

**INQUIRY INTO PROPOSAL FOR A COMPLIANCE
OFFICER FOR THE NSW PARLIAMENT**

Name: The Clerk of the Parliaments

Date Received: 3 February 2021



LEGISLATIVE COUNCIL

OFFICE OF THE CLERK

3 February 2021

D21/04063

The Hon. Peter Primrose MLC
Chair
Privileges Committee
Legislative Council
Parliament House
SYDNEY NSW 2000

Dear Chair,

Submission – Inquiry into a proposal for a Compliance Officer for the NSW Parliament

I refer to your letter, dated 14 December 2020, inviting me to make a submission to the Privileges Committee's inquiry into a proposal for a Compliance Officer for the NSW Parliament.

As noted in your letter, Chapter 4 of the Legislative Council Privileges Committee's 2014 report on *Recommendation of the ICAC regarding aspects of the Code of Conduct for Members of Parliament, the interests disclosure regime and a parliamentary investigator* sets out important background to this inquiry. That report details the strong interest of the Legislative Council Privileges Committee in similar proposals since as early as 1996 which led to the recommendation in the 2014 report for the appointment of a Commissioner for Standards. In view of the thoroughness of the 2014 report I will not re-state any of the matters set out in that report. I commend that report to Members of the current committee and indeed to all Members of the Legislative Council.

This submission seeks to provide a brief outline of the current proposal for a Compliance Officer, including its purpose and how it has come about. The submission then seeks to address some anticipated questions or issues that might be of interest to Members.

The current proposal for a Compliance Officer for the NSW Parliament

Purpose of the proposed position

The purpose of the proposed position of Compliance Officer is to fill the jurisdictional gap that exists for the resolution of allegations or complaints of misconduct against Members that fall short of corrupt conduct. There is currently no person or body with the authority to investigate any such

low level, minor misconduct matters. The absence of any other mechanism for their resolution has previously led some such relatively minor matters to be the subject of investigations, public hearings and reports of the Independent Commission Against Corruption (ICAC), with devastating and arguably disproportionate consequences for the Members concerned.¹ On other occasions Members have sometimes been the subject of public allegations of misconduct and, in the absence of any person or body with the authority to investigate and resolve the matter, the member has been left with the matter “hanging over their head” for months or years, sometimes without the matter ever being resolved.

The purpose of the position is therefore to facilitate the expeditious resolution of these sorts of matters, including complaints of:

- misuse of allowances and entitlements,
- inadequate disclosure of interests,
- allegations of bullying or harassment, and
- other less serious misconduct matters.

The development of this proposal

Around the time of the tabling of the 2014 report of the Legislative Council Privileges Committee and a similar report from the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics,² there were media reports suggesting the proposal for a Commissioner for Standards had the support of Premier Baird.³ No further action was forthcoming, however, likely due to the (minor) differences between the models recommended by the two Privileges Committees and a lack of sufficient support in *both* Houses.

In 2016, Premier Baird asked the Presiding Officers to develop an agreed model for a Commissioner for Standards or Ethics Commissioner, amongst other matters.⁴ Despite a significant amount of work through 2016 and 2017 an agreed model was not able to be developed.

Nevertheless various Members and officers continued to be troubled by the “jurisdictional gap” and absence of a body authorised to expeditiously resolve minor misconduct matters.⁵ In August 2020, the Clerk of the Legislative Assembly and I received correspondence from 23 Members across both Houses requesting the development of a mechanism or process to handle complaints about the conduct of Members, including alleged bullying or inappropriate behaviour.⁶

¹ See for example ICAC, *Investigation into the submission of false claims for sitting day relief by Angela D’Amore MP and some members of her staff*, 2010.

² Standing Committee on Parliamentary privilege and Ethics, *Inquiry into matters arising from the ICAC report entitled “Reducing the opportunities and incentives for corruption in the State’s management of coal resources,”* Report 2/55, July 2014. The Legislative Assembly recommended the establishment of an Ethics Commissioner for the NSW Parliament.

³ M Coultan, “Baird to appoint sheriff for MPs,” *The Australian*, 23/5/2014

⁴ Correspondence from the Premier to the Presiding Officers, dated 1 June 2016. Correspondence from the Presiding Officers in response to the Premier, dated 21 June 2016. Tabled in the Legislative Council – see *LC Minutes of Proceedings*, 22/6/2016, p 966.

⁵ See also for example Legislative Assembly *Hansard*, 7/5/2019, p 4.

⁶ “Mechanisms to Raise Concerns About Member Conduct,” 6/8/2020.

