

Office of the Parliamentary Commissioner for Standards

Peter Sidgreaves MP
Chair
NSW Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics
Parliament House
Macquarie Street
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By email only to ethics.committee@parliament.nsw.gov.au

DATE: 19.03.21

Dear Mr Sidgreaves

Thank you for your interesting letter of 10 March 2021 seeking my views on the proposed establishment of a Parliamentary Compliance Officer for the New South Wales Parliament.

My general advice is that as with any system of regulation the Assembly needs to first consider carefully its aims and objectives, and then to think about possible design models, before reviewing and creating the roles needed to deliver the preferred model. Only once consensus has been reached on how the model will work, the essential outputs it needs to deliver, how liaison with other agencies and stakeholders will be managed, and a clear operating framework agreed, can work start on designing the roles and postholders needed.

In my opinion, this whole system approach is particularly important if meaningful steps are to be taken to address concerns about bullying and harassment or widespread minor misconduct. If the Assembly considers that there are endemic problems that needs to be addressed, the appointment of a Compliance Officer to handle complaints can only be part of the solution. Without clear behavioural codes that articulate the expected standards of behaviour, without Assembly-wide commitment and support for the right culture, without a programme of mandatory training and induction, without a clear range of sanctions, a complaint handling role alone will not succeed in ensuring the Assembly delivers a professional workplace that discharges its public duties competently and with integrity.

Care should also be taken not to blur the responsibilities of advice and investigation. The Assembly will need to consider carefully the standing of any such advice provided by a Compliance Officer and whether it is an appropriate function for the Officer to perform given that a later investigation might hinge on, or challenge the, interpretation of earlier advice provided by the Officer. The Assembly should also be mindful that many regulatory systems do not provide advice on a case-by-case basis but instead make use of detailed published guidance, comprehensive frequently asked questions, and educational tools informed by earlier investigative decisions, as a means to address issues of interpretation.

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Publication of investigations, and the accompanying evidence, is difficult to comment on in the abstract but the Assembly will need to consider carefully the competing interests that might be involved when publishing materials that could rightly be viewed as confidential. However, the over-arching public interest in transparency of decision making and maintaining confidence in the Assembly, and the actions of its Members, should be at the heart of any publication scheme. The Assembly should also bear in mind that publication of investigation outcomes, including “not upheld” outcomes, can have a powerful impact on changing culture, affecting the behaviour of other Members, and can in some instances of minor breaches act as a sanction in of itself.

It seems critical to me that if the proposed role of Compliance Officer is to succeed, is to enjoy the respect and support of the Assembly and its Members, and is to make a meaningful contribution to the culture and standards of the Assembly, the role needs to be appropriately empowered. This, in my view, must include the powers to compel cooperation with his or her investigations, the power to require the production of documentation, and the power to censure those who fail to cooperate. Part of this empowerment must also include the ability to exercise these powers independently, free from interference, or the perception of interference, by Assembly Members or other stakeholders. This does not mean that checks and balances are not needed for these powers, such as the right of appeal, but it does mean that these powers should be operated independently on a day-to-day basis by the Officer using their unfettered discretion. In my view, this would go a large way to building public confidence in the rigour, independence, and impartiality of the overall regulatory scheme.

For the same reasons, and to ensure public confidence in the role of Compliance Officer, I would recommend reserving most, if not all, powers of sanction, subject to a structured appeal mechanism, to the Officer. To ensure these powers are exercised fairly and consistently, the Assembly should consider whether a documented and structured sanctions regime needs to be designed and endorsed by the Assembly before an Officer is appointed. I do not think that a structured sanctions regime would limit the use of the Officer’s own discretion, but instead would operate as an important check and balance to ensure that their discretion is used fairly and consistently.

You will understand that I am not best placed to comment on the appointments and dismissal process for the proposed Compliance Officer but my colleague, Robin James, Clerk of the Committee on Standards, may be able to assist. Robin can be contacted via email on

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Thank you again for inviting me to comment on the Assembly’s proposal and I wish you well with this important endeavour.

Yours sincerely

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Kathryn Stone OBE
Parliamentary Commissioner for Standards

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