

# CORRECTED VERSION

## LAW REFORM COMMITTEE

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

Sydney — 17 August 2009

#### Members

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#### Witnesses

The Hon. Peter Primrose MLC, President of the Legislative Council, NSW Parliament,  
The Hon. Kayee Griffin MLC, Chair of the Legislative Council Privileges Committee, NSW  
Parliament, and  
Ms Lynn Lovelock, Clerk of the Legislative Council, NSW Parliament.

## CHAIRMAN'S WELCOME

**Mr PRIMROSE**—I have a couple of notes that I thought I would go through, just reiterating what is in our submission. Ms Griffin, as the Chair of the Privileges Committee, can talk to a couple of her points, but I will begin maybe by talking about the code of conduct and, as I said, I am at this point going to reiterate what is largely in our submission, but just to remind people. Thank you again for giving us the opportunity to be here today to address the Committee. I thought I would go through some of the elements of the framework of the regulation of members' conduct in New South Wales.

In terms of that conduct, the first element of the regulatory framework is the code of conduct for members. The code of conduct was first adopted in 1998 by resolutions of each House. An expanded version of the code was adopted in 2007, incorporating a number of new provisions, which I will talk about in a moment. The code consists of a preamble and seven clauses. The individual clauses deal with conflicts of interest, bribery, gifts, use of public resources, use of confidential information, duties as a member of parliament and the new clause which we threw in in 2007 concerns secondary employment or engagements.

I point out that one of the values that I certainly found as a member was that the code of conduct is very simple. We produced it, put it onto a card, laminated it and gave it to members, so that members had a large copy and a small copy. While that may seem very simple, it is very easy for these codes to simply be forgotten. I, and I know a number of other members, actually have them stuck to the wall. It is very useful when you are thinking and talking of having a code to say it is not buried away somewhere but it is actually stuck on my wall. It is a great reminder.

The definition of corrupt conduct in the ICAC Act is the next thing I would like to talk about. The code of conduct for members had its origins in the Greiner/Metherill affair of 1992, which concerned allegations that the then Premier and the then Minister for Environment had arranged a public service appointment for another Member of Parliament for political motives. This affair led to findings by the Independent Commission Against Corruption that the Premier and the Minister had engaged in corrupt conduct within the meaning of the Independent Commission Against Corruption Act 1988.

Subsequently, however, the New South Wales Court of Appeal held that the ICAC's findings were void and wrong at law due to limitations in the Act itself. In response to this decision by the court, the Parliament inserted a new section, 9(1)(d), into the ICAC Act in 1994. This section expanded the definition of corruption corrupt conduct to include a specific clause, and that is (d):

In the case of conduct by a Minister of the Crown or a Member of a House of Parliament, a substantial breach of an applicable code of conduct.

In other words, this specifically inserted a section which allowed the ICAC to extend its investigatory jurisdiction over members and Ministers. Following the amendment, a code of conduct for members was adopted in 1998 as I mentioned. It is understood that the linkage of a code of conduct for members and external review by statutory agency is unique in Australia. In most parliaments the investigations of breaches of ethical standards by members is a matter for the committee, an officer or the House concerned.

Then we come to perhaps one of the most vexed issues, and that is the relationship between the ICAC and its role and the matter of parliamentary privilege. When investigating the conduct of members of parliament and other public officials, the ICAC has broad statutory powers. These include the power to require a statement of information from a public official, the power to require the production of documents or things and the power to enter and inspect premises occupied by a public official and take copies of documents found. Despite these substantial powers, however, the ICAC Act expressly preserves parliamentary privilege. Section 122 of the Act provides:

Nothing in this Act shall be taken to affect the rights and privileges of Parliament in relation to the freedom of speech and debates and proceedings in Parliament.

One effect of this limitation is that the ICAC cannot investigate conduct of a member which is protected by parliamentary privilege. This would include, for example, the motives of a member for asking particular questions in Parliament. In view of this restriction in the statutory regime, the ICAC has suggested that the Parliament should establish an alternative avenue by which breaches of the Code of conduct can be

investigated where the conduct is protected by parliamentary privilege. This could include investigation by a parliamentary committee or an officer of Parliament. To date, however, the Parliament has taken no action in this regard.

