

CORRECTED VERSION

LAW REFORM COMMITTEE

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

Sydney — 17 August 2009

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Witnesses

Dr S Longstaff, St James Ethics Centre.

CHAIRMAN'S WELCOME

Dr LONGSTAFF—Thank you very much, Mr Chair. I only propose to make a very brief comment and then throw it open to questions and discussion. That comment is really three points. One is to say that the legislation as it exists seems to me to be fine for what it intends to do, but it only has a limited purpose. That limited purpose seems to be clearly based on a proper regard for the public trust invested in members of parliament and a prohibition against any member of parliament using their office for private or sectional interest, so to that extent it is fine.

It does raise one question, just as a technicality, about the extent to which those interests are merely those which are personal to the Member of Parliament, as opposed to other connections and what have you, close family members, spouses, and that is a vexed question in this area because, depending on how one answers it, one can improperly suggest that a person's spouse is merely an extension of the member of parliament and instead they, of course, have their own lives and their own interests, so one needs to be cognizant of that yet at the same time it would be impractical to suggest that there is no influence amongst what benefits close family members and Members of Parliament.

The other more important point I think is that the legislation in its limited purpose seems to deal with a negative possibility, rather than having any intention at all to build capacity in members of parliament, not just in relation to dealing with potential conflicts, but with the myriad ethical questions which must come before Members of Parliament in the course of their duties.

That's a matter for some reflection simply because I personally favour, and I think most of the community would favour, investing a fair amount of trust in members of parliament to deal with the ethical dimension of the responsibilities that they exercise, and yet there is nothing that I can see at the moment within the processes of the Parliament which builds the capacity of members of parliament so that they can meet those expectations of trust with the degree of competence that one might want.

When it comes to dealing with the ethical dimension of any issue it is not just a matter of common sense, it is a matter of practice and some skill which one is able to bring to bear. So that to extent, I would say looking at the scope of your inquiry, there is an opportunity to consider a broader mix for what might be done within the Victorian Parliament than simply dealing with potential mischief.

The CHAIR—That is one of the briefest openings we have had, but very stimulating. Can I begin by saying I accept the fact that you say it is limited and as far as it goes it is okay, and it is a 30 year old Act and I believe it was a trail blazer when first passed by the Victorian Parliament, but it is time to look at it, as you suggest. Do you think that these kinds of documents, even given their limitation, do you think they work or have you come across evidence you can point us toward that would demonstrate that?

Dr LONGSTAFF—If the standard of what works is do they forever prevent or limit conflicts of interest, the answer is no, but that's an unreasonable standard to apply, that they have some kind of perfect outcome. I think they do work because of the extent to which they are invoked in various jurisdictions and then having some practical effect, so one can look in the Commonwealth Parliament in Australia in particular to see how issues about conflicts can be used, not always with good faith on both sides, sometimes as a political weapon rather than just as a genuine act of accountability in the Parliament.

Likewise, in other places like Canada, you can see it is a relatively similar sort of operation and again has practical effect. Its principal purpose is to make clear to everybody that the principles which underpin the legislation are recognised and that there is a general expectation as a matter of the Parliament's own volition that those principles be applied consistently by all members, that it is not just a matter for an individual Member of Parliament to decide whether or not those principles should apply. The institution itself has come to the view that they ought to.

To that extent it provides the opportunity for Members of Parliament to hold each other accountable in the best traditions of interpersonal accountability in the way that Parliaments ought to operate. I think they do work on balance but providing they are clear that they are really articulating a principle and providing a basis for interpersonal accountability. Where they tend to fall down is they can never be expressed so completely as to cover every single situation that might arise and you therefore do depend upon the judgment of individual

members that they can understand and properly apply the principle as required.

Mrs KRONBERG—The concept has been aired about the development of a Code of Conduct to apply to Victorian parliamentarians and you have spoken about the incorporation of principles. I would like to move into the area of values and can such a document ever be configured that encompasses values in a broad sense, without those values challenging people's beliefs and origins and cultural issues?

Dr LONGSTAFF—They can. In any document you want both values and principles because they each do separate work. The role of values is basically they emerge in response to the question what is good and the purpose of a value is to allow any person, when making an unconstrained choice, to determine amongst options which of those options are of things they ought to choose, so if there is an apple and an orange here and I had an unconstrained choice, if I pick up the apple you will know from that that I think it is good or better than the orange.

