



## LEGISLATIVE ASSEMBLY

Extract from Legislative Assembly [Votes and Proceedings no. 132](#) – Tuesday 29 March 2022 – item no. 15

### Resolution establishing the Independent Complaints Officer

#### 15 INDEPENDENT COMPLAINTS OFFICER

Mr Peter Sidgreaves moved:

(1) That this House considers and adopts the revised proposal for the establishment of an Independent Complaints Officer, which was considered and agreed to by the Legislative Assembly's Standing Committee on Parliamentary Privilege and Ethics, during a meeting held earlier today.

##### (1) Establishment of position

That this House directs the Speaker to join with the President to make arrangements for the establishment of the position of an Independent Complaints Officer to expeditiously and confidentially deal with low level, minor misconduct matters so as to protect the institution of Parliament, all members and staff.

##### (2) Functions of position

The Independent Complaints Officer shall have the following functions:

###### (a) Receive and investigate complaints

The Independent Complaints Officer may receive and investigate complaints confidentially in relation to alleged breaches of the members' code of conduct, not related to conduct in proceedings of the Legislative Council or Legislative Assembly or their committees, including:

- (i) misuse of allowances and entitlements;
- (ii) other less serious misconduct matters falling short of corrupt conduct; and
- (iii) minor breaches of the pecuniary interests disclosure scheme.

The Independent Complaints Officer shall also have the function of receiving and investigating complaints confidentially in relation to bullying, harassment and inappropriate behaviour by members, not related to conduct in proceedings of the Legislative Council or Legislative Assembly or their committees.

In regard to bullying and harassment, consideration of complaints will take note of members' legal obligations including under the:

- Members of Parliament Staff Act 2013;
- Anti-Discrimination Act 1977; and



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- Work Health and Safety Act 2011.

Section 22(b) of the Anti-Discrimination Act 1977 makes it unlawful conduct for a member to sexually harass a workplace participant or other member in the workplace, or for a workplace participant to sexually harass a member.

### (b) Monitoring Code of Conduct for Members

The Independent Complaints Officer shall monitor the operation of the Code of Conduct for Members, the Constitution (Disclosures by Members) Regulation 1983 and the members' entitlements system, and provide advice about reform to the Legislative Assembly Committee on Parliamentary Privilege and Ethics ("Privileges Committee") as required.

### (c) Educational presentations

The Independent Complaints Officer shall assist the Privileges Committee, Parliamentary Ethics Adviser and the Clerk as requested in relation to the education of members about their obligations under the Code of Conduct for Members and the Constitution (Disclosures by Members) Regulation 1983.

## (3) Term of appointment

### (a) Appointment by Presiding Officers

The Presiding Officers shall appoint an Independent Complaints Officer within three months of the mid-term point of each Parliament, or whenever the position becomes vacant, for the remainder of that Parliament and until the mid-term point of the following Parliament, on such terms and conditions as may be agreed upon with the Presiding Officers, not inconsistent with this resolution. The proposed appointment must have the support of the Privileges Committee in each House. An appointment may be extended for a period of up to six months so as to ensure there is no period in which there is no person holding the position.

### (b) Contract with Clerks of both Houses – Independent Complaints Officer

The appointment of the Independent Complaints Officer is to be confirmed by the Clerks of both Houses entering into a contract of employment with the appointee.

## (4) Complaints investigations

### (a) Protocol

The Independent Complaints Officer shall, within three months of his or her appointment, develop a protocol to be approved by the Privileges Committee and tabled in the House by the committee chair, outlining how complaints may be received, the manner and method by which complaints will be assessed and investigated, the definition of low level, minor misconduct, and arrangements for the notification of matters between the Independent Complaints Officer and the Independent Commission Against Corruption and other relevant bodies (including the most appropriate agencies in relation to bullying and harassment matters), subject to relevant



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legislation (including section 122 of the Independent Commission Against Corruption Act 1988).