Another consequence of the application of parliamentary privilege is that in the conduct of its investigations the ICAC must ensure that information is gathered in such a way that does not infringe any relevant immunity. This became real for us in 2003 when officers from the ICAC executed a search warrant on the office of a member of the Legislative Council during an investigation concerning the alleged misuse of parliamentary entitlements. After the warrant had been executed, it emerged that some of the material seized may have been within the scope of proceedings in Parliament within the meaning of Article 9 of the Bill of Rights and thus immune from seizure. The case was eventually resolved following a resolution of the House upholding a claim of privilege by the member. Since then, the ICAC has adopted procedures for the execution of search warrants on members' offices which are modelled on a protocol recommended by the Legislative Council's Privileges Committee.

Before handing over to the Chair of the Privileges Committee, I simply think that it may be worthwhile reiterating that our privilege is derived directly from Article 9 of the Bill of Rights, rather than a statute that has been resolved by this House, and, accordingly, we rely for the interpretation of that on a range of sources but particularly common law interpretations. That has meant that while it is reasonable to say that parliamentary privilege as an immunity should not be impugned, the problem that arises of course is what is parliamentary privilege, and that was one of the fundamental disagreements that we had in relation to the matter I have just referred to.

For example, one of the arguments involved the various interpretations by the Crown Solicitor in New South Wales that parliamentary privilege allowed material to be collected by an investigatory agency. It allowed them to peruse that matter, have access to it, but the privilege only kicked in after such time as they then decided to take it before a court, because Article 9 specifically said that this matter shall not be adduced before a court or tribunal. We regarded that as essentially going in to having a fishing expedition, to find what they wanted and to trawl through members' material. Then and only then would privilege kick in in relation to not allowing them to use some material but they would have had access and been able to read through it. We believe our interpretation, of course, is the correct one. Other people would disagree. But even getting down to the point of what parliamentary privilege is was a major area of conflict with our investigative agency.

**Ms GRIFFIN**—The Privileges Committee is the next key element in the system of the regulation of members' conduct. The Legislative Council's Privilege Committee was first established in 1988 with the role of considering matters relating to privilege referred to it by the President or the House. This privilege role was subsequently expanded to include consideration of requests for citizens' rights of reply.

In 1995, however, the committee acquired a new area of responsibility which concerns members' ethics. The ethics functions of the committee derive from Part 7A of the ICAC Act. This part was inserted into the Act in 1994 at the same time as section 9(1)(d) referred to earlier. It provides for the appointment of a committee in each house of Parliament to undertake the following functions:

1. to prepare draft codes of conduct for the members of the House and draft amendments to codes of conduct already adopted;
2. to review any code of conduct adopted by the House every two years; that has since been amended to four years;
3. to undertake educative work relating to ethical standards applying to members;
4. to give advice in relation to such ethical standards in response to requests for advice from the House, though not in relation to actual or alleged conduct of any particular person.

The choice of the particular committee to perform these functions is a matter for the House concerned. The Legislative Council has designated the Privileges Committee for this purpose since 1995.

Following its designation under Part 7A in 1995, the Privileges Committee conducted two inquiries in relation to the development of a draft code of conduct for the members of the House. At the time there was some disagreement between the Council committee and its counterpart in the Assembly as to the most appropriate form and content for the code. Eventually, however, their disagreements were resolved with adoption of a

single code of conduct for the members of both Houses in 1998.

Since the adoption of the code, the committee has conducted two reviews of the code, in 2002 and 2006. The process of reviewing the code has generally involved the committee seeking submissions from members and from ICAC followed by a review of the wording of the code and suggestions for reform. The next review of the code is due in 2010.

The committee has also taken steps towards fulfilling its statutory function of performing educative work concerning members' ethical standards. This educative process has been undertaken in conjunction with the clerks of the House. For example, it has primarily been the clerks who arrange briefings for new members on the requirements of the code and the ICAC Act and ensure that members are advised of the requirements concerning the use of public resources and the disclosure of interests. However, the Privileges Committee has made recommendations concerning issues it believes should be highlighted in such educational forums, such as the use of influence deriving from a member's position. The committee has also advocated the development of a single resource for members containing all the rules pertaining to members' conduct such as the code, the ICAC Act and determinations of the Parliamentary Remuneration Tribunal.

