about? I keep reading in the paper about all the abuse of allowances from overseas travel, from here and from there. What’s it all about?’, we can say ‘Here it all is’. We put it all up-front so that we move absolutely away from the closed nature of the way we behave, which does not make any sense to anyone. If we pay an allowance to someone for the job that they do — which is there for a legitimate reason — let us show why it is there and who gets paid. I suppose that moves away a little bit from your reference, but I think it is all tied together. I think a strong code of conduct could go a long way in actually addressing some of the public perception issues.

The CHAIR — You provided us — and thank you for doing so — with a copy of the code of conduct for electorate officers, and you thought that that might be a starting point for consideration.

Ms LINDELL — Starting this week we have a very similar code for parliamentary officers as well. While I do not think that you can pull one out and just put it onto members, there are certainly the values that are there, and I would argue that most members of Parliament most of the time abide by those values anyway. But to actually have them stated, I think, is a powerful thing. I suppose in that sense that is why we have the electorate officers code of conduct and why we have gone into a parliamentary officers code of conduct — because it is there up-front; there is no doubt about it. What are you supposed to do as an electorate officer? You are

supposed to conduct yourself in this way. How is a member of Parliament supposed to conduct themselves? In this manner. As I said, most members of Parliament do that, but I suppose it is more for people who are saying, 'Bloody members of Parliament! All you read about them is negative, negative, negative'. At least that would be something there that shows that there is an expectation.

The CHAIR — What I was going to ask you to do, Speaker, is to elaborate somewhat on whether the implementation or the setting of a code of conduct has begun to make a difference in the way that electorate officers conduct themselves and think about their work and whether you have got any evidence in relation to that at this point. When was it introduced?

Ms LINDELL — The electorate code of conduct was introduced, I think, for last July.

The CHAIR — So about 12 months.

Ms LINDELL — Yes, it is about 12 months. It certainly raised a lot of interest and concern at the time. The most common problem and comment that we had back as presiding officers was, 'Why are you making a code of conduct for electorate officers? Members of Parliament do not have a code of conduct'. We were very quick to say, 'Members of Parliament do have a code of conduct, and it is in the Members of Parliament (Register of Interests) Act'. But when you read it, it is very narrow, and it is around beneficial and financial interests. It does not go to working with integrity; it does not go to dealing with people impartially. A lot of the electorate officers said, 'We are political. How can we be impartial?'. We say, 'No, no, no, we are not meaning politically impartial. We are meaning impartial in that people who come to see you, regardless of what race they are, what sex they are or what religion they are, can expect the same standard of service'. That is the impartial nature that we are talking about — not a political impartiality.

The CHAIR — I guess what I am driving at — just setting aside for a moment the almost intrinsic value of stating something explicitly and putting it out there for the public to understand and, in this instance, for electorate officers or members of Parliament to absorb — and what I wanted to ask you to tell us about is how that is working to change the behaviour, attitudes or self-understanding of electorate officers. Have you done any work on that in the 12 months?

Ms LINDELL — No, not in the initial 12 months. I do believe, though, that there has been a reduction in some of the difficulties between members and staff, because I think being able to refer electorate officers to the code of conduct and being able to refer members to the code of conduct has made it much clearer what values and what behaviours are seen as best practice rather than what is acceptable behaviour — what we all should be striving for. I think it is a basis on which people can move forward. I think at the time it did cause a lot of electorate officers to actually review their behaviour, but I think probably it is a little bit early to see what its real value is.

Mr CLARK — Speaker, can I go back to your introductory remarks. I think you rightly referred to public suspicion and belief that MPs abuse their allowances and opportunities. But could I put it to you that there is an even greater concern in the public, which is about honesty and directness in what is said publicly. To give you an example just from listening to morning radio this morning, one of our well-known talkback hosts commenting on what is happening in Canberra was saying the public regard it all as a huge distraction, because they expect politicians to act dishonestly and they are actually interested in other things. What do you think codes of conduct can do about that public perception that MPs are dishonest, shifty, evasive and untrustworthy in what they say?

Ms LINDELL — There is a view that MPs believe in accountability because every four years they are accountable for the job that they have just done for the past four years. On any reasonable view of that it is really disappointing that people would think that, but I think that is a pretty commonly held view of what MPs actually think might be accountable. I think having a code — a code that was promoted and a code that members could be judged on rather than a very narrow act around personal interest — will not change the public's attitude overnight, but it might cause the people who review and set the public debate and the public agenda to think that at least Victorian politicians are attempting to address some of these issues. If you coupled that with greater transparency and with greater access to information around our payment structure and our allowance structure, then I think you would begin to change public perception. I am not sure whether I have really answered.

Mr CLARK — I think the hard question is: do you include in it a statement of standards and an obligation to be honest and to tell the truth, the whole truth and nothing but the truth, to avoid misleading and deceptive conduct et cetera? Then if you say the answer is yes, who would be the judge of whether or not there is a breach of that standard? That, I think, is the real dilemma we all face.

