

11. Independent Complaints Officer

- (1) That this House adopt the following resolution to establish an Independent Complaints 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 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,
- (iii) allegations of bullying, harassment and other types of inappropriate behaviour,
- (iv) minor breaches of the pecuniary interests disclosure scheme.

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

- *Members of Parliament Staff Act 2013;*
- *Anti-Discrimination Act 1977; and*
- *Work Health and Safety Act 2011*

- (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 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) Amendment of the Code of Conduct for Members

The Members' Code of Conduct is amended by

- (a) the addition of the following paragraph:

"Clause 10

A Member must treat their staff and each other and all those working for Parliament in the course of their parliamentary duties and activities with dignity, courtesy and respect, and free from any behaviour that amounts to bullying, harassment or sexual harassment"

Commentary

Section 22(b) of the Anti-Discrimination Act 1977 makes it unlawful 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."

- (b) the insertion into the second paragraph of clause 9 the following words:

“A minor breach of this Code may be the subject of an investigation by the Independent Complaints Officer”

(4) 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.

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

- (b) Standing

This protocol shall include definitions of standing such that:

- only current members of the parliamentary community, that is Members of the NSW Parliament, those who work for Members of the Parliament of NSW in their capacity as Members or Ministers, those who work for the parliamentary departments, contractors or subcontractors, volunteers, interns and trainees, have standing to lodge complaints
- that an individual may make a complaint up until 21 days following termination from their employment, but not have standing after that date if not part of the parliamentary community
- 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

Members of the parliamentary community 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 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 finds that there has been a misuse of an allowance or entitlement, the Independent Complaints Officer may recommend repayment of funds misused. Where the Independent Complaints Officer finds that a member has otherwise breached the Members' Code of Conduct the Independent Complaints Officer 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 and whether to report to the House.

(f) Minor breach

Where the Independent Complaints Officer investigates a matter and finds that a member has breached the Code or Regulations but in the Independent Complaints Officer'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 Independent Complaints Officer 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 Independent Complaints Officer 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 finds no evidence or insufficient evidence to substantiate a breach of the Code of Conduct for Members or 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.

(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 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 Independent Complaints Officer 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 Independent Complaints Officer'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 Independent Complaints Officer'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 Independent Complaints Officer'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.

(6) 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.

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.

(7) 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 in accordance with clause 5 (a), or where the member requests that the records be made public.

A member requesting the records be made public should present the records to the Clerk, to be tabled in the House at the next sitting. During an extended break in sittings the Privileges Committee is empowered

to publish records of the Independent Complaints Officer, on the recommendation of the Officer that expeditious publication is required.

(8) Reports to Parliament

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

- the number and types of complaints received
- the number of investigations undertaken
- the number of matters found by an Independent Complaints Officer 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 an 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 but not to the House
- the number of matters an 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.

(9) Annual meeting with relevant committees

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

(10) Review of the Independent Complaints Officer System

The privileges committees of both Houses are required to review the Independent Complaints Officer system within 12 months of the establishment of the Independent Complaints Officer position, in consultation 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 complaints 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.

[Resolved and message sent to Assembly—LC Minutes 22 March 2022 p. 3039-3035, amended and message sent to Assembly—LC Minutes 8 June 2022 p. 3420-3421]

The President informed the House that Ms Rose Webb has been appointed as the Parliament's inaugural Independent Complaints Officer effective 11 August 2022—11 August 2022 p. 3587.

Mr Primrose, according to the resolution of the House establishing the Independent Complaints Officer, tabled the Independent Complaints Officer Investigations Protocol, dated November 2022. Ordered, on motion of Mr Primrose, that the document be published—17 November 2022 p. 3953. The document can be accessed via the following link [Independent Complaints Officer Protocols](#).