The Presiding Officers subsequently requested the Clerk of the Legislative Assembly, the Chief Executive of the Department of Parliamentary Services and me (the Department Heads) to come back to them with a jointly agreed proposal to establish a position of Compliance Officer. We provided a joint submission on 27 August 2020, attaching a draft resolution for the establishment by both Houses of a position of Compliance Officer, and a draft protocol for the investigation of complaints by the Compliance officer. Our submission indicated that:

The draft resolution and protocol are based upon the work undertaken for and with the then Presiding Officers in relation to a similar proposal in 2016/17. However, the following distinguishing features of this new proposal are noted.

- The position title is now Compliance Officer.
- The role of the Parliamentary Ethics Adviser is now separated, so as to remain a stand-alone position.
- The draft resolution document includes a proposed amendment to the members' Code of Conduct to include a requirement to treat "staff, each other and all those visiting or working for or with Parliament with dignity, courtesy and respect," thereby bringing bullying and harassment within the framework of the Code of Conduct and the jurisdiction of the Compliance Officer.

The following matters are also highlighted for your consideration:

- The draft protocol for investigations is very much a draft for guidance only – in fact paragraph 5 (a) requires the Compliance Officer, within three months of his or her appointment, to develop such a protocol for approval by the Privileges Committees and Presiding Officers.
- In view of the recommended amendment to the Code of Conduct for Members and the roles of the Privileges Committees, it is recommended that the privileges Committees be consulted in relation to this proposal.
- If the establishment of the position of Compliance officer is supported, it is recommended that the target date for the passage of resolutions by both Houses and an appointment be mid-2021, which accords with paragraph 4 (a) of the resolution.⁷

This joint proposal was conveyed to the Leaders of the two Houses in October. As is their prerogative, the Leaders of the Houses made some amendments to the proposal and motions were agreed to in both Houses in late November referring the proposal to the two Privileges Committees.⁸

⁷ Clerk of the Parliaments, Clerk of the Legislative Assembly, Chief Executive, Department of Parliamentary Services, "Resolution to establish the position of Compliance Officer," Memorandum dated 31/8/2020.

⁸ LA Votes and Proceedings, 12/11/2020, pp 931-934; LC Minutes of Proceedings, 17/11/2020, pp 1650-1656.

Some anticipated questions and issues

Whilst I understand there is support amongst Members for this proposal, I understand there are a number of points of detail that may be of particular interest to the Committee. The Deputy Clerk has passed on to me a number of your specific comments and questions. These are set out below with my responses.

Clause (2) (iii): The proposal for a Compliance Officer (as we know) has been developed from a model with a focus on misuse of entitlements and allowances. The inclusion of bullying, harassment (specifically including sexual harassment) and 'other types of grievances' requires a different set of considerations and likely a different skill set to address. I assume 'other types of grievances' would include homophobia, racism, and a myriad of other concerns. Investigating such concerns and proposing remedies is not the same as required for addressing an issue of overpayment of a travel expense. This is why I believe we need to seek submissions/s from suitable agencies that will help address this part of the terms of reference.

As outlined in the 2014 report of your Committee, the recommendation for the appointment of a Commissioner for Standards envisaged the investigation of complaints about the misuse of entitlements, inadequate disclosure of interests and other breaches of the Code of Conduct for Members. The 2014 proposal did not explicitly refer to complaints of bullying or harassment. So why does the proposal for a Compliance Officer now explicitly refer to and include these matters within the jurisdiction of the Compliance Officer? I would offer the following observations in response to this question.

Firstly, as outlined above, Members of the NSW Parliament are now calling for the appointment of person or body with the authority to investigate such complaints. 23 Members from both Houses wrote to the Clerk of the Legislative Assembly and me on 6 August 2020 requesting the establishment of a mechanism or process to handle and independently investigate complaints about "workplace bullying or inappropriate behaviour."⁹

Secondly, since 2014, widespread concerns have been raised about the incidence of bullying and harassment within a number of parliaments around the world. By way of example, the following reports have been produced since 2018:

- *Creating the Right Culture* (in the Welsh Assembly), Report by the Standards of Conduct Committee, September 2018¹⁰
- *The Bullying and Harassment of House of Commons (UK) staff, Independent inquiry report*, 15 October 2018 (the Cox report)¹¹
- *Report of the Joint Working Group on Sexual Harassment* (in the Scottish Parliament), December 2018¹²

⁹ "Mechanisms to Raise Concerns About Member Conduct," 6/8/2020.

¹⁰ National Assembly for Wales, Standards of Conduct Committee.

