

CORRECTED VERSION

LAW REFORM COMMITTEE

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

Melbourne — 10 August 2009

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Mr G. Crooke, QC, former Queensland Integrity Commissioner.

The CHAIR — I declare the meeting open. Our first item of business is the telephone hearing with former Queensland integrity commissioner, Gary Crooke. We are now waiting for him to be called and to make contact.

Mr Crooke, first of all, thank you very much for making what has been quite a big effort in talking to us this afternoon; we appreciate it very much. We know you are at a remote location in Queensland. We cannot even dream of where you are, but we all have our ideas about that.

Mr CROOKE — You would be surprised, I think.

The CHAIR — We would be surprised. Before I begin I thank you again for making the time to talk to us and also for the written submission you sent to the committee. We have read that and have it in front of us, and we look forward to any comments you will make in a moment. There are a few preliminaries that I need to go through, having welcomed you.

I note that you have chosen to give evidence to this committee by audio conferencing. 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 in other Australian states and territories. Any comments you make outside the hearing or after the official hearing proceedings have concluded may not be afforded such privilege, and I am sure you are very used to all of that. Hansard is recording today's proceedings, and we will provide you with a proof version of the transcript as soon as we can. That will give you an opportunity to correct any typographical errors. We assume that you agree that your evidence is taken by audio conferencing.

Mr CROOKE — Yes.

The CHAIR — We have just under 45 minutes, Mr Crooke. I invite you to make some brief opening remarks speaking to the submission, and then I am sure members of the committee will have questions so we will open it up for discussion. Is that okay?

Mr CROOKE — Right, it is okay. Let me just preface my remarks by another remark on technology and Murphy's Law. I am on a mobile phone, and I just hope the batteries last the distance. If it cuts out, we are going to be in trouble. But the batteries are fully charged, so let's hope.

The CHAIR — Okay.

Mr CROOKE — The Queensland integrity commissioner, to the best of my knowledge and research, is a pretty unique situation, because although there are other integrity commissioners in the common-law world, they usually fulfil a dual purpose. Not only do they give advice, but sometimes they are giving advice that is rather subsidiary to what appears to be their main purpose — namely, the investigation of complaints or proactively taking measures to investigate possible misconduct.

That is quite different in Queensland, because the integrity commissioner is a backroom person. The office is such that the holder is expected to work the equivalent of two days per week part time, and the only other person is my secretary. When I held office, Mattea, was called my executive assistant. She was really the shopfront, and I fulfilled the obligation to work two days a week, but often it was away from Brisbane electronically.

The role of the integrity commissioner was such that you had to sit and wait to be asked. You had no proactive capacity. You sat there and waited and gave advice, not directions. The advice could only be given about conflict-of-interests matters to what were defined as designated persons — essentially, senior public servants, members of the Parliament and holders of statutory office. The Premier was an exception to the general rule, in that the Premier could seek advice about any matter involving ethics and integrity. One of the foundations of the office was that everything by way of advice, or any material sent to the integrity commissioner seeking advice, was protected by strictest secrecy on the side of the integrity commissioner. Conversely, those who sought advice could publish it as widely or as narrowly as they chose. That is what distinguishes it from other institutions.

In Queensland there is the Criminal Justice Commission which has a wide-ranging remit to investigate misconduct, and it seems to me that in the Queensland situation — and I think we have all got to be very careful here about what applies in other jurisdictions where there are other instrumentalities of public administration that perhaps fill gaps that might still exist if they were not there in another jurisdiction — the Crime and Misconduct Commission is amply resourced and amply skilled to do any of the proactive investigations that might be necessary about misconduct.

That is a thumbnail sketch of what the office is about. I might say from experience that those who came for advice valued the secrecy provisions. They said it encouraged them to come to seek advice, and they would have been disappointed and perhaps would not even have come if the secrecy provisions were not there.

The CHAIR — Okay, we will we move on to questions now. Mr Croke, your submission suggests that any regime that is established should focus on the conscience of members of Parliament, and you say that is better than relying on a document or a series of documents. Could you expand on what you mean by that?