Ms LINDELL — That is right. I suppose that goes further than this committee and this committee report, because I would probably be arguing more for — and I have certainly struggled with what you do with the Privileges Committee — using it as more of an enforcement agency. How can we actually put in place something real which members of Parliament might in fact pay some heed to? Just this morning I was talking to one of our clerks about the Queensland system, where they have got a privileges and ethics committee. Perhaps that is where we should be moving to.

Mrs KRONBERG — Speaker, just touching very quickly back on your reference to the code of practice for electorate officers.

Ms LINDELL — Code of conduct, yes.

Mrs KRONBERG — The code of conduct. Did you have in mind that now, upon reflection, there might have been an opportunity to have an induction process, an educative experience, for electorate officers who are already installed and already employed in offices?

Ms LINDELL — There are induction days for new staff.

Mrs KRONBERG — Yes, but for existing ones.

Ms LINDELL — There were a number of information sessions held before the code was put in place, which were not extremely well attended. But I suppose the view was that if staff were concerned or wanted to know more about it, they would have attended them. There were a number of them.

Mrs KRONBERG — Thank you. Before the reference came forward for what we are working on at the moment, was there any suggestion that the act be reviewed prior to this and it never happened?

Ms LINDELL — I am not aware of anything.

Mrs KRONBERG — The other question is: has there been any analysis of the submissions to the register of members' interests in terms of the amount of detail people have been naturally giving over time? Are there trends or tendencies? Is there some pattern to the submission of information?

Ms LINDELL — Not that I am aware of. The Clerk of the Parliaments holds the register. The only interest I have really ever shown in the register of interest is to make sure that my own personal declaration is up to date. While we are on that issue, though, there are perhaps a couple of things that I would like to say particularly about the register of interests. I know that some of the questions that were put to me were around advice and whether we needed some extra advice. I know it is one of the issues, and I am sure the clerks will speak to the committee about it.

I believe the advice — that if you have any doubt about whether something should be declared, then you should declare it — has actually opened the Parliament up and opened members up for unfair criticism in that if they have not declared things that did not need to be declared under the act and other members have declared it, it is believed that there is some fault in the person who has not declared it.

I think those instances are very unfortunate because they cloud and add weight to that public perception that people are in it for what they can get out of it, and then they try to hide it. I think that was deliberate. The incident involved the former environment minister, who did not declare departmental hospitality at the opening of the ski season. There is nothing in the Members of Parliament (Register of Interests) Act that compels or obliges him to declare that, but it was made out that he was trying to hide something because another minister had declared the same sort of hospitality.

That was simply because the advice is, 'If you have got any doubt, declare'. While that may have been given to try to protect members, it has actually led to the opposite happening. I think there is a need for either some guidelines to be produced and, maybe in partnership with some written guidelines about what should actually be

declared, there should be also either a panel of people or a person, who is familiar with the lives that MPs lead and how complex people's personal finances can be, for MPs to go to for advice.

I think one of the other questions that was put to me was whether an annual return is adequate. I would argue that it is. People's lives can be very complex. If you sell your house simply to buy another house, there can be a time where you may own both houses just because of the settlement dates on those two properties. That might exist for three or four weeks. Is that something that needs to be declared? I would argue that it is not.

If you have a day-to-day requirement to keep your register of interests up, then just because you have got three weeks because of the settlement dates of two houses where you may in fact legally own two houses, I think it would make a nonsense of the register of interests if you then had to declare that. An annual snapshot is really, I would have thought, adequate so that you did not fall into those very strange sort of quirky things.

Mr FOLEY — Could I ask a couple of questions, Speaker? The committee has received a number of submissions from different parliaments around the commonwealth, and there are different models to approach this. One of the key issues is who regulates whatever the model is. Your submission refers to the fact that it should still be, whatever the model, regulated by the Parliament. Could you explain what your view on that issue is?

Ms LINDELL — I suppose it is the strength and the wisdom of the collective, as far as my view goes. I do not see how one house could actually interfere with the dealings of the other house. Initially I was thinking that if there were some person or some body that reviewed — even if they could not change it, they could at least have some oversight — it might bring comfort to the general public. But none of it really sits terribly well.

Recently I have been looking at parliamentary privilege as it operates when you have an ICAC and what powers and privileges does the Parliament have to secure documents — those legal aspects. There is a case in New South Wales where, at the end of the day, a member of Parliament had had their Parliament House office raided and documents were taken — documents much broader than the search warrant was for — and their privilege was absolutely abused, and there was a negative report from ICAC. They did not follow their policies. They did not follow their procedures. They did not have a senior person sign off on that.

I struggle with who you can put on it. Surely the Parliament has to be the ultimate power or the ultimate controller of the members of Parliament. The processes of outside bodies can be 'corrupt' in that sloppy sort of term, not corrupt as being corrupt. Their processes can fall down; their procedures can fall down, and you can have what amounts to a very serious breach of a member of Parliament's privilege — whether accidentally or vindictively, but just driven by a junior investigator in a very powerful body. Somewhere along the line we have got to make sure that we do not corrupt the power either. I suppose that ultimately I believe the Parliament and each house is responsible for the behaviour of its members.

