



LEGISLATIVE COUNCIL

PRIVILEGES COMMITTEE

Proposal for a Compliance Officer for the NSW Parliament

TERMS OF REFERENCE

- (1) The Privileges Committee review the following proposed resolution for the establishment of a Parliamentary Compliance Officer, as brought forward by the President, in the same terms as the proposal brought forward by the Speaker in the Legislative Assembly:

Proposed resolution to establish a position of Compliance Officer

(1) Establishment of position

That this House directs the President to join with the Speaker to make arrangements for the establishment of the position of Compliance 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 Compliance Officer shall have the following functions:

- (a) Receive and investigate complaints

The Compliance 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,
- (iii) allegations of bullying, harassment and other types of grievances,
- (iv) minor breaches of the pecuniary interests disclosure scheme.

- (b) Monitoring Code of Conduct for Members

The Compliance 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 Privileges Committee as required.

- (c) Educational presentations

The Compliance 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.

- (d) Informal advisory services

A member or the parliamentary administration may seek confidential advice on a matter of interpretation of the Members' Entitlements scheme, for the purposes of resolving any disagreements.

(3) Amendment of the Code of Conduct for Members

The Members' Code of Conduct is amended by the addition of the following paragraph:

"Clause 10

Members must treat their staff and each other and all those working for Parliament in a manner compatible with a safe workplace, free from harassment.

Commentary

Section 22(b) of the Anti-Discrimination Act 1977 makes it an offence for a member to sexually harass a workplace participant or another member in the workplace, or for a workplace participant to sexually harass a member."

(4) Term of appointment

(a) Appointment by Presiding Officers

The Presiding Officers shall appoint a Compliance 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. 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) Dismissal

The Compliance Officer may only be dismissed by the Chief Executive Officer of the Department of Parliamentary Services with the consent of the President and Speaker.

(5) Complaints investigations

(a) Protocol

The Compliance 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 President, 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 referral of matters between the Compliance Officer and the Independent Commission Against Corruption and other relevant bodies, subject to relevant legislation (including section 122 of the Independent Commission Against Corruption Act).

(b) Investigatory report to the House

Where the Compliance Officer considers that there has been a misuse of an allowance or entitlement, the Compliance Officer may order repayment of funds misused. Where the Compliance Officer considers that a member has otherwise breached the Members' Code of Conduct, the Compliance Officer may recommend corrective action.

Subject to (c) below, the Compliance Officer will make a report to the House if, and only if, the member does not comply with the order or accept the recommendation as the case may be, and the complainant consents to the making of a report.

(c) Minor breach

Where the Compliance Officer investigates a matter and finds that a member has breached the Code or Regulations, but in his or her opinion considers the breach to have been minor or inadvertent and the member concerned has taken such action to rectify the breach, including the making of appropriate financial reimbursement, the Compliance Officer shall advise in writing the member and the complainant of the finding and the action taken by the member. No report to a House is required in this circumstance.

(d) Declines to investigate

If the Compliance Officer receives a complaint but upon assessment declines to investigate the matter, or upon investigation finds no evidence or insufficient evidence to substantiate a breach of the Code of Conduct for Members or the Constitution (Disclosure by Members) Regulation, the Compliance Officer shall advise in writing the member and the complainant of the decision. No report to a House is required in this circumstance.

(e) Expert assistance

The Compliance Officer may engage the services of persons to assist with or perform services for the Compliance Officer, including in the conduct of an investigation, within budget.

(6) Powers of the Compliance Officer

The Compliance Officer shall have power to call for 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 Compliance Officer's inquiries including giving a full, truthful and prompt account of the matters giving rise to a complaint.

The Compliance Officer may report any failure to comply with these provisions to the President, for determination of the matter by the House.

(7) Keeping of record

The Compliance 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 Compliance Officer are to be regarded as records of the House and are not to be made public without the prior approval of the Compliance Officer and resolution of the House, except for the referral of information between the Compliance Officer and other relevant authorities in accordance with paragraph 12 of the protocol or where the member requests that the records be made public.

(8) Reports to Parliament

In addition to reports on investigations, the Compliance Officer shall be required to report to the Parliament annually on the performance of his or her functions including the number of members who sought advice, the number and types of complaints received and the number of investigations undertaken and the findings of those investigations. All reports from the Compliance Officer are to be tabled by the President on the next sitting day after receipt.

(9) Annual meeting with relevant committees

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

Committee membership

Hon Peter Primrose MLC	Australian Labor Party	<i>(Chair)</i>
Revd the Hon Fred Nile MLC	Christian Democratic Party	<i>(Deputy Chair)</i>
Hon Greg Donnelly MLC	Australian Labor Party	
Ms Cate Faehrmann MLC	The Greens	
Hon Trevor Khan MLC	The Nationals	
Hon Natasha Maclaren-Jones MLC	Liberal Party	
Hon Matthew Mason-Cox MLC	Liberal Party	
Hon Natalie Ward MLC	Liberal Party	