Mr CROOKE — Certainly. I think you do have to have a document, and it is not as though a document is inconsequential. That has to be there, and it has to be as skilfully crafted as is possible, but what is more important and more fundamental than that is what you just said, that it is the principles that have to be understood. An astute person can put a construction or introduce technicalities into a construction of a document that enables them to slide past the purposes and intention of the document. So basically it is about understanding the ethical principles that underpin it, and applying those ethical principles, if there is any doubt, to the exclusion of some sophisticated or obtuse construction of the document. That has the added benefit of it coming from, as it were, the conscience or the heart of the person concerned, that they have thought it through and they have chosen to take a Caesar's wife approach. Rather than do something that might suit their own individual or selfish purposes, they are doing something that is squeaky clean and selfless, and for the good of public administration.

Mr CLARK — You have explained that your role is in the context of a broader range of protective mechanisms in Queensland. An outsider looking at recent media reports about convictions of a former cabinet minister and political fundraising issues et cetera, might take the view that the Queensland structure is not working if that is the sort of outcomes that it has. This is probably a bit of an unfair question in a way, but how would you respond to that line of argument?

Mr CROOKE — Yes. I think there is a simple answer to it, and that is, it was those very institutions of which you speak, that unearthed this corruption, and you would have to ask the question as to whether or not it would have been unearthed were they not in existence. They have powers beyond the powers of a police force.

Mr CLARK — Could you fill us in a bit on that detail in terms of how the institutions came to pick up the various instances that have been the subject of public comment?

Mr CROOKE — Yes. Essentially, they were given to them, including information given by the former Premier, Mr Beattie, and the present government. There was quite a deal of information that was not necessarily on the public record that was provided.

Mrs VICTORIA — In your submission you have spoken about registering family members' interests, so immediate family and other interests that the member may have control over. How do you suggest that that is policed? For example, if a husband and wife own a business together and the husband is the member and the wife owns 51 per cent, obviously that is not a controlling interest on the MPs behalf. How do you suggest that is administered?

Mr CROOKE — Yes. This is a very tricky subject in this day and age. In bygone days when there was a marriage, there was a presumption that the husband ruled the roost. That is far from being the case today, and of course we do not even have to talk about marriages, we talk about relationships, partnerships et cetera.

Now on the one hand, we have got things like human rights tribunals et cetera that jealously guard the rights of individuals, and it might be said that people in relationships nowadays often agree that one party to the relationship will keep to themselves whatever it is that are their financial affairs, as well as other things, and that is the way it works. On the face of it, it is intrusive to say that your spouse will not be able to hold shares or whatever in any area where you might be a decision-maker.

It still has to happen, the rationale being that if you are going to take public office at the highest level, those with whom you associate have to realise and agree that part of the terms of doing so are that anything that is a financial interest has to be closely controlled, and indeed the extreme is that you cannot hold shares, for example, nor could any person in your immediate family hold shares. The rationale for all this is that public perception would frown upon you being the decision-maker in an area which might affect your immediate family.

A controlling interest is one test, but we can go back here to the principles underlying the whole thing because the difference between 51 per cent and 49 per cent is not really sufficient to undermine the principle that if there is a significant interest in the area of decision making by a person closely connected with you, then that is enough for public perception to be very scornful and cautious about any decision making by you in that field. Although there are borderlines in any definition, you have got to be very careful about this whole field and indeed err on the side of caution in relation to the holding of financial interests by yourself or those very close to you in areas where you are in public administration to make important decisions.

Mrs VICTORIA — Can I add one quick follow-up on something that you said about the ownership of shares. Surely you do not have an objection to people, if they do reach such high office, putting their shares into blind trusts et cetera?

Mr CROOKE — A blind trust is well and good if it is a blind trust. A blind trust just means you do not know what the heck is in it. You see a lot of people go into a blind trust and they put the very shares they are holding into that blind trust. It then becomes a seeing trust, because they know exactly what is in it.