The next part relates to the Parliamentary Ethics Adviser and I would like to briefly mention the role of our Parliamentary Ethics Adviser. The Ethics Adviser was established by resolution of both houses in 1998 following the adoption of the code of conduct. The function of the office is to advise members, on request, in relation to ethical issues concerning the exercise of their role as a member, including the use of entitlements and potential conflicts of interest. This advice is to be guided by the code of conduct and by other guidelines adopted by the house. It may not include the giving of legal advice.

The Ethics Adviser is required to meet annually with the standing committee of each House designated under Part 7A of the ICAC Act which, in the case of the Legislative Council, is the Privileges Committee.

The advice provided by the Ethics Adviser is confidential, except with the consent of the person who requested the advice. However, the Ethics Adviser is required to report annually to Parliament with certain statistics, such as the number of ethical matters that have been raised by members and the number of members who have sought advice.

Another part of the process, of course, is the register of pecuniary interests and it is the final regulatory mechanism mentioned in the scheme for the disclosure of members' interests.

This scheme was established by Regulation in 1983, but underwent significant changes in 2007 and 2008. Under the regulation all members of parliament are required to submit a return every six months, disclosing any interests held within certain specified categories. These categories include real property, sources of income, gifts, contributions to travel, interests in corporations, and debts. The clerk of each House compiles and maintains a register of the disclosures made by the Members of the House. The register is tabled in the House and is available for public inspection.

The amendments to the scheme made in 2007-08 included a requirement for six monthly disclosures by members, as opposed to annual disclosures which had previously been the case; a greater level of disclosure relating to income received from services provided to third parties; additional disclosure where a member engages in secondary employment or other contractual arrangements involving use of their Parliamentary position; and new forms to be used by members when preparing their returns, incorporating more detailed explanatory material to cater for the expanded disclosure requirements.

These amendments were largely in response to issues raised by the Independent Commission Against Corruption and the Privileges Committee of each house.

It may be observed that the current system for the regulation of members' conduct in New South Wales is the product of a process of evolution which has unfolded over a period of approximately three decades. Key elements of the system have developed in response to particular events in the political life of the State and one, of course, relates to the matter that our President alluded to in 2003.

The system incorporates a wide variety of accountability mechanisms, both inside and outside the Parliament. In recent years the interaction between these various elements has proven to be quite dynamic, resulting in the

expansion of the code of conduct, the scheme of disclosure of members' interests and the role of the Ethics Adviser.

However, there remain aspects of system that are yet to be resolved, most notably in relation to the Independent Commission Against Corruption.

**The CHAIR**—Thank you both for those presentations. Having regard to what you have said and the way things are structured here in the New South Wales Parliament, stepping back from that, what works well and what doesn't work so well, because what you have described in a lot of ways is quite forensic, about how arrangements have been developed and how tricky they are but, stepping back, do you think things are moving forward, are there some imponderables that are jamming it, or what is your sense of that?

**Mr PRIMROSE**—I will make an initial comment and then hand over for a more forensic comment from the clerk.

I was the immediate past chair of the Privileges Committee here during some of those inquiries and I think just as our privileges and understanding of our privileges is based upon particularly common law interpretations, in much the same way I think it is fair to say the system we are discussing today has developed almost on a common law basis in response to inquiries by our Privileges Committee.

For example, we had a very long and tumultuous inquiry in relation to the declarations by a member. That led to, I think, uncovering a whole range of deficiencies in our system of declarations, including the ability to make changes to those declarations easily, and that led to a series of recommendations from our committee which have now been adopted.

In much the same way, the matter we alluded to involving an MLC, Peter Breen, which was the long and intensive inquiry by ICAC and our committee, looking at the role of parliamentary privilege has led to a number of changes.

While there have been direct initiatives, we have moved forward as a consequence of facing real issues and learning from them and actually been able to develop responses and hopefully thought out responses to them, so the summary is yes, I think we have moved forward.

We still have limitations, as was indicated, where particularly our relationship with the ICAC, the interpretations by executive government of privilege, the interpretations of our role with the ICAC, they are still being developed, but I think we have certainly moved forward in the last few years.

**Mrs VICTORIA**—I have a couple of questions and they all relate. We have annual returns. You have gone to twice yearly returns. Can you explain whether that has been of benefit? Our returns are quite fulsome but they are presented to the public, if you like, as a summary and there has been much discussion as to whether we should have our residential addresses and that type of thinking involved. Can you any of you comment on that?