### (b) Standing

This protocol shall include definitions of standing such that:

- Only current members of the NSW Parliament, those who currently work for members of the Parliament of NSW in their capacity as members, and those who currently work for the parliamentary departments, have standing to lodge complaints. This includes current contractors or subcontractors, current volunteers, current interns and current trainees.
- An individual may make a complaint up until 21 days following termination from their employment, but not have standing after that date if not remaining within any of the aforementioned categories.<sup>1</sup>
- Complaints must be lodged within two years of the incident alleged to have occurred, unless this is not fair or reasonable to a complainant or member.
- No complaint may be considered which is alleged to have occurred prior to the passing of this resolution.

### (c) Confidentiality

Individuals with standing who are not members of Parliament and who make complaints shall be required to maintain confidentiality concerning complaints and investigations. Others involved in any complaints investigations, for example witnesses shall be required to maintain confidentiality concerning complaints and investigations.

There shall be an expectation that, except in extraordinary circumstances, members of Parliament will maintain confidentiality about complaints and investigations. However, nothing about this expectation affects parliamentary privilege and, in particular, the parliamentary privilege of freedom of speech.

### (d) Protocol with the Independent Commission Against Corruption

Where the Independent Complaints Officer has concerns that a complaint may potentially involve corrupt conduct, he or she should cease the complaint investigation and invite the complainant to raise the matter with the Independent Commission Against Corruption.

The Independent Complaints Officer in determining to draw back from the investigation of a complaint may make a notification to the Independent Commission Against Corruption but

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<sup>1</sup> However, this does not affect timeframes for complainants to take action under the relevant legislation, for example, the *Work Health and Safety Act 2011* and the *Anti-Discrimination Act 1977*.



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should not hand over papers and records obtained under the Independent Complaints Officer system unless under legal compulsion.

The Independent Complaints Officer is not required to notify the Independent Commission Against Corruption when he or she begins an investigation.

### (e) Investigatory report to the House

Where the Independent Complaints Officer ("the investigator") finds that there has been a misuse of an allowance or entitlement, the investigator may recommend repayment of funds misused. Where the investigator finds that a member has otherwise breached the Members Code of Conduct or engaged in bullying, harassment or inappropriate behaviour the investigator may recommend corrective action.

Subject to (f) below, the Independent Complaints Officer will make a report if the member does not accept the recommendation and, in the case of bullying, harassment and inappropriate behaviour matters, only where the complainant consents to the making of the report. This report will be presented to the Privileges Committee. The Committee will consider whether to adopt the recommendations of the Independent Complaints Officer.

### (f) Minor breach

Where the Independent Complaints Officer ("the investigator") investigates a matter and finds that a member has breached the Code or Regulations or engaged in bullying, harassment or inappropriate behaviour, but in the investigator's opinion the breach is minor or inadvertent and the member has taken action to rectify the breach – including the making of appropriate financial reimbursement – the investigator shall advise the member in writing of the finding, and the complainant in writing of the finding and the action taken by the member. The investigator shall briefly report his or her findings and the rectification action taken by the member on a confidential basis to the Privileges Committee. However, if the matter relates to bullying, harassment or inappropriate behaviour, the report must only be made to the relevant Privileges Committee with the complainant's consent. No report to a House is required in this circumstance.

### (g) Declines to investigate

If the Independent Complaints Officer receives a complaint but upon assessment declines to investigate the matter, or upon investigation the Independent Complaints Officer finds no evidence or insufficient evidence to substantiate a complaint of bullying, harassment or inappropriate behaviour; a breach of the Code of Conduct for Members; or a breach of the Constitution (Disclosures by Members) Regulation 1983, the Independent Complaints Officer shall advise in writing the member and the complainant of the decision. The Independent Complaints Officer shall also briefly report the decision to the relevant Privileges Committee on a confidential basis. However, if the complaint relates to bullying, harassment or inappropriate behaviour, the decision must only be reported to the Privileges Committee with the complainant's consent. No report to a House is required in this circumstance.