The whole purpose of a blind trust is that there is somebody completely at arm's length who makes investments, and you, as the beneficiary, do not know what the heck those investments are. If that was done, that is an accepted and acceptable way of doing it, in that it is used throughout the common-law world in England and in the United States, where they do this, but there is often a pretty fundamental error in relation to it because the very essence of it is undermined if they just take their portfolio and give it to somebody to manage. But if it all evaporates and the trustee is free to invest in whatever, that is okay.

I think there is another argument here too, because if you had overseas shares or shares in a company in another state that had no business in your state and therefore there would be no decision making, there would be an argument that those shares do not matter and then do not attract adverse public perception. The Queensland Parliament on the other hand chose to go the very, very cautious way, and there has been a decree that no senior members — that is, ministers or parliamentary secretaries — can hold shares.

Mr BROOKS — You have put forward that there should be somewhat restricted access to a parliamentary register of interests, as opposed to some other submissions we have had that there should be broader public access. I just wanted to know if you wanted to expand on your point.

Mr CROOKE — Yes. I think there are enough downsides to holding public office that there ought to be some recognition that people do have a private life and private interests. It ought not to be there for the mere stickybeak. I do not think the bar should be set too high, if anybody wants to look at it, but they ought to have some plausible reason for wanting to do so rather than just have it there perhaps, let us say by way of example, for some scuttlebutt journalist to trawl through, apropos of nothing, to give the parliamentarian a bounce about it.

Mrs KRONBERG — Mr Crooke, I am interested in the consultations with members of Parliament and other people who came to speak to you about these matters. Could you describe how the secrecy of their discussions with you was maintained?

Mr CROOKE — Yes. Now, firstly, the act decrees that I can only give advice if the request is made in writing. The advice has to be in writing. That is to guard against the he said-I said sort of situation where there might be misinterpretation or, worse still, tailoring or taking things out of context. There is very little opportunity for verbal discussion. It happens only rarely if there is some small issue that needs to be tidied up. If there was anything of any substance, the whole lot would be done in writing.

The letter is usually hand-delivered to my office and usually the advice is hand-delivered back to the individual who requested it, and there are security measures surrounding my office et cetera to make sure that nobody can just walk in and look at what is there.

Mrs KRONBERG — Mr Crooke, are we to conclude that there are no copies of that inwards and outwards correspondence being made and retained?

Mr CROOKE — Copies are sometimes made while work is in progress but not retained; they are shredded. There is a copy in my file of the whole situation, but not stray copies hanging about.

Mrs KRONBERG — Just a follow-up question, Mr Crooke: when you step down from the role, does somebody else become a custodian of any of that material that you held while you were holding office?

Mr CROOKE — Yes. It is all within the office — that is, the Office of the Queensland Integrity Commissioner; yes.

Mrs KRONBERG — Thank you.

Mr FOLEY — Mr Crooke, in your introductory comments you talked about the basis of your approach being to embed an ethical approach and to develop amongst the members of Parliament and the senior public servants, if you like, a values or ethical approach to the enforcement of the codes and the related documentation. You also pointed out that there will always be the propensity for some people to seek to slide past that no matter what the written document is. Based on your experience — and I see you refer to the Canadian experience — what is the best way, from your perspective, that would promote and assist that values or ethical approach to compliance, rather than an enforcement, big-stick approach.

Mr CROOKE — I think it is very much to do with discussion and training. I think this big-stick approach is counterproductive. You have got to take measures to get people to embrace ethical behaviour as an incident of their profession or office. You have to try to create some sort of collegiate ethic there that says, 'Everybody in this team is expected to behave with integrity, or otherwise the team is let down'. We do not really speak here only of a political party or the party in government for the time being. We speak of public administration and the Parliament, of people holding that office. There needs to be some ownership of the capital of that organisation, that the community expects high standard from it. Anyone who does anything that detracts from it is letting the side down. There has to be gradually built up an ethic like that. People realise they belong to a team with high ideals, and anyone who does not accord with these ideals or does things that detract from them gets the scorn of their colleagues.