That is true in general of human beings, that whenever given an unconstrained choice we will choose that thing which we think is good or better, so it becomes a very important issue as to what it is that makes something good or better and when we begin to answer that, that's what generates values.

Equally, we may determine that something is good but also feel that it is not right that it is being pursued in a particular manner.

We might agree today that it is good to go to Melbourne. We might come to the Hume Highway in a bus and allow that decision that it is good to go to Melbourne inform our decision to go south, rather than turn to north at the intersection and go to Brisbane. How we get to Melbourne will be just as important. The things that regulate how we get to Melbourne are principles. We could go sticking to the speed limit. We could go as fast as we can without getting caught and so on and so forth.

Any kind of guidance that is of use to people will need to have two elements. It will have to express values and principles. As I say, the value is helping us to choose amongst options and the principles regulating the means by which we pursue and obtain those things we have chosen.

That said, it is perfectly acceptable for an institution like a Parliament to say that there are certain things to do with our purpose which are so clearly understood, whether by constitution or convention, that there are particular values around, for example, things like honesty, courage, transparency, things of that kind, which fit like a hand in a glove, if you like, to the purpose of the Parliament, and principles which are more complicated to determine but nonetheless can be worked on, that any person, irrespective of their political belief, their cultural beliefs, ought to adopt as the price of being part of that institution in a democratic system.

To that extent there will be some approaches which people might think they should be able to bring to bear in a completely unfettered way in the exercise of their role as a member of parliament, which would be excluded as not appropriate and that would be determined by the expression of values and principles at the most general level.

Mrs KRONBERG—Thank you, that is most thought provoking.

Mr BROOKS—I just wanted to ask about the sorts of values. You mentioned a few of the values you might expect from an institution like a Parliament. Could you expand on what other sorts of values you particularly think generally the community would want to see.

Dr LONGSTAFF—I'm not sure that in this case that it is going to be determined by what the community happens to want at a particular time. I think, members of parliament, your practice as you know is that one of the things you are constantly required to do is to distinguish between what the community wants and what its interests happen to be. It is a clear function to be able to do that and it is very much baked into our notion of representative democracy that you are not there just as delegates of the community, as mere ciphers expressing what they happen to want from time to time, but rather they are people of judgment.

Allied to that notion is also the view that certain institutions have defining ends or purposes which of themselves begin to suggest what should be amongst the values.

For example, if I was talking to you as a group of lawyers and we were trying to say what values and principles ought to be in place for the legal profession, it would be quite a strange thing if justice didn't feature at all in such a defining purpose.

In medicine you would be looking at something around human health and well-being. In accountancy and journalism you would hope there would be concern about the truth and so forth.

One would need to look at the purpose of a democratic legislature and say what are the values and principles that almost naturally spring from a commitment to such an institution existing and how then ought they be expressed within some kind of ethical framework, which is different to a code of conduct, I should say. The code of conduct tends, as you might know, to be much more about specific rules. This is what you can do in relation to gifts and entertainment or conflicts and things of that kind. An ethical framework tends to be at a greater level of generality and therefore more applicable to situations as a whole.

To get back to the point, I would look at the distinctive purpose of the legislature in a democracy and that is where I think you would begin to infer certain values of the kind that I mentioned.

Courage, particularly moral courage, for a member of parliament to speak as they really believe they ought to speak in the Parliament, to vote as they really ought to vote, even at times when to do so will court the disagreement of the media, of their colleagues, of the community they serve. That is a key requirement, to speak honestly and to be honest.

I think it is interesting in the current legislation there is a regard in general terms for not doing anything which would bring the office of a Member of Parliament into disrepute. I think that is an important thing because we ultimately depend on people like you to preserve the integrity of the institution for those who come later, and wherever the question of the honesty and integrity of members of Parliament is called into question, it affects the way people then judge the honesty and integrity of the laws that are being passed, and to the extent that the community ever begins seriously to doubt that, then there is a very grave risk to the quality of our democracy.

