

Submission

No 10

**INQUIRY INTO RECOMMENDATIONS OF THE ICAC  
REGARDING ASPECTS OF THE CODE OF CONDUCT FOR  
MEMBERS, THE INTEREST DISCLOSURE REGIME AND A  
PARLIAMENTARY INVESTIGATOR**

**Organisation:** ACT Legislative Assembly

**Name:** Tom Duncan

**Position:** Clerk of the Legislative Assembly for the Australian Capital  
Territory

**Date Received:** 17/03/2014

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Mr Stephen Frappell  
Clerk, Legislative Council Privileges Committee, and  
Mr David Hale  
Clerk, Legislative Assembly Privileges and Ethics Committee  
Parliament of New South Wales  
Macquarie Street  
SYDNEY NSW 2000

Dear Messrs Frappell and Hale

I refer to your letter dated 22 January where you invited me to make a submission to your inquiry into recommendations of the Independent Commission Against Corruption (ICAC).

Detailed below are my responses to the three ICAC recommendations you are inquiring into.

#### Recommendation 22

The Legislative Assembly for the Australian Capital Territory (the ACT Legislative Assembly) adopted the Code of Conduct for All Members of the Legislative Assembly for the Australian Capital Territory (the Code) on 25 August 2005. In April 2008 the Assembly agreed to establish the position of Ethics and Integrity Adviser, the main role of which is to advise Members of the Legislative Assembly, when requested, on ethical issues concerning the exercise of his or her role as a Member (including advice on the use of entitlements and potential conflicts of interest).

The Code remained unchanged until 2012 when it was substantially reviewed. The catalyst for this review occurred in 2012, when the Assembly directed the then Speaker to commission an independent workplace audit of staffing arrangements to examine whether or not inappropriate payments to staff were made in the Office of the Leader of the Opposition for the period 2009 to 2012. The Speaker appointed an Independent Auditor who was, pursuant to the resolution, provided with all relevant records including relevant building access records and ICT information for the relevant period. In the subsequent report (the McLeod Review), the Independent Auditor recommended that it would be timely to review the Code.

Subsequently, the then Speaker commissioned the Assembly's Ethics and Integrity Adviser to review the Code. That review was completed in 2012, recommending that the Code be revised. I am happy to provide you with a copy of the review if you require it. The relevant Committee to which the Adviser's report was given, the Standing Committee on Administration and Procedure, recommended that the revised Code be adopted and, on 24 October 2013, the revised Code (which had been slightly amended by the Assembly) was adopted by the Legislative Assembly.

The revised Code is shown below.

**Resolution agreed by the Assembly**  
**25 August 2005 (amended 16 August 2006, 24 October 2013)**

**CODE OF CONDUCT FOR ALL MEMBERS OF THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

The Members of the Legislative Assembly for the Australian Capital Territory acknowledge that, in a parliamentary democracy they cannot command, but must constantly strive to earn and maintain, the respect and support of those who have elected them to their positions of honour and privilege as Members.

In committing to this Code of Conduct, Members undertake, to the community and to one another, that the following principles shall guide their conduct as Members in all matters:

- (1) Members should at all times act with integrity, honesty and diligence.
- (2) Members should act only in the interests of, and with respect for, the people of the Australian Capital Territory and in conformity with all laws applicable in the Territory.
- (3) Members should always act in the public interest, make decisions and choices on merit, and not seek to gain financial or other benefit for themselves, their family or friends.
- (4) Members should be reasonably accessible to the people of the electorate they have been elected to serve, and should represent their interests conscientiously.
- (5) Members should be transparent in, and accountable for, their decisions and actions, should avoid or appropriately resolve any actual or reasonably perceived conflicts of interest and should submit themselves to appropriate scrutiny.
- (6) Members should make only proper use of those public resources to which they have access.
- (7) Members should respect the dignity and privacy of individuals, and not disclose confidential information to which they have official access other than with consent or as permitted by law.
- (8) Members should observe proper standards of parliamentary conduct, and observe respect for differences and fairness in their political dealings.
- (9) Members should promote and support these principles by leadership and example, in order to maintain and support public trust and confidence in the integrity of the Assembly and the conduct by its Members of public business.