Mr FOLEY — Just a point on, as Mr Clark said, the most recent weak link in what is hopefully a strong chain in Queensland — and I am sure every jurisdiction, sadly, has had them. How do you promote that adherence to the highest of standards? How do you link that with the written documentation that you have, in your experience? There is a document somewhere in the Queensland system that talks about the codes et cetera, which has been provided to us. How do you make the transition from that to the higher ethical standards that you are talking about?

Mr CROOKE — That is an enormous challenge, and it has to be constantly worked on by building up this notion of professionalism and belonging to an organisation that expects these high standards. The difficulty is whenever anybody engages in conduct such as we have seen with Nuttall, it exponentially drops the public image of the organisation. Years of good work can be undone by one act of misconduct or criminality. That is the difficulty. You are always struggling to raise the standard, and then something happens that lets down ages and ages of very good work.

It is a constant struggle. It is one that you cannot resile from because it is hard. How you do it is just perseverance and incremental steps — small steps by way of example. I think, too, even what happens in the Parliament reflects on the public's respect for the institution, because one of the essences of integrity or ethical behaviour is respect for other persons. If there is a conduct in the Parliament that is disrespectful or worse, it lowers the image of the Parliament in the eyes of the community. That is what it is all about — maintaining community respect. It is a cycle. Once that starts to build up, people have pride in maintaining it within the institution. It is not something you can flick a switch on and say, 'There, we have got that fixed'. It is constant

perseverance and gradually getting people to adapt their own conduct towards recognising that they are custodians of public respect for the institutions of government.

The CHAIR — Thank you, Gary. Just a couple more questions and then we will let you go, if that is okay?

Mr CROOKE — That is certainly okay.

Mrs KRONBERG — Mr Crooke, I am very interested in your comments about how after a five-year term you see your role as providing the advice and it not being tied to investigatory functions. Upon reflection, what do you say about the independence of your function?

Mr CROOKE — I am sorry I did not catch the last part.

Mrs KRONBERG — It referred to the benefits or otherwise of the separation between the advisory and the investigatory functions upon reflection.

Mr CROOKE — Yes. I think you start to get a problem if you have them in under the one roof or one umbrella. You can build Chinese Walls, but I think in this sort of situation they are artificial. You can make a pretty stark example. I think you can have one person coming into an organisation one day to seek advice, and they give them advice on one hand and a summons on the other. The roles become blurred. I think there is a tension between the two. I think this voluntary opportunity that is provided by the institution of the integrity commissioner is something that is a better answer than trying to have a one-size-fits-all organisation that is guide, philosopher and friend on the one hand, and prosecutor on the next.

Mrs KRONBERG — Mr Crooke, so you are saying it is something you would not advise, to have the two of those functions combined?

Mr CROOKE — That is my personal view, but on the other hand, you will see there are many places where it differs. As I said, the Queensland approach seems to be, from my research, unique. But wherever you get an integrity commissioner it is usually a monolithic structure of many people and many investigators as well as the person who is there to advise if asked. I think too, where there is investigatory powers there is also the school prefectorial-like thing about going along to tap people on the shoulder and say, ‘Hello, hello, hello, what is going on here?’, which the integrity commissioner in Queensland cannot do. I mean, you have got to have that other arm to say, ‘Hello, hello, hello’. But there is this thing that seeks to dwell upon the conscience and the inherent wish to do the right thing in those who can come to seek advice.

See there is another pitfall too, that most people, in fact 99.9 per cent of people, profess to be ethical. Thus they say, ‘Look, I can see something is a bit risky or perhaps questionable about this, but because it is me and because I am so ethical I will go ahead and do it and I will not let extraneous considerations interfere’. Now that is the most basic mistake that can be made, because the test of what conduct is acceptable is the viewpoint of a reasonable member of the public properly informed. It is not how ethical you think you are. People do make that mistake. The fact that the integrity commissioner is out there just waiting and cannot tap people on the shoulder to say, ‘Hey, don’t you think you should come to the integrity commissioner?’, or even go further proactive than that, is perhaps a shortcoming of the thing. But I think you have to put up with that on the basis that the voluntary thing just builds upon the ownership of the ethical conduct within the organisation.