Mr FOLEY — A subsequent question: one of the issues that we have been asked to look at, and on which we have asked for a comment from you, goes to an independent person to advise MPs about ethical issues. Whilst you make the point that the houses of Parliament should be the determinants of their own systems of rules on that, you do support the notion of suitably experienced and qualified people advising MPs on ethical issues; it may be worthy of a look. How would you see that working, particularly, as we understand from submissions, that it has worked in, say, Queensland and the ACT, and there are different models. How would you see that system working in the context of a Parliament being the master of its own destiny?

Ms LINDELL — I suppose people ultimately can deliver advice. We all receive advice every day, but at the end of the day it is the individual's responsibility to either adhere to the advice or reject the advice. I do not see having a person offering advice as an absolute, 100 per cent guarantee that people's interests will be legally and duly declared. I do not have a way around that; I just do not. Many of our financial affairs are very straightforward. For many, that is not the case. I would have thought it should not be the Parliament's responsibility to provide definitive advice for people who may have two or three people who look after their financial dealings; it is just unrealistic. I just do not know. I hit my head against a brick wall with trying to find that as well.

The CHAIR — But could this not assist to some extent — not completely, I accept that point — in resolving one of the inconsistencies you talked about before in relation to a former environment minister?

Ms LINDELL — Yes.

The CHAIR — Could that not help there?

Ms LINDELL — That is right. The submission I made says that perhaps some written guidelines could provide some initial advice — not just to the act — because as a new member you are given the act. That is terrific. I look at it and say, ‘Okay. I can follow that’. But I think in my first member’s interest register I had listed my involvement with every last community group that I had ever met with in the electorate. Clearly, that is not the aim of this act.

Perhaps there could be some written guidelines, and then if we can either put in a retainer or some way that the Parliament has access to either a person or a panel of people, I think that is reasonable. But we could never provide the advice that some members would need.

Mr CLARK — Can I follow on from that and raise a couple of specific instances which caused some issues about how the current code operates? They relate to family trusts and the disclosure of property addresses. In relation to family trusts, the issue is: should members simply be required to disclose the existence of a family trust? They have an interest in the Jones family trust; if that trust is the owner of shares in various companies, should the code require them to list all the shares in which that trust has a beneficial interest?

In relation to addresses, as you probably know over time members have tended to move from disclosing the full street address and number of the properties that they own through to disclosing that they own a property in a particular suburb or town. Again, the question is: in relation to both of these do you have a view as to what the code currently requires; separately to that, do you have a view as to what the code ought provide?

Ms LINDELL — If we look at the personal information of addresses, I think it is reasonable that street numbers, or in very small areas perhaps just the properties owned is sufficient. Realistically I doubt there is any lower house person who people do not know where they live. But that is not to say that it should be available publicly, and the fact that I live on the Nepean Highway in Edithvale should be enough for anyone, and that I own property on the Nepean Highway in Edithvale should be enough. I think perhaps the actual address should be provided, but only the general address as public information.

I do not know the real legal answer to your first question. My view would be that if I had a family trust, then I would have declared it, and I would have declared what it contained and where I gained beneficial interest from. That is my reading of the act, but I have not seen any legal advice.

Mr CLARK — Do you think that is appropriate?

Ms LINDELL — I think it is absolutely appropriate.

The CHAIR — I take it your question extends also to other family members when you talk about trusts?

Mr CLARK — That is a further contentious issue.

The CHAIR — Because we have had one submission where a person has drawn attention to the difficulty of other members of a family, in that particular case a spouse, having to declare to some extent what their assets are. Do you have a sense of how far families should be extended?

Ms LINDELL — We live in a very complicated world. Probably I believe that immediate family interests should be declared, and I accept that that can be incredibly difficult for some members. I am not trained either in legal or accounting matters but if there is a true division of wealth, of finances, while there is a domestic union but a financial separation — if there is provision for that occurrence, then perhaps immediate family does not need to be declared.

But I would argue that in a system where Parliament allows for a small amount of spouse travel, then spouses and family are recognised on the one hand and thus have to be recognised on the other hand. We cannot just have entitlements for family when it suits us, but not have entitlements for family or responsibilities for family on the other hand.

Mrs KRONBERG — In terms of family, are we talking about dependents under the age of 18?

Ms LINDELL — I would hope so.

Mrs KRONBERG — We are not talking about adult children?

Ms LINDELL — Adult children, no. I think the children of politicians suffer enough while they are children. We can leave them be as adults.

The CHAIR — I think we have probably covered our schedule of questions. Are there any further comments you would like to make in summing up?

Ms LINDELL — I think I have covered all the notes that I had. I wish you well with the inquiry; I think it is probably overdue. It raises many issues which I understand will not come under the gamut of the inquiry.

From my point of view I would like to think that you will at least raise those wider issues in your report, because I think this is just one more step along a road of progress so far as openness and transparency is concerned about what happens in the life of the Parliament, and in the dealings of politicians. Good luck with it.

The CHAIR — Thank you very much.

Witness withdrew.