**Mr PRIMROSE**—Both houses have looked at that.

**Ms LOVELOCK**—There was a lot of discussion about how we should do it and we looked at all the other Parliaments to see what they were doing, both here and several overseas.

One of the problems that we saw with doing exception reporting, which was a model which was in vogue for some time, whereby there would be a primary return given by a member at the beginning of the Parliament and then only reporting any exceptions when something happened, was that the length of time given to do the exception reporting could become an issue. Members could find themselves falling foul of meeting the deadlines.

They already have a number of things they have to do with a fairly complicated system of entitlements that we have in New South Wales. In the long run we decided, particularly for an upper house, to do exception reporting like that meant that we had eight years in the term and it was a very long time for people to have to see whether they were doing exceptions and it actually created more work for the member because you would have to keep checking to make sure you had reported something or you had changed your data.

In the long run it was agreed that twice yearly gave members a fixed timeframe. You could put a supplementary in. As the President alluded to, one of the areas of concern was that under the previous regime there was no status for an amendment, so if a member had forgotten to put something in and then put in a revision of that, to say look, sorry, I forgot to declare this, at that point it had no status so I had returns that had letters coming in from members saying there had been a change, but that actually didn't make the register correct, it wasn't part of the register.

That is why we have now brought in provision for having voluntary supplementary returns made if a member has a significant change and wants to put it in. If they have forgotten to put something in and an error comes up, they can put in a supplementary. Twice yearly they do the whole range.

With the six monthly one, they only have to put in where there have been changes. They don't have to put in all the details again. They only have to say nil for most of them unless something has changed, in which case they then fill that in.

The six monthly one is quite brief and easy for members to do, but once a year they have to do the full one. The basis of that was that even after four years there could be lots of changes and this is something we thought would be easier to operate.

**Mr PRIMROSE**—The other point you raised was about issues such as residential address. That was again a particularly pointed issue for us, consequent upon another ICAC investigation, which ultimately led to a member standing down from their position. The member was saying that they lived at X for the purposes of receiving an allowance and the ICAC basically found that they didn't live there, so it is a very vexed question for us.

**Ms LOVELOCK**—We have now changed it so that members do not have to disclose their residential address. They only have to say the suburb or the area, but that's only for their residential address and the area of concern I can see there is that will protect a member and their family, but if they have an investment property that they are leasing out it doesn't protect their tenants, so for the same reasons that you say you don't want your private property being exposed because constituents may choose to take out issues with the government against you or whatever, I think that by having the addresses actually identified, you are actually putting your tenants at risk if you have an investment property. We have amended that.

At the moment we publish the entire register. I have a copy here. It is very large because of the nature of the new one, the new forms. We are looking at reducing the amount of paper that is involved there. We have not yet published on line. That is a bit of a vexed issue, about whether or not we publish on line. Some members feel it would be a good thing and other members feel it wouldn't be.

At the moment I keep the register in my office. It is available basically nine to five during the week. Members can see it at any time I am in the office. The majority of the people who come to see it are the media and they come to see it at the time it is due. That is the basic reason.

Sometimes we get parliamentary advisers coming in to have a trawl through it, but generally I don't think I have had a member of the public actually ask to come in and see the register of interests.

**The CHAIR**—You have got, I understand, guidance notes and example entries.

**Ms LOVELOCK**—Yes.

**The CHAIR**—Has that been useful for members?

**Ms LOVELOCK**—I think mostly it has. The new scheme only came in last year and it is much more complicated for members, just looking at the forms. It was quite a simple one prior. I think the examples do help. We did find a couple of areas of concern, where we weren't quite sure what the answers are.

I do find as the clerk it is difficult. I will tell the members I will assist them as I can but basically it is on their heads. I can't give them legal advice and won't give them legal advice.

When there have been issues raised, and there have been a couple so far, where I'm not certain what it means, for the interests of all members I will seek legal advice. I don't pass that legal advice on as such to a member, but I have looked into some things. For example, we had an issue about leasing and how much detail needed to be put into the return in terms of leasing and there was actually a conflict, so I got legal advice on that and that informed me how members are supposed to be responding. I can then pass that information on in a general way.