I can't give you now, if you like, the shopping list of what would be there, but I can point you in the direction of a piece of work which would need to be done based on that sort of approach.

Mr BROOKS—Are you aware of any other parliaments or democratic institutions that might have gone down this path?

Dr LONGSTAFF—The Canadians are the only ones I can think of that did some work on this, but that was because of some constitutional requirements they had about embedding democracy as a concept in their constitution. I am not aware, although it may very well have been done, by perhaps someone like John Muir at ANU or Brian Galligan early on in some of his work on federalism, I haven't looked at it, but not from the top of my head.

Mr FOLEY—If we go from the broad values and cascade down through the principles and then seek to embed that ethical behaviour, we have heard from a number of other parliaments and academics about the role of ethics advisers, some honoraries, some embedded in different organisations, all sorts of different models, Canada being one in mind--

Dr LONGSTAFF—That's right.

Mr FOLEY—From your range of experience across the different sectors, what do you see is the role of ethics advisers and what should they bring to any process, particularly in this sometimes vexed area of public policy and democratic representation?

Dr LONGSTAFF—They could do a couple of things. Their principal function, I think, is to assist the member of parliament to make a well informed decision. They should not substitute themselves for the judgment of the member of parliament, but they should be there to build the capacity of the member of parliament to ensure that they are taking into account relevant considerations, almost to be a wise and disinterested friend, who is saying, 'Okay, here let's look at the situation'. To that extent they are not seeking to impose upon the member of parliament some external standard, but rather to take into account that the member of parliament, a volunteer in our society, has come forward and joined your legislature, and if there is

a set of values and principles already identified for your legislature, they will be a relevant consideration because you have chosen in that sense to be part of an institution, but also to take into account the range of interested stakeholders that exist. Basically, there is a structure of decision-making, which I will not go through now, which would give rise to a whole set of relevant considerations as part of the conversation. So that is their first and I think their principal function, because ultimately the member of parliament must decide.

The second thing is that when one reaches circumstances of genuine ethical dilemmas, by which I mean circumstances where things which are good and right actually compete, which is really where the tough questions arise for all of us, we do not have too much trouble between two cases of right and wrong or good and bad. Our own dilemmas are when it is good versus good. It might be a competing loyalty amongst friends or colleagues. It could be a conflict between telling the truth and not hurting someone and you know if you tell someone the truth it is going to hurt them. There can be a point in which those things which are in competition are so equally balanced, that no religion, no philosophy, no algorithm exists to say this is the right answer. It is a little bit like if you did physics at school, you remember doing force with vector lines, where the lines can be length and direction and they can be equally and opposite opposed and the thing is stuck in the middle. We can be in that situation. To that extent, for any human being to say to another, 'I am going to hold you accountable for getting the right answer' is completely unreasonable, because there is no way of just arriving at that. That is not to say that we are therefore excused of responsibility for the quality of our decisions. Rather, we might not be judged in terms of having got the right answer, but we can be judged as to whether or not we have approached the process of making a decision with the requisite degree of skill and sincerity that would normally be expected.

The role of the advisor then is not just in that sense to be able to assist that process, but also is required to attest to the fact that such an attempt was made, and to that extent it provides a protection to the Member of Parliament, who is genuinely wrestling with the issue, and rather than just rationalising their self-interest or rationalising the interest of their party, they can actually rely upon this disinterested person to be able to say this was not just some kind of cavalier choice made by this person, there was a genuine dilemma and they wrestled with it and so on and so forth.

I think those are the two areas where they can be of assistance in relation to the particular case that might arise for a member of parliament. I am not just talking there about conflicts. It might be on a conscience vote or something else, or any vote. In a sense all votes are conscience votes. But also in terms of building the capacity of the Parliament as a whole, and there should be some effort to do that as well, whether people are - maybe particularly if they are members of parliament and not just members of the executive, but as parliamentarians to see that that institution is strengthened.

Mr FOLEY—Following that up, from your experience across the range of different sectors, what qualities do you need in those-

Dr LONGSTAFF—In those people?

Mr FOLEY—Yes, for those elders, they might not necessarily be elders.

