

Mr Peter Sidgreaves MP Chair Standing Committee on Parliamentary Privilege and Ethics Legislative Assembly, Parliament of New South Wales

By email to: ethics.committee@parliament.nsw.gov.au

Dear Chair,

Thank you for your letter and questions regarding the proposed resolution for the establishment of a Parliamentary Compliance Officer for the Parliament of New South Wales.

In Victoria, there are two independent Compliance Officers - a primary Compliance Officer and a secondary Compliance Officer. The role of primary Compliance Officer is currently vacant. I serve as the secondary Compliance Officer.

My responses to your questions are set out in Attachment A.

The functions of a Compliance Officer in Victoria are set out under Part 4 of the *Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019* (VIRTIPS Act). The Compliance Officers are responsible for hearing and determining appeals from Members of Parliament in relation to the use of the Electorate Office and Communications Budget, certain parliamentary allowances and the separation payment. This function is relatively new, and has to date received only one matter for consideration, which was determined by the Primary Compliance Officer. Consequently, the experience and practices of the office are still developing and evolving.

I note that the proposed Compliance Officer role for the Parliament of New South Wales will incorporate some functions that in Victoria are performed by the Parliament of Victoria's Parliamentary Integrity Advisor. As such, you may wish to also consult with the Parliament of Victoria about the proposal and seek their responses to the targeted questions.

Please note that my responses to your questions provide a factual explanation of the legislative provisions and arrangements that apply in Victoria. My responses do not comment upon matters of government policy, including whether the proposed model for the Parliamentary Compliance Officer for the Parliament of New South Wales is appropriate.

Further, while I appreciate the invitation to appear before the Committee's public hearings, I note that I am yet to consider an appeal as the Secondary Compliance Officer. As such, I thank you for the invitation, but I will not take it up beyond providing this written response.





Any questions about the provisions in the VIRTIPS Act may also be raised with the Minister for Government Services, Mr Danny Pearson MP, who is the Minister responsible for the VIRTIPS Act.

If you have any questions, please contact my office

Yours sincerely

Jane Brockington Secondary Compliance Officer

30 April 2021



## Attachment A – responses to questions

#### Appointment of a Compliance Officer

1.1) What are the main considerations in deciding on an appointment method for a Compliance Officer?

In Victoria, the primary and secondary Compliance Officers are appointed by the Governor in Council on the recommendation of the Minister under s29(2) of the *Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019* (Vic) (VIRTIPS Act).

Before the Minister recommended the appointment of the initial primary and secondary Compliance Officers, the Premier was required to consult in relation to the proposed recommendation with the Leader of the Opposition (s30(4) of the VIRTIPS Act).

For all subsequent appointments, the Minister is required to submit details of the proposed recommendation to the Integrity and Oversight Committee of the Parliament of Victoria, which may veto the proposed recommendation (s30(1) of the VIRTIPS Act).

A person is eligible to be appointed as a Compliance Officer if the person either:

- is, or has been, qualified for appointment as a judge of the High Court, the Federal Court or the Supreme Court of Victoria or another State or a Territory of the Commonwealth, or
- has extensive or specialist knowledge, expertise or experience in at least one of the following:
  - o government, law or public administration
  - o any other field that the Minister considers is relevant to the performance of the function of the Compliance Officer (s29(3) of the VIRTIPS Act).
- 1.2) Is there an optimal method for appointing a Compliance Officer? For example, who should make the decision and who should be consulted?

Please refer to my answer above or consider raising with the Minister for Government Services who is responsible for the VIRTIPS Act.





1.3) Is the appointment method set down in Clause 4 of the Compliance Officer proposal that is before the Houses appropriate?

Please refer to my answer above or consider raising with the Minister for Government Services who is responsible for the VIRTIPS Act (including the provisions concerning the appointment of a Compliance Officer).

In addition, the Parliament of Victoria may be best suited to comment on matters of parliamentary procedure and the appropriateness of the Parliament of New South Wales performing the proposed appointment functions.

1.4) At what point in the parliamentary term should a Compliance Officer be appointed, and for what period?

In Victoria, the Compliance Officer is appointed on a sessional basis for a period not exceeding five years and may not be reappointed (s31 of the VIRTIPS Act).

#### Dismissal of a Compliance Officer

2.1) What are the main considerations in deciding on a dismissal method for the Compliance Officer?

In Victoria, the Compliance Officer can be dismissed by the Governor in Council on any of the following grounds:

- misconduct
- neglect of duty
- inability to perform the duties of the office
- or any other ground on which the Governor in Council is satisfied that the Compliance Officer is unfit to hold office (s32(2) of the VIRTIPS Act).