**Mrs KRONBERG**—I have a question for the President, having been the previous chair of the Privileges Committee, and also invite comment from Ms Griffin, in terms of you holding that role currently, is there a trend developing in terms of the expectations from ICAC? Do you actually see the privileges of the Parliament, the Parliament itself under pressure over time? Is there a ratcheting up in terms of what should or should not be available and, if so, who is winning if there is a contest?

**Mr PRIMROSE**—Executive versus the Parliament. Now, that is interesting. We tried that once before and we ended up with people getting their heads chopped off.

I think it is just part of the endless conflict that is going on. No one is critical, that I am aware of, of the role of the ICAC in terms of their activities, and I think the role of the ICAC has actually made us better parliamentarians, but at the same time we are not prepared to say to any agency you have total open slather, because we do have a particular and unique role as parliamentarians, and so it has really been a learning exercise I think and it is a continuing learning exercise on both sides. The ICAC asserts its authority. Where we believe they have gone too far, as we believed they had in the case of the Breen matter, we reassert our belief and our understandings. Those negotiations continue and hopefully we come up with something that is best for both parties. I think that is an ongoing exercise.

Who is winning? I think both sides. I really think that the ICAC has developed a better understanding of the role of members of parliament and the role of parliamentary privilege and the benefit that that affords to people. It is there for a purpose. It has developed over a number of centuries for a purpose and equally the ICAC's role. I think members now recognise that it is there for a purpose in relation to them as well as for other institutions and we welcome their role as well.

For example, members in here frequently get advised of items. The Premier here has said, and numerous Premiers have said over the years, that if something is referred to them, they will refer it to the ICAC. Many members here, if allegations are made, they know that they can refer it to the ICAC and what will happen. So, as I said, there is a mutuality involved and I think both sides are winning, because we are talking to each other, but both sides continue to test the limits of their authority.

**Ms GRIFFIN**—I think that is correct, that having ICAC around has made everyone better parliamentarians or, as some have previously been in local government, mayors or councillors, ICAC has been there in the same way. So we are very aware of ICAC and I think it probably has made us more aware of it because we have had to do returns, to actually think about what we need to publicly put in those returns and so on. I think perhaps the definition of parliamentary privilege will probably be something that attracts a continuous debate down the track, depending on what cases may occur between now and some time into the future.

I think the case that occurred in 2003 certainly brought to a head some of the issues in relation to the parliamentary privilege issues, how ICAC and the Parliament deal together in terms of when there is an accusation regarding a current sitting member. I do not think anyone can necessarily claim that they are one up on each other or someone is going backwards. We live as parliamentarians in an era where we have had ICAC for a couple of decades now and it is something that is part of the framework that operates in New South Wales.

**Mrs KRONBERG**—Just a quick question, perhaps to Ms Lovelock. In terms of the registration of interests, people here put in their debt, but that debt would not be what they might owe a bank or some other lending authority.

**Ms LOVELOCK**—No, it excludes that.

**Mrs KRONBERG**—Could you give me some examples of debt outside of borrowings?

**Ms LOVELOCK**—It is basically a private debt. It is where somebody might lend you money, a friend might lend you a large sum of money in order to do something. If you are borrowing money from a recognised lending agency, you are not required to actually declare it. So it is really to try and get when people might be borrowing money from - I am not sure about solicitors because they are not really lending agencies but I know people borrow from money that is held in law firms. That sort of thing would need to be disclosed. It is a confusion for members, the debt that needs to be actually put in there, because when we got advice on that, you do not need to put in the debt if it was discharged during the period in which you were reporting. So if you no longer have that debt, it is whether you have the liability of that debt that you need to report.

**The CHAIR**—And that is the kind of thing that is in the guidance notes.

**Mr PRIMROSE**—Yes, and that is very useful information.

**Mr BROOKS**—We heard earlier from Dr Simon Longstaff about his views on the ICAC's role in being a commission against corruption and his view that it would be good if he had a role in promoting high standards and ethics and the sort of behaviour that the Parliament wanted to see. I also noted the Privileges Committee has an educative role in promoting high standards or ethical behaviour. I was just wanting to know what your views were around ICAC performing that role, and the success or otherwise, and also in relation to the Privileges Committee, what sort of work you might have done. Do you get funded? Do you have a budget to run sessions for members? Maybe you do not. Maybe it is up to the committee to organise those things. I just want to know how that works.