Dr LONGSTAFF—There should be nothing about them which suggests that they are there because of their capacity to bring about compliance with the law or with rule. The practice of providing retired judges, for example, may give some degree of confidence about their ability to understand the legal issues, but there is nothing about their experience as judges which should lead anybody to infer that they are good as ethics advisers. They may have those qualities as individuals but not because of their former office. Rather, what I think you are looking for is somebody who is philosophically literate in the area of ethics, and I think you do need a background in philosophy because there are a whole series of dead ends that have been pursued in this area by human beings over centuries which is worth knowing about. You want somebody who has got a familiarity with the constitutional requirements, such as a member of parliament, who knows the way the system of government operates. You want somebody who possesses some measure of wisdom, so that they are not just providing an off-the-cuff kind of response according to the latest fashion but can actually engage in some acts of discernment, and you want them to be the kind of person who any member of that House or Houses would agree to be disinterested. That does not mean they have never belonged to a political party or they have never ever voted a particular way on a particular issue. It is rather that they bring a certain quality to bear in terms of the way they assist, which is possibly why judges are so often looked to because they are

thought to be disinterested.

Mrs VICTORIA—If we take an adviser as a disinterested, wise friend I think you would put it, what would you see their role to be in an ongoing capacity? For example, if somebody went to the adviser, came up with what they thought was a good solution, let the adviser know that after their talking this is the way they are going, and then there is a subsequent breach, where does the adviser then sit? Is what they have been told totally confidential and can never be brought to bear?

Dr LONGSTAFF—Normally, that would be the case, but that depends a little bit on what rules you create within the Parliament.

Mrs VICTORIA—What should we do?

Dr LONGSTAFF—I would accord confidentiality on that basis. Given the consequences for a Member of Parliament for getting it wrong, you would want the person to be able to disclose everything which was relevant to the decision being made in the same way that a person going to a lawyer seeking legal advice should be able to have that privilege. It is interesting though. In this case, and it would have to be the case here that the privileges committee would look at it, when a person goes to a lawyer, it is not the lawyer that has the legal professional privilege, it is the client that enjoys the privilege. It is to them the benefit needs to be accorded. Likewise, this would need to be a privilege which the Parliament accords to its members to allow for confidential discussion. Of course, the member of parliament would then be able to release the adviser from any duty of confidentiality if they chose so to do, but the Parliament itself would say there is a certain good which we secure as an institution which means we will in a sense set our own barrier beyond which we will not inquire under this regime.

The CHAIR—You touched on the fact that St James Ethics Centre works with a range of organisations and individuals around ethical issues. As an organisation have you worked with bodies to develop up a values, principles code regime?

Dr LONGSTAFF—Yes.

The CHAIR—Could you talk about how you do that?

Dr LONGSTAFF—We do it quite frequently. Typically, what we do is form a steering committee. That steering committee is responsible for preparing an initial draft. There are two ways in which that initial draft--

The CHAIR—Who would be on the steering committee?

Dr LONGSTAFF—It depends on the organisation. There are different models. Sometimes they take it from among their leadership team. In that case what they will do is they will look for people who have got the authority, say in a commercial environment, to ensure that whatever is ultimately decided is given the kind of governance weight that is required. Other organisations seek to get a representative group. We have one organisation we are working with at the moment where there is a mixture of different stakeholders represented on that steering committee, largely to ensure that all of the different voices that might reasonably be heard are taken into account. There is no single way that is routinely imposed on any organisation. That steering committee can simply work as a group, like this Committee might do, and come up with its exposure draft, or it might initially commission a piece of work to research what people think ought to be there, by looking at what people actually claim are the sorts of core values and principles that ought to be in place. Either way, whether they start with a clean sheet of paper based on their own experience or with this initial research, the exposure draft is then circulated so that people are given an opportunity to comment about it and then subsequently, with those comments taken into account, a final version is approved by what governance process is in place within the institution and adopted.

That will usually be at the most general level, as I say, levels of values and principles. Some organisations then say, 'We need something more than that. We need some certainty in relation to some non-negotiables'. They might then proceed to a second step. There can be three steps actually. You can have duties of stakeholders which creates a set of reciprocal obligations, but ultimately what people tend to look for next is a statement around a code of conduct which will say here are particular forms of behaviour which you must act

in such a manner.