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(h) Breaches where the member has failed or declined to take rectification action – reports and appeal rights

Where, after investigating a complaint, the Independent Complaints Officer ("the investigator") finds that a member has breached the Code of Conduct for Members or the Constitution (Disclosures by Members) Regulation 1983, or has engaged in bullying, harassment or inappropriate behaviour and the member has failed to undertake the stipulated rectification action or declined to do so pending appeal:

- the investigator shall report his or her findings and conclusions to the Privileges Committee on a confidential basis including recommendations as to the sanctions, if any, that should be imposed by the House. However, if the matter relates to bullying, harassment or inappropriate behaviour, the report to the Committee must only be made with the complainant's consent.
- the member in question shall also have the right to lodge an appeal against the investigator's findings, conclusions and recommendations with the Privileges Committee where they have been so reported to the Committee.

Further, after receiving:

- an investigatory report from the Independent Complaints Officer about a breach for which the member has failed to take the stipulated rectification action, and/or;
- an appeal from the member in question concerning the investigator's findings, conclusions and recommendations;

the Privileges Committee shall:

- form its own conclusions
- have the power to report its conclusions and recommendations – including as regards appropriate sanctions – to the House
- have the power to decide that a report to the House and/or sanctions are not warranted in a particular case e.g. where the Committee disagrees with the investigator's findings.

(i) Expert assistance

The Independent Complaints Officer shall be able to engage the services of a person or persons to assist with or perform services for the Independent Complaints Officer, and in the conduct of an investigation, within budget.

### **(5) Powers of the Independent Complaints Officer**

The Independent Complaints Officer shall have power to request the production of relevant documents and other records from members and officers of the Parliament. Members, their staff and parliamentary officers are required to reasonably cooperate at all stages with the Independent Complaints Officer's inquiries including giving a full, truthful and prompt account of the matters giving rise to a complaint.



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The Independent Complaints Officer may report to the Privileges Committee any failure to comply with a request, and the committee will recommend whether the matter requires the determination of the matter by the House.

### **(6) Keeping of records**

The Independent Complaints Officer shall be required to keep records of advice given and the factual information upon which it is based, complaints received and investigations. The records of the Independent Complaints Officer are to be regarded as records of the House and are not to be made public without the prior approval of the Independent Complaints Officer and resolution of the House, except for the notification of information between the Independent Complaints Officer and other relevant authorities in accordance with the protocol to be developed pursuant to clause 4(a), or where the member requests that the records be made public.

A member requesting the records be made public should table them in the House. During an extended break in sittings a member may table records with the Privileges Committee.

### **(7) Reports to Parliament**

In addition to reports on investigations, the Independent Complaints Officer shall provide to the Chair of the Privileges Committee to table in the House quarterly reports that contain general, de-identified information about matters dealt with under the Independent Complaints Officer system including:

- the number and types of complaints received
- the number of investigations undertaken
- the number of matters found by an investigator to be unsustainable
- the number of matters involving breaches that were dealt with via the rectification procedure, and the rectification action that was taken for these matters, such as repayments
- the number of matters the Independent Complaints Officer found to involve breaches for which a member failed to undertake the required rectification actions that were reported to the Privileges Committee but not to the House
- the number of matters the Independent Complaints Officer found to involve breaches for which a member failed to undertake the required rectification action, that were reported to the Privileges Committee and to the House
- the results of matters reported to the House including the type of sanctions imposed.

### **(8) Annual meeting with relevant committees**

The Independent Complaints Officer is to meet annually with the Privileges Committee of the House.

### **(9) Review of the Independent Complaints Officer System**

The Privileges Committee is required to review the Independent Complaints Officer system within 12 months of the establishment of the Independent Complaints Officer position, in consultation



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with key stakeholders. The committee must examine how the system is operating in practice and whether any changes are needed and in particular:

- the confidentiality provisions applying in respect of complaints and investigations under the system,
- the timeliness of complaints assessments and investigations conducted under the system, and
- the provisions applying with respect to standing for complainants and retrospectivity under the system.

Following the initial review the committee is also required to review the Independent Complaints Officer system once every parliamentary term, in consultation with key stakeholders, to examine how it is operating in practice and whether any changes are needed.

(2) That this resolution have continuing effect until amended or rescinded.

(3) That a message be forwarded to the Legislative Council conveying the terms of the resolution agreed to by the House.

Debate ensued.

Question put and passed.