**Ms GRIFFIN**—In terms of the education process a lot of the work that is done, particularly with new members, is done with the support of the clerks. I think it is a two day session that happens with new members now, and if a member comes in part of the way through the term, then the information is given to them as a starter. It is given through the clerk's office. I suppose the last education that the Privileges Committee did this year would have been updating the public pamphlet available that talks about the ethics adviser.

Also, as I think I said when we were speaking about what the Privileges Committee does do, we do have a lot of meetings that relate more to, I suppose, the citizen's right of reply. The only inquiry we basically had this term was a matter that was referred by another member of the Upper house regarding comments that were made by the Archbishop of Sydney, and the Privileges Committee had a short inquiry in relation to that. A substantial amount of that time has been spent in relation to the other part of our duties which relates to citizens' rights of reply.

**Ms LOVELOCK**—If I could just add to that, we have worked with the ASPG. We had a conference on ethics here that was conducted. We even held a sort of Geoffrey Robertson style hypothetical in relation to ethics. One of the biggest problems that we have with that sort of work though is member attendance. The members are not here. When the House is sitting they are really busy; when the House is not sitting, they are busy out in their electorates. So it is difficult to actually get that material across. So we try to put things together that we can pass on to the members through inductions when we have them here and can talk to them. Otherwise, a lot of it is done face-to-face. Members come and see me. If we think there is an issue, we go and talk to members. So it is ongoing in that way.

I do think that the Privileges Committee has a very large brief. I think it has been difficult having it designated as the ethics committees. That came about when we first set up ethics committees in Parliament. Originally, it was supposed to be a joint committee. We were going to use the ICAC Committee in this place and add five members of the public to that committee. The upper house actually rejected that and said that we would not first of all have an ethics committee that consisted of a smaller number of members of the Upper house. Then in amending the legislation, setting up the committees, we said that it would be a committee that was designated, and that committee ended up being the Privileges Committee. When we brought in the citizen's right of reply, that also became designated as part of the functions of the Privileges Committee, and I think that is something we maybe really need to look at, because the Privileges Committee has a big brief in terms of the privileges. Its time is directed in a number of different sometimes conflicting ways.

The education role has to some extent fallen back to the clerks.



**Mr PRIMROSE**—If I might just very briefly add into that that we have recently introduced Parliament-wide a new entitlements system here. We do not ask for the tick-off from the ICAC, but they were consulted and their advice sought and obviously their views incorporated into that as part of corruption prevention and education. So at that level, other than members, systems that directly affect members were used, and the ICAC does stress its educative role and the role in corruption prevention, so their ideas were incorporated there.

The other thing that we sought during my term with our ethics adviser in relation to ethics was actually the suggestion of designing a series of vignettes as instances for members to make available, and as I think probably your previous witness may have said, and you would be aware of it as well, it then became almost a Geoffrey Robertson hypothetical as to how you could actually come down with anything that was solid. It is easy enough to say in relation to an item this is what you should put down in relation to your residential address, but coming down with a series of vignettes which could act as guides which were under 5000 pages was almost impossible. So that basically was swept aside for a future day.

They were very complex issues. In part, I think that is why we have responded to real world events and made comments on them in relation to our inquiries through the committee. It has looked at real world issues directly as part of a common law approach, looked at those, taken evidence and then made suggestions flowing out of real world issues which were then taken up and implemented.

**Mr BROOKS**—Just to follow up on that issue of the educative role or informative role of ICAC, I am not sure if it is part of this commission, I am not sure where it sits, but as a member, rather than say the President, how do you see that role being performed? Does it actively go out and educate and help members and other public officials in how they perform their roles?

**Mr PRIMROSE**—A string of ways. Obviously, the members and members of the public and councils and others throughout all public institutions can call and seek advice. There are also numerous publications that are put out. As well as publications aimed at directing an educative role, also there are findings in relation to a whole range of matters. They will do an inquiry and then produce a series of findings with recommendations, and many members, I know, including myself, actually read those and look at the deliberations that they have made in relation to those matters.

Part of their job in publicising those findings, because they present them to presiding officers over here quite often, is an educative role in the media. That is another really valuable role. I know the ICAC sees education and corruption prevention as a really important part of its brief, and it is taken seriously by members, by the Council and by others and they try to adduce principles out of that which we try to incorporate in our practice.