In addition, a Compliance Officer ceases to hold office if they:

- resign by writing delivered to the Governor in Council
- becomes an insolvent under administration
- are convicted, or found guilty, of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence
- nominate for election as a Member of Parliament or otherwise become a Member of Parliament



- become a represented person within the meaning of the *Guardianship and Administration Act 1986* (Vic)
- die (s32(1) of the VIRTIPS Act).
- 2.2) Is there an optimal method for dismissing a Compliance Officer? For example, who should make the decision and who should be consulted?
  - Please refer to my answer above.
- 2.3) Is the dismissal method set down in Clause 4 of the Compliance Officer proposal that is before the Houses appropriate?

I make no comment in relation to this question.

#### Skills of a Compliance Officer

3.1) Is creating a Compliance Officer type role an appropriate way to address bullying and harassment matters? What steps might be taken to ensure the person appointed to the role has the necessary skills and support to deal with entitlement and pecuniary interest complaints on the one hand; and bullying and harassment complaints on the other?

I note that the functions of the Compliance Officer in Victoria do not relate to bullying and harassment matters. I make no comment on the questions asked in part 3. The Parliament of Victoria has responsibility for workplace matters for both Members of Parliament and Ministerial staff. As such, this question may be best directed there.

#### Interaction with Anti-Corruption Commissions and Protocols

4.1) Clause 5(a) of the Compliance Officer proposal before the Houses provides that within three months of his or her appointment the Compliance Officer is to develop a protocol to cover matters including how complaints may be received, and the referral of matters between the Compliance Officer and the NSW Independent Commission Against Corruption. Do you have any specific comments about what should be included in this protocol?

In Victoria, an appeal to the Compliance Officer must be in writing, using the forms approved by the Compliance Officer and published on its website and containing the information specified in the form (regulations 13 and 18 of the *Parliamentary Salaries, Allowances and Superannuation Regulations 2019* (Vic)).

The approved forms for making an appeal are available on the Compliance Officers' website: https://www.vic.gov.au/compliance-officer.





Do you have any comment on how your role interacts with Victoria's Independent Broad-based Anti-Corruption Commission (IBAC)?

The Compliance Officer in Victoria does not interact with, or currently have a formal arrangement or established protocol with the Independent Broad-based Anti-Corruption Commission.

4.2) Do you have a protocol covering interactions with the IBAC and what does it cover?

Please refer to my answer above.

# Publication of Investigation Outcomes and the Evidence on which they are based

5.1) Should the outcomes of the Compliance Officer's investigations be published? What about in the case of minor and/or inadvertent breaches? What about in the case of unsustained matters?

In Victoria, the Compliance Officer has the discretion to publish a statement of findings and any required actions in relation to an appeal.

The Compliance Officer considers a range of factors before choosing to publish a statement of findings, including whether:

- there would be a benefit to other Members in having access to the decision to promote a better understanding of, and compliance with, the regulatory framework
- there would be a public interest in releasing the decision, such as providing transparency about how public funds may be used by Members
- there are personal or commercial details that would be inappropriate to disclose.

If the Compliance Officer is proposing to publish any statement of findings, they will ordinarily provide a copy to the relevant Member of Parliament or Former Member first. This provides an opportunity for the Member or Former Member to review the statement and raise any privacy concerns.

If the Compliance Officer considers that a statement of findings and any required actions should be published in a particular case, the Compliance Officer may transmit the statement to each House of the Parliament, where it must be tabled. The Compliance Officer must publish the statement on its website as soon as practicable after giving it the Clerks of the Parliament (ss7E and 9H of the *Parliamentary Salaries, Allowances and Superannuation Act 1968* (the PSAS Act)).





5.2) Are the arrangements for reporting on investigative outcomes, as set down in clause 5 of the Compliance Officer proposal, appropriate?

I make no comment on the suitability of the arrangements as outlined in Clause 5 of the proposed resolution.

5.3) Clause 7 of the Compliance Officer proposal provides that the Compliance Officer's records are to be regarded as records of the House and are generally not to be made public. Do you have any comments on these provisions? Are the Victorian Compliance Officer's records ever published?

As discussed, the Compliance Officer may choose to publish a statement of findings. The statement of findings are generally condensed summaries of the logic behind a decision.

There is no requirement under the VIRTIPS Act or PSAS Act that the records of the Compliance Officer be published. The Office of the Compliance Officer is separate to the Parliament of Victoria, and its records are not considered to be parliamentary documents.

5.4) Do you have any comments on potential issues of parliamentary privilege as they relate to clauses 5 or 7 of the Compliance Officer proposal?

If a Compliance Officer publishes a statement of findings and any required actions on its website, the publication is absolutely privileged (s35 of the VIRTIPS Act).

### Powers of the Compliance Officer

6.1) Is the power to call for the production of relevant documents and other records from Members and officers of the Parliament an appropriate power for the Compliance Officer?

In Victoria, in performing the function of the Compliance Officer the Compliance Officer may seek and receive written or oral statements from the appealing Member or Former Member, or the Clerk of the relevant House who made the determination (ss7E(14) and 9H(4) of the PSAS Act). If a Member or Former Member does not comply with a request for further information, the Compliance Officer may reject the appeal under s7E(15) or s9H(5) of the PSAS Act.

