

Joint Standing Committee on the Corruption and Crime Commission

From: mtate@bigpond.com
Sent: Monday, 20 June 2016 9:53 AM
To: Joint Standing Committee on the Corruption and Crime Commission; Tate
Subject: Joint Standing Committee
Attachments: to W Cox.docx

Hon Nick Goiran MLC
Chairman
JSC on the CCC

Dear Mr Goiran,

Thank you for your invitation to make a submission to the JSC on a current enquiry.

As you may know, I am the inaugural Parliamentary Standards Commissioner appointed under the Tasmanian Integrity Commission Act. I attach a submission I made to a review presently being conducted by the Hon William Cox into the operation of the Integrity Commission Act. It may be that the role I discharge and the resources it requires are sufficiently different to those of the Commissioners and Parliamentary Inspectors of your own Commission that the process of my appointment will not provide a satisfactory model for your purposes.

As I understand it, advertisements were placed in various media, but that the response did not lead to a satisfactory candidate emerging, so I was approached by the then Premier who had had some discussion with the then Leader of the Opposition. When I indicated my willingness to accept the appointment, I understand that the Premier then had further discussions with the Leader of the Greens and with the President of the Legislative Council (which is largely composed of Independent Members). My name was then forwarded to the Governor in Council who made the appointment.

As you can see, this process was less formal in its genesis than that which is provided for in Western Australia, and, frankly, I think the Tasmanian approach is quite adequate in protecting the Office from any danger of partisan political influence. To adopt the Western Australian model could narrow the field and possibly provide for a candidate less able to enjoy the confidence of all sides of politics.

As to the timeliness, I expect that by the time that my term expires (6 July 2017), a similar process to the one used for my appointment, and as provided for under the Integrity Commission Act, will have ensured that a candidate suitable to all parties and independents in the Parliament will have been identified as suitable for appointment by the Governor in Council.

I hope this is of some use in your deliberations.

Yours sincerely,
Michael Tate AO
Parliamentary Standards Commissioner

[Signed copy of this letter being sent by mail.]



18 February 2016

The Hon William Cox AC, RFD, ED, QC
Independent Reviewer
Independent Review of the Integrity Commission Act 2009

Dear Mr Cox,

Thank you for the invitation to make a written submission to your Review.

I was appointed to the office of Parliamentary Standards Commissioner by the Governor in Council on 16 November 2009 for a period of five years, and reappointed on the 9 November 2015 for a period of five years, though in fact my term will expire on 6 July 2017 when I reach the age of seventy-two years (s 27 (4) of the Integrity Commission Act 2009, (hereinafter "the Act")).

You will be aware of the relevant provisions of the Act.

Section 27 establishes the office of Parliamentary Standards Commissioner. The title itself caused me some initial concern as it might have suggested to some that I could deal with standards of behaviour in the Chamber, the province of the Speaker of the House of Assembly or the President of the Legislative Council. I indicated to the Department of Justice that the title "Parliamentary Integrity Commissioner" might be preferable, and would be more in keeping with the matters outlined in 28 (1) (a) and (c). However, this suggestion was not followed up and I merely note it for the record.

Section 28 of the Act provides for the function (singular) of the Parliamentary Standards Commissioner. It makes it clear that the role is advisory only.

The Codes of Conduct which qualify as codes of conduct for the purposes of s 28 (1) (a) and (d) are:

- Standing Rules and Orders adopted by the House of Assembly which include a 'Code of Ethical Conduct for Members of the House of Assembly' (SO 3), and a 'Code of Race Ethics for Members of the House of Assembly' (SO 4). The responsibility for compliance with these Codes rests with the House of Assembly;
- there is no Code of Conduct applying to Members of the Legislative Council (unless they are Ministers). The Legislative Council has adopted Standing Order 103 which requires the declaration of a pecuniary interest, with consequences for the possibility or effect of a vote;
- the 'Code of Conduct for Ministers' issued April 2014 by the Premier;
- the 'Code of Conduct for Ministers – Receipt and Giving of Gifts Policy' issued April 2014 which is applicable to all Ministers and other members of Cabinet, and the immediate families and dependents of Ministers and other members of Cabinet.

For a period of my term, there was also a "Code of Conduct: Government Members of Parliament" issued by the then Premier on 12 June 2006. It was endorsed by subsequent

Parliamentary Standards Commissioner

Rev Prof Michael Tate AO



Premiers who were leaders of the Parliamentary Labor Party but in fact its scope extended to those two members of the Tasmanian Greens who were members of the Government. Such a Code has not been issued for the guidance of current Government Members of the Parliament.

Section 28 (1) (b) takes one to the Parliamentary (Disclosure of Interests) Act 1996. I do not need to outline its purpose which is self-evident, but I point out that failure to comply with the Act is a matter for the relevant House of Parliament (s 24), and the administration of the Act is assigned to the Premier (s 26).

In accordance with the latter section, I have made a submission to the Premier concerning the clarification of that Statute. This submission is currently receiving serious attention from the Premier and his Department and I expect it to result in an amending Bill being presented to the Parliament early in the forthcoming sittings.

The compiling of the Draft Model Codes of Conduct for Members of Parliament, Ministers and Ministerial staff in 2010 – 2011 involved close collaboration between myself, the then Chief Commissioner of the Integrity Commission (the Honourable Murray Kellam AO) and various members of the Commission's staff. The Model Codes were presented to Members of Parliament in June 2011 and to various meetings of the Joint Standing Commission on Integrity, but so far, the possible adoption of a Code of Conduct for members of Parliament has not been presented to either House of Parliament for consideration.

Briefings and Advices for Individual Members of Parliament

I have held private meetings for Members of Parliament alerting them to the requirements of the Parliamentary (Disclosure of Interests Act) and the various relevant Codes of Conduct. These have been given in an educative or precautionary mode.

I have provided a number of specific Advices under s 28. Several have been able to be given over the telephone or in a face to face meeting with the Member concerned. A larger number have been written Advices.

With one exception, both oral and written Advices have been provided to the Member concerned on a confidential basis as provided for by s 28 (2) of the Act. If the Advice has been sought with that understanding, whilst I regard myself as bound by it, I have assumed that a Member may choose to disclose the fact of the Advice or its content if it suited the interest of the Member. So far that has not occurred.

The relationship of s 28 (2) to s 94 and, the exact scope of s 94 have not been tested.

As indicated, there has been one instance where the Advice sought was intended to be made public. On 18 September 2014, the President of the Legislative Council, the Honourable Jim Wilkinson MLC, sought my Advice concerning "...the possible impact of Legislative Council Standing Order No 103 on the participation of an Honourable Member in a vote on the Crown Employees (Salaries) Bill 2014". The Advice was not sought on a confidential basis and, in fact, was published in the Legislative Council Hansard of 24 September 2014.

There have been several instances where I have declined to give Advice sought. From the commencement of my appointment as Parliamentary Standards Commissioner, I have refrained from giving Advice under s 28 (1) (d) of the Act relating to the *operation* of any

Parliamentary Standards Commissioner
Rev Prof Michael Tate AO



code of conduct applying to Members of Parliament when that Advice has been sought by a Member other than the one who is seeking guidance about his or her own conduct or possible future conduct. This was intended to give confidence to Members that I was not “providing ammunition to the other side” whilst the Member concerned took the opportunity to seek and consider any Advice given by me on a confidential basis (s 28 (2) of the Act).

I would be happy to provide an oral submission at a public hearing should you consider that this might be helpful. I would do so mindful of the confidentiality strictures in the Act.

Yours sincerely,

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