Consistent with the above principles, Members further undertake that they should:

- (10) Actively seek to prevent any conflict of interest, or the perception of such a conflict, arising between their duties as a Member and their personal affairs and interests, take all reasonable steps to resolve any such conflict or perception of a conflict that does arise, and:
  - (a) comply with section 15 of the *Australian Capital Territory (Self-Government) Act 1988* (Cwth);
  - (b) declare their pecuniary interests and ensure that their declaration is kept up to date pursuant to the resolution of the Assembly 'Declaration of Private Interests of Members' agreed to on 7 April 1992 (as amended or replaced from time to time). Include in the Member's Statement of Registrable Interests all gifts, payments, fees, rewards or benefits valued at more than \$100 received in connection with the Member's functions as a Member; and

- (c) disclose in a manner appropriate to the circumstances any other financial or non-financial interest that they may hold, or which they may be reasonably perceived to hold (other than as a member of the public or of a broad class of persons) which a reasonable observer, informed of that interest, might perceive as giving rise to a conflict of interest with the performance of the Member's duty as a Member.
- (11) Not solicit to undertake, or undertake, any activity as a Member in return for the provision, promise or expectation of any improper benefit to the Member or to another person.
- (12) Take care to consider the rights and reputations of others before making use of their unique protection of parliamentary privilege consistent with the resolution of the Assembly 'Exercise of freedom of speech' agreed to on 4 May 1995 (as amended or replaced from time to time).
- (13) Not use information received by them as a Member that is not in the public domain in breach of any obligation of confidence applicable to their receipt of that information, or improperly for the private benefit of themselves or another person.
- (14) In their capacity as an employer on behalf of the Territory under the *Legislative Assembly (Members' Staff) Act 1989*:
  - (a) familiarise themselves and comply with the terms and conditions on which their personal staff are engaged and with all applicable policies and practices (including those related to occupational health and safety, discrimination, harassment and bullying, equal employment opportunity and use of information technology);
  - (b) not employ a family member as defined in that Act;
  - (c) direct their personal staff to be mindful of the Member's commitment to this Code of Conduct, and to assist the Member to comply with this Code of Conduct; and
  - (d) direct their personal staff to comply with any code of conduct applicable to those staff from time to time.
- (15) In all their dealings with staff of the Assembly and members of the ACT Public Service:
  - (a) extend professional courtesy and respect; and
  - (b) recognise the unique position of impartiality and the obligations of Public Service officials.
- (16) Only make a complaint about the compliance of another Member with this Code of Conduct where they believe there are reasonable grounds to suspect non-compliance and not make any such complaint that is frivolous or vexatious or only for political advantage.
- (17) Cooperate fully with any official inquiry that may be commenced in connection with their compliance with this Code of Conduct, or that of another Member.

As can be seen from the Code, there are requirements that members must always act in the public interest (para 3), should avoid any actual or reasonable perceived conflicts of interest (para 5), and should declare their pecuniary interests and any other financial or non-financial interest that they may hold, or which they may be reasonably perceived to hold which a reasonable observer, informed of that interest, might perceive as giving rise to a conflict of interest with the performance of the Member's duty as a Member (para 10 (b) and (c)).

### Recommendation 23

The ACT Legislative Assembly has had a regime for MLAs declaring their interests since 7 April 1992. Since that time Members have had to declare not only their own interests, but those of their immediate family of which they are aware of.

The Continuing Resolution which governs the declarations is shown below:

**Resolution agreed by the Assembly  
7 April 1992 (amended 27 August 1998, 17 March 2005, 6 March 2008 and  
10 December 2009)**

**DECLARATION OF PRIVATE INTERESTS OF MEMBERS**

That—

- (1) within 28 days of the making and subscribing of an oath or affirmation as a Member of the Legislative Assembly for the Australian Capital Territory each Member of the Legislative Assembly shall provide to the Clerk of the Legislative Assembly a declaration of the private interests of themselves and their immediate family in the form as presented to the Assembly on 17 March 2005<sup>1</sup> and shall notify any alteration of those interests to the Clerk within 28 days of that alteration occurring;
- (2) under the general direction of the Speaker, the Clerk shall store the declarations of private interests made by each Member and arrange for the declarations for that Assembly to be placed on the Legislative Assembly website on the internet. Any alterations shall be placed on the Legislative Assembly website on the internet every six months. When a Member vacates his or her seat and is not re-elected at the next general election for the Assembly, the Clerk shall destroy all declarations made by that Member in his/her custody and remove those declarations from the Legislative Assembly website on the internet;
- (3) any declaration stored by the Clerk be made available for perusal to any person on request; and
- (4) that this resolution has effect from the commencement of the Second Assembly and continues in force unless and until amended or repealed by this or a subsequent Assembly.

### Recommendation No 25

In the McLeod Review mentioned above the following recommendation was made in 2011:

**That the Assembly consider whether it is also an opportune time to reconsider the appointment of an independent Ethics Commissioner in the light of its experience with the operation of the Code of Conduct since its introduction.**

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<sup>1</sup> Form is contained in the *Members' Guide*.