In my view, which I have expressed in a number of different places, of all the things that you might have, if you were to have only one thing it should be the ethical framework, because that provides the fundamental guidance which people need to draw on in making decisions.

That is basically it. Once it is adopted, it is then a matter of providing some kind of framework that maintains and builds the capacity in the people within that institution to apply those values and principles to the actual choices they have to make.

The CHAIR—You also touched on the Canadian Parliament's regime, which receives favourable commentary. Do you know whether that development was produced in a way--

Dr LONGSTAFF—No, I do not. Their initiatives were quite a long time ago when they were started and I can't remember exactly how they did it.

Mrs KRONBERG—I have a two tiered question. Because you have been in the St James Centre since 1991, you would have profound insight, I should imagine, into the success or otherwise of having an Independent Commission Against Corruption in this State. I would like you to comment on any trends or on issues that you see around its ongoing success, whether there is applicability for that in Victoria?

Dr LONGSTAFF—It has been more or less successful at different times in its operation in New South Wales, depending on the scope of ambition, I suppose, of the commissioner from time to time. It has got a very particular role in my mind, which is clearly articulated in its name, which is that it is an independent commission against corruption. Why do I focus on that? Because it is not an independent commission for something else, for virtue or integrity or something like that. Yet it has tried in its history on a number of occasions to balance its investigative powers with a move also to try and encourage education and support and to build capacity.

It is a difficult thing to do to have both of those powers or approaches under the same roof, because the natural inclination for people in organisations when approached by the ICAC is to think that they are present because of some deficit that exists within the institution or the body, where in fact the better way often to deal with these things is not to say that there is something wrong as having to be fixed, but rather to say there is some possibility which is good that could be embraced by further education and development of capacity.

I think for all that, the idea of having an Independent Commission Against Corruption with the broad powers of investigation that this commission enjoys makes a lot of sense because it is able to bring the light of day onto issues which would otherwise be, I think, unaddressed by other measures. So it has been a successful and important institution, but I think it may have been asked from time to time to do more than it could usefully do. It could, in fact, have been complemented by some other body, say with the equivalence of a public service commission which, as far as government is concerned, would have been better able to address some of the positive opportunities to build capacity within the system as a whole.

Mrs KRONBERG— Do you have comments to offer in terms of its applicability for enforcement for any contraventions of any codes of practice or conduct for members of parliament?

Dr LONGSTAFF—Its experience has been diverse I suppose. The first line of defence, if you like, when it comes to standards within parliaments must be with members of parliament themselves. They have got to have regard to the institution, which means that they take its functions seriously. In fact, my own view is, and this is beyond the brief of today's discussions, that we in Australia should be doing far more to enhance the career of the parliamentarian, the great parliamentarian who serves with distinction as a member of parliament and is not instead being lured by the prospect of advancement through the executive.

I think we have lots of perks and benefits for people who go into government and become part of the executive. We are not doing nearly enough in our Parliaments in Australia to ensure that the dedicated parliamentarian is also recognised and supported through a career of advancement as a great Member of Parliament.

To the extent that we deal with those sorts of issues and have Parliaments held with the same regard as, say,

governments then I think we would probably do a lot to make people want to preserve the institution, not just for historical or functional reasons, but because they see the opportunity and importance that it brings to bear for the society as a whole.

That said, whatever happens, there does come a point at which those members of parliament who have a disregard in practice for the standards which it seeks to uphold, need to be held accountable and I think the Parliament itself needs to hold them accountable, or some other public mechanism, rather than just saying to the voters you can get rid of them at the end of the period.

Whether it is an Independent Commission Against Corruption or whether it is a privileges committee of the Parliament, or some other process, there needs to be something in place in which if a person who is wantonly indifferent to the standards that the Parliament has established for itself that they are accountable, and to say too bad if the public does not like it they can get rid of them at the next election, I don't think that is an adequate response.

I don't know if I have answered your question or not.

Mrs KRONBERG—So you are saying if the Parliament is not able to exercise some sort of power or influence over the person at the time when the Parliament itself is subject to being impugned, or its reputation, as the whole, and at the same time they are of the people and for the people, that's a reflection on society?