**Mr FOLEY**—When you were talking about how members come and have a chat to you about some position--

**Mr PRIMROSE**—And a whole bunch of other things.

**Mr FOLEY**—Parliament also has a part-time ethics adviser as I understand it.

**Ms LOVELOCK**—Yes.

**Mr FOLEY**—How busy has that person been and how does all of that link in with what has been referred to today, the practicalities of members' returns, all the way through the big issues that ICAC inquiries might throw up?

**Ms LOVELOCK**—I know some members do ring me and seek to see the ethics adviser and the advantage of it is that it is a person external to Parliament. If you end up in trouble over something and you say, 'Look, I have run this past the ethics adviser and they said that there is no issue', to some extent that gives you a better standing than if you had not talked to anybody about it, and I guess it is a different standing to if you say, 'I talked to the clerk', because the perception might be that the clerk is too close to the Parliament and therefore does not have that degree of independence. So it does provide that sort of a role.

I do not think a lot of members have gone for advice but he puts in an annual report in which he talks about the number. He has had five inquiries in a year, or something, so he has not heavily worked on it but I think it

is useful having that sort of a position removed from the Parliament.

When the Privileges Committee was looking into it, we based in our report the model on what happens in Canada, particularly in Saskatchewan, but didn't actually go down that path where they have an Ethics Commissioner who is actually lawyer, who is an officer of the Parliament who could do that sort of thing and that is what we recommended, going down that path.

The problem with having yet one more body who doesn't provide legal advice, who doesn't have that kind of a background, is not a member, can't talk about the problems that members have, is that he is simply someone who can say that is interesting, I will think about it. If it is something that is really smelly the members are going to know about it first before they go to the Ethics Adviser. It is going to be a really complicated issue where the Ethics Adviser is likely to say that it is really complicated and you need to give that some thought before you go down that path. He is not going to say yes do it or no, don't do it.

Could I make one comment, as a clerk rather than a member, I actually see problems with linking a code of conduct with members of parliament with an external investigatory body. We are the only Parliament which has done that. I have concerns with a lot of things, such as the way the Act is written. It says that a serious breach of the code of conduct can result in a member losing their seat. What is a serious breach? Who defines what a serious breach is?

**Mrs KRONBERG**—Isn't the term substantial breach?

**Ms LOVELOCK**—It could be substantial, sorry. We have wilful breach and substantial breach and it concerns me that that leaves it open to the interpretation of an individual who might be heading up the ICAC at the time, which makes it more difficult, I think, for members to have their code of conduct linked there. The reason that it is linked is because, as the President outlined in his statement, it was discovered when the ICAC investigated a former Premier, Nick Greiner, that the Act didn't actually capture members because it didn't actually meet the requirements of section 9 of the Act which meant that you had to be basically able to dismiss a public official and since they could not dismiss a public official because they are elected, then the ICAC Act didn't actually capture the members, so they came up with an amendment which said for the purposes of this Act it would be a breach of the code, a substantial breach of this code, which was adopted for that purpose.

We only have one code. We have not come up with two different codes that would be a more aspirational code for the members and then one that is adopted for the purposes of the ICAC Act. We have only got the one code. I think that is problematic for the members because it leaves them open to yet another area of investigation that other members of parliament aren't open to.

The problem there is that the ICAC has only found corruption in a few cases, or potential corruption. It has only really found in one of our members that they had a case to answer, but none of those cases have actually been prosecuted by the DPP. You have got these two levels of standard and what has happened is that members who are found to be corrupt by the ICAC, or have done something that might be seen as corrupt, then have no avenue to respond to that because even though it is not taken through the courts where they could get up and say this is wrong and they could be found guilty or innocent, there is no appeal mechanism. There is nothing they can do once the ICAC comes out with this finding. I do think that is problematic and something for the committee to think about.

**Mr BROOKS**—One would imagine that it would be fairly damaging politically in the eyes of the electorate just to be investigated by ICAC.

**Ms LOVELOCK**—Exactly. As a clerk I thought I could say that because I see that happening to members. It can be devastating for a member. Members have resigned following that, or their position in the public eye has been affected by what has happened to them.

**The CHAIR**—Thank you. It has been very valuable and very stimulating, thank you very much.

**Witness withdrew.**