As a result of the above recommendation, the then Speaker placed a notice of motion on the *Notice Paper* of 5 June 2012 proposing that the Assembly establish a Commissioner for Standards to investigate any possible breaches of the Code of Conduct and any failures to declare interests.

In the review of the Code which was completed by the Assembly's Ethics and Integrity Adviser, the Adviser supported the establishment of the position, although he recommended that:

...the positions of Ethics and Integrity Adviser and the Legislative Assembly Commissioner for Standards should be completely separate and never concurrently held by the same person.

On 31 October 2013, on the motion of the former Speaker of the Assembly, the Assembly agreed to the following resolution of continuing effect:

**Resolution agreed by the Assembly  
31 October 2013**

**COMMISSIONER FOR STANDARDS**

That this Assembly requests the Speaker to appoint a Legislative Assembly Commissioner for Standards on the following terms:

- (1) The Speaker must, after each Assembly is elected or whenever the office becomes vacant, appoint a Commissioner for the life of that Assembly and the period of three months after each election. The initial appointment is for the term of the 8<sup>th</sup> Assembly and the period of three months after the election at the conclusion of that term.
- (2) Before appointing a Commissioner, the Speaker must consult with the Chief Minister, the Leader of the Opposition and Crossbench Members.
- (3) The Commissioner may be dismissed only following a resolution of the Legislative Assembly resolving to require the Speaker to end the Commissioner's appointment—
  - (a) for misbehaviour; or
  - (b) for physical or mental incapacity, if the incapacity substantially affects the exercise of the Commissioner's functions.

However, a motion for such a resolution may only be debated after the Standing Committee on Administration and Procedure ('the Committee') has reported to the Assembly that it is satisfied that the Commissioner is unfit for the office or unable to fulfil the Commissioner's functions.

- (4) The functions of the Commissioner are to:
  - (a) investigate specific matters referred to the Commissioner—
    - (i) by the Speaker in relation to complaints against Members; or
    - (ii) by the Deputy Speaker in relation to complaints against the Speaker; and
  - (b) report to the Standing Committee on Administration and Procedure.
- (5) Members of the public, members of the ACT Public Service and Members of the Assembly may make a complaint to the Speaker about a Member's compliance with the Members' Code of Conduct or the rules relating to the registration or declaration of interests.

- (6) If the Speaker receives a complaint about a Member pursuant to paragraph (5) and the Speaker believes on reasonable grounds that—
  - (a) there is sufficient evidence as to justify investigating the matter; and
  - (b) the complaint is not frivolous, vexatious or only for political advantage;the Speaker may refer the complaint to the Commissioner for investigation and report.
- (7) Members of the public, members of the ACT public service and Members of the Assembly may make a complaint to the Deputy Speaker about the Speaker's compliance with the Members' Code of Conduct or the rules relating to the registration or declaration of interests.
- (8) If the Deputy Speaker receives a complaint about the Speaker pursuant to paragraph (7) and the Deputy Speaker believes on reasonable grounds that—
  - (a) there is sufficient evidence to justify investigating the matter; and
  - (b) the complaint is not frivolous, vexatious or only for political advantage;the Deputy Speaker may refer the complaint to the Commissioner for investigation and report.
- (9) In exercising the functions of Commissioner the following must be observed:
  - (a) The Commissioner must not make a report to the Committee if the Member or the Speaker about whom the complaint was made has agreed that he or she has failed to register or declare an interest if —
    - (i) in the Commissioner's opinion the interest involved is minor or the failure was inadvertent; and
    - (ii) the Member concerned has taken such action to rectify the failure as the Commissioner may have required within any procedure approved by the Committee for this purpose.
  - (b) The Commissioner must not make a report to the Committee unless the Commissioner has—
    - (i) given a copy of the proposed report to the Member or the Speaker who is the subject of the complaint under investigation;
    - (ii) the Member or the Speaker has had a reasonable time to provide comments on the proposed report; and
    - (iii) the Commissioner has considered any comments provided by the Member or the Speaker.
  - (c) The Commissioner must report by 31 August each year to the Speaker on the exercise of the functions of the Commissioner.
- (10) The Committee must review the operation of the Commissioner after two years following the initial appointment of the Commissioner and report to the Assembly in the first sitting period in 2016.

Following a merit selection process in accordance with paragraph (2) of the resolution, the Speaker, on 6 March 2014 appointed the Honourable Dr Ken Crispin QC, a former Judge of the ACT Supreme Court, as the Assembly's inaugural Commissioner for Standards.

As the appointment was only just made, there have been no matters referred to the Commissioner for investigation and report.

I trust you find this information useful. Should you require any further information please do not hesitate to contact me.

Yours sincerely

Tom Duncan  
Clerk of the Legislative Assembly

March 2014