Mr CLARK — Mr Foley referred to the fact that your advice is based around the code of conduct and the register of interests. With all of these things there is an issue of how far does the code go. Our code in Victoria focuses on what you might call personal conflicts of interest and personal conduct in terms of avoiding a clash between your personal interests and your public duty. Arguably there are broader conflict issues at, say, a party political level, I suppose most obviously in terms of the roles in fundraising for a party organisation and how that might compromise one’s public office duties, and also there is the issue of the potential use of public resources for party political objectives as, for example, in political advertising.

First of all, does the Queensland code cover either or any of those aspects? Do you consider they are significant problem in public life in Australia, and if so, do you have any views as to how they should be best be tackled?

Mr CROOKE — Yes, that is a very interesting question. Now, let us take it in stages.

Firstly, my predecessor and I both had a very firm view about the paramountcy of the Parliament. We took the view that if anything related to conduct within the Parliament or in relation to standards the Parliament itself had set down, that was a matter for the Parliament to determine as to what was the proper approach or what was the proper resolution of a particular question. Therefore, under the act in Queensland, the integrity commissioner, upon giving reasons, can decline to give advice. One of the areas has been to leave Parliament to regulate its own affairs. If there is a parliamentary requirement about particular administrative things, that is for the Parliament to determine.

I think, too, it is essential that people have their entitlements set out in the clearest possible form. Every effort should be made to avoid grey areas in the area of entitlements, such as travelling allowances and things like that. There should not be room for people to wonder whether they are entitled to this or not in things like, say, what does the travelling allowance cover or when can you take an overseas trip in accordance with your parliamentary business et cetera? It is pretty essential that it is not left to debate about whether that was within the scope or not. It should be something like a job description or job entitlements when you come to take the position, that you know that the position carries with it this, this and that, but it does not include this, this and the other. I think that is very basic and important, because you just do not want to get into this area where there is debate and where one person is thinking it is perfectly okay and another person will not do it because he thinks it is not okay. It has to be very carefully set out.

There was more that you asked. I have not dealt with it all. Can you just remind me what the other aspect was?

Mr CLARK — Yes, it was about conflicts not involving personal interests but broader political interests — for example, in party fundraising, the use of public resources for political advertising or mutual back scratching within an organisation to win support.

Mr CROOKE — Sure. Now that has been a bit of a hobbyhorse of mine. I raised it in the annual report of last year, not this year. The Premier said, ‘Well, we have got to raise money somehow’, and they went on doing it. In the current wave of events and the confluence of events in Queensland, the Premier has now said that political fundraising is out. The way I expressed it was that people elected to public office are trustees of the capital of that office. They are expected and indeed duty bound to use it for the benefit of the community. If they are using capital — that is, the respect that goes with the office, the power to make decisions that goes with the office — to raise funds for a political party, that is a sectional interest and it is not for the good of the community. I hasten to add that this has gone on for many, many years on both sides of Parliament. I think it is fundamentally wrong because of that that you cannot use this for a sectional interest. We are not necessarily talking about a personal interest here. It is a long way from putting the money into your own pocket. It is the fact there is this public capital, the capital held in trust for the public, being dealt with in a way that is not for the good of the community in general but for a sectional interest.

The CHAIR — Mr Crooke, I feel we may be testing your mobile phone. On behalf of the committee, I thank you very much for the very generous time you have given us this afternoon. As I said earlier, you will be provided with a copy of the transcript of the record. Susan or Kerryn might be in contact with you subsequently to tidy up any details that might not have been clear to us.

Mr CROOKE — Sure. Please do not hesitate if there is any clarification or anything else you want me to add or discuss. I am only too happy to do that, and I wish you well with what you are doing.

The CHAIR — I think we need it!

Mr CROOKE — It is not easy, is it?

The CHAIR — No, it is not easy. There is a lot of food for thought in the material you have shared with us this afternoon.

Committee adjourned.