Dr LONGSTAFF—We, as citizens, have at the most fundamental level agreed to certain constitutional arrangements, which include a Parliament. That is our highest body for deliberation as a political group and, as such, we want that Parliament to be constituted in a way so that it exercises its functions clearly in the public interest but beyond that, according to certain values and principles which we would want the Parliament itself to determine and to declare in line with its purpose.

We do not then expect that the Parliament will simply wash its hands then of any of the implications, having made that decision to bolster itself as an institution. Rather, I think we do feel that the Parliament impugns itself, to borrow your words. If it declares that certain core values and principles are essential to a Member of Parliament discharging their function in that institution, it impugns itself if it declares that but does nothing about it itself, should a person simply breach those with ease and indifference.

Its first responsibility is to say we will provide support, which is where this advisory role can be. We could ensure that every member of parliament, to the extent that they require it or wish for it, are given the best possible support to act as they ought to act, but within a certain range of behaviour the Parliament must also say if you choose not to, then you cannot do so with impunity because we, as a group of people within this Parliament, will not be indifferent such conduct.

Mr BROOKS—Further to that point, would you see that it would be preferable from an ethical point of view or even from a practical point of view for that role of enforcement, or shining the light in terms of accountability, to move for an independent source to Parliament? You mentioned the Privileges Committee before. Do you think there is a difference or there is an argument for or against either of those two options?

Dr LONGSTAFF—The ideal, I think, is for Parliament to be able to do it itself. In other words, for Parliament to have a standing and trust within the mind of the community and an expectation amongst its own members that when it comes to these matters, issues of party politics, individual success or failure will be set aside for a distinctly important public office, which is just the Parliament to sit in some judgment, if you like, of its own peers.

I think constitutionally that fits with our model, with Parliament at the pinnacle, but it does require extraordinary moral courage on the part of members of parliament not to be minded to what the party might think, or the electorate, or the media, or anything else, to be able to actually discharge that function and it also requires the Parliament to have a standing in the minds of the public that it will expect and accept that when such judgments are made, rare as they may be, they are done with that degree of disinterest and moral courage, because at that point, much like a conscience vote in Parliament, all of the other stuff is put aside and the Parliament just acts in a purer sense.

If those conditions cannot be satisfied, if it really is fanciful to think that members of parliament would be able to set aside party political affiliation, they could not act with moral courage, or if there isn't any trust, at least in the short-term you may have to deal with an independent body reaching such a view until such time as Parliament does have that regard and capacity.

If you say is that less ideal than the Parliament being able to do it, yes, but it is not as bad as the third possibility, which is that nothing is done, which just would in fact create a vicious cycle in which there would be members of parliament hypothetically acting in a manner inconsistent with these values and principles. The Parliament itself ignores it. It is over to the people. The people would say it is another spiral turn on the downside.

The first preference is Parliament being able to deal with it, but under the conditions I have mentioned. The second preference is an independent body. No preference for the do nothing option.

Mrs VICTORIA— Just to follow up on that, do you think that is achievable?

Dr LONGSTAFF—Yes.

Mrs VICTORIA—You do? An optimist. I love it.

Dr LONGSTAFF—There are plenty of people I know who will get stuck into politicians, but actually I think it is a terrible job. You don't get your weekends and things like that and basically most people I know, and I know people from all different sides of politics, go in typically for the right reasons. I think there is lots we could do to improve it in a whole lot of different ways but I don't assume that my fellow citizens in Parliament are somehow incapable of doing what I could do if I was in a similar position. Nor do I think that I would suddenly lose all sense of judgment and capacity just because I was elected to one of the country's legislatures.

I think you could do it. The question is whether or not you have the will to do it and you reach a compact, a clear compact amongst the Members of Parliament, as Members of Parliament and as citizens, not as party members, that this is what you will do for the sake of your legislature.

Mrs VICTORIA—We have 128 MPs in Victoria, most of us belonging to a party. I think we only have one independent and one from the DLP. Do you really think that we could be so unbiased?

Dr LONGSTAFF—I think you could, that is the point. If you value your democracy more than your party, and at some point every member of parliament must ask questions about what ultimately they value, whether it is the democracy, the service they bring, over their party, and we are talking about not something which is about political footballs, it may have political implications, then you could agree that you are going to do it and you could hold each other accountable.

It is not easy. That is why I say there is a particular premium on moral courage in party politics, but if you do not think it is possible, if you think that in the end the party machine in its various forms, whatever they are, and there are machines in all different parts of politics, that they wouldn't allow you to discharge that function as a member of parliament then your obligation to the community is to put in this other independent body, but it's a sad day in a sense when that kind of conscious deliberation comes to the conclusion that we actually cannot do it.

I would just say that the temptation because of that would be to fudge it to say let's all agree we can do it, even though deep down we don't think we will, because that way we won't surrender our autonomy, we won't create an independent body which seems to give an indication of incapacity within the Parliament.

Don't rationalise again the self-interest that might be at play in that by saying on that basis we will pretend we can do it. It would have to be a serious compact, based on a really serious conversation within the Parliament about your willingness to do it, in which the party political process or those things would have to be consciously suspended, almost like a standing conscience vote that anything that goes on in that Privileges Committee, that party politics is excluded.

Mr FOLEY—We have heard a range of different institutional forms that might give support to that

and you have dealt with the ICAC model here. From what we have been advised, what you have is a degree of self-regulation and a degree of almost coercive regulation in the same space when it comes to Members of Parliament in certain areas. We have looked at the ACT, Brisbane, some of the Canadian stuff.

How important is it to get that institutional arrangement right, noting that government arrangements are increasingly complicated, globalised, partners with private sectors all over the place in all sorts of forms, and the distinctions around executive government, parliaments, party, what is pursued for fund raising, what is pursued for the general work of government, all get moved together increasingly in this complex mix of government and community. How important is it for that institutional arrangement to make it clear for Members of Parliament that there are particular institutional supports at different levels?

Dr LONGSTAFF—It is essential and it is in part for the reasons I gave before when talking about the need for us to enhance the standing of Parliaments in this nation vis-à-vis government. I think Parliament needs to assert itself clearly as an institution of value over that of the executive, not just as a derivative function. It is not as if our Parliament should exist just as a place for the government of the day to come and get their will and have a debate.

There has been a tendency, it doesn't matter what the political complexion of the government of the day to play with Parliament as if it is almost an optional extra. There are a lot of arrangements that have led to that. I just don't think our system is well served by that, so Parliament itself needs to be conscious of its own purpose within our constitutional arrangements. It needs to make clear its institutional desire in a range of ways which asserts its primacy and the parliamentarians need to therefore take seriously their role in and of itself, not as a highway to ministerial opportunity, but in and of itself and on that basis should make the kind of arrangements that you will choose best suit you, but that should be the starting point.

Mr FOLEY—That puts us in the dilemma that if it is high-minded and arrives at a proper purpose, then there is an argument there for notionally putting the independent coercive external agency a step or two further back down in the process.

Dr LONGSTAFF—As I say, I don't know the answer to that. It depends a little bit on what you can stomach as members of parliament, how much you can actually claim for your institution. It is a fallback position in a sense, in my mind, in our constitutional arrangements to have this independent body bringing accountability to bear because you cannot do it yourself. That is ultimately what it is, because you cannot be trusted to do it yourself. That might be true. It might be completely unrealistic, for all the reasons you gave, to expect a group of people with that entanglement to be able to rise to their better nature, but then you will go to the independent body outside, but that is why you will be doing it.

The CHAIR—We have gone over time, but Mrs Kronberg has a question which she has every faith that you will be able to answer with a yes or no.

Mrs KRONBERG—I am excited about the sort of things you have said about a parliament's need to course through a process of building capacity, so that these separations between the role of the Parliament and the political imperatives of the executive, and in our system the opposition, and so forth can transcend a political imperative. Are there parliaments around the world that are coursing through that or are many of them just stuck in these interim phases that you mentioned?

Dr LONGSTAFF—Not that I know of today but they used to, and all you have to do is go back and look at some of the tumultuously successful parliaments in the 18th century and the 19th century to see when that used to be possible.

The CHAIR—Thank you very much for what has been an incredibly stimulating and thought provoking 45 minutes. It has been very valuable. I think we have all been riveted to your every word.

Dr LONGSTAFF—Good luck with it all.

Witness withdrew.