¹¹ Report by Dame Laura Cox DBE, appointed by the House of Commons Commission.

¹² Appointed by the Scottish Parliamentary Corporate Body.

- *Bullying and Harassment in the New Zealand Parliamentary Workplace: External Independent Review*, May 2019 (the Francis report).¹³

The first words of the (New Zealand) Francis report are: “Bullying and harassment are systemic in the parliamentary environment.”¹⁴ The Francis report goes on to outline a number of features of the parliamentary workplace that create risk factors for bullying and harassment. These include: “a high intensity culture” and “unusual and complex employment arrangements.” The report further states that “a core perceived problem is low accountability, particularly for Members, who face few sanctions for harmful behaviours.”¹⁵ All of the reports refer to the power imbalances inherent in the parliamentary environment as a major risk factor. Whilst the NSW Parliament does not appear to have the same *widespread* incidence of bullying and harassment as the parliaments considered in the reports listed above, it does share all of the risk factors that are reported to have contributed to widespread problems in other parliaments.

As Clerk I found the (UK House of Commons) Cox report both troubling and thought provoking, particularly its observations critical of the management of these issues by senior parliamentary officers. The Cox report specifically identifies the “deferential culture” towards Members, the “acquiescence of senior management” and the “institutional minimising of complaints” as factors that have created the environment in which bullying and harassment have flourished.¹⁶ After careful reflection I resolved to explicitly address bullying and harassment during the 2019 induction program for newly elected Members of the Legislative Council in April 2020 and at the seminar on the new Code of Conduct for Members later that year. The notes from which I spoke on both of those occasions are attached as Appendix One to this submission. Whilst I stand by the statements I made on those occasions, what was glaringly obvious to me in making them was that the absence of an established mechanism which gives someone the authority to investigate complaints about bullying and harassment means there is a real risk that such statements, and appeals to “the better angels” of Members, could easily ring hollow.

For all of those reasons, given the opportunity to put forward a proposal for a Compliance Officer at this time, the proposal now includes provision for the position to have jurisdiction in relation to bullying and harassment.

Assuming it is accepted that the Compliance Officer will have such jurisdiction, the question arises whether a person appointed to the role will have the skillset required to deal with all of the sorts of matters now included within the scope of the position, ranging from misuse of entitlements to bullying and harassment? The sorts of people appointed to similar positions in other Parliaments include:

- Former Judges¹⁷
- Former Ombudsmen¹⁸

¹³ Debbie Francis, sponsored by the Speaker of the House of Representatives.

¹⁴ *Ibid.*, p 7.

¹⁵ *Ibid.*

¹⁶ Cox report, p 17.

¹⁷ The current ACT Commissioner for Standards is former ACT Supreme Court justice the Hon Ken Crispen QC.

¹⁸ The current UK House of Commons Commissioners for Standards is Kathryn Stone DBE, most recently a Legal Services Ombudsman.

- Senior Lawyers.¹⁹

It may be that some of those categories of persons would have the requisite skills and experience to deal not only with complaints about misuse of entitlements and inadequate disclosure of interests, but also bullying and harassment. However, for the avoidance of doubt and to ensure the Compliance Officer has the resources required to deal with all of those forms of complaint, clause 5 of the proposed resolution gives the Compliance Officer the authority to engage the services of (other) persons to assist with or perform services for the Compliance Officer, including in the conduct of investigations. The only caveat that has been added to clause 5 is that such engagements must be “within budget.”²⁰

Clause (3): Does the term ‘harassment’ include bullying? Does it include concerns about inappropriate statements or actions in relation to racism, sexual orientation, religious beliefs or body image?

- Is it limited to sexual harassment as the commentary suggests?
- Does it covers complaints involving two Members? Can the Compliance Officer investigate a complaint where a Member feels they are being harassed by a staff member?

There are two reasons for the inclusion of Clause 3 which proposes a new provision be added to the Code of Conduct for Members. Firstly, it is hoped that the inclusion of the new Clause will have a salutary effect and impact upon the conduct of Members and help ensure the NSW Parliament is, as far as possible, a harassment and bullying free workplace. Secondly, the inclusion of the new provision in the Code of Conduct is the means by which the Compliance Officer gets jurisdiction to investigate complaints about such conduct.

The note in the commentary is also intended to form part of the amended Code of Conduct for Members (noting the Code adopted in 2019 now includes a number of similar notes and commentary). The purpose of the note is not to limit the scope of the content of the new Clause in the Code of Conduct (ie to limit it to sexual harassment only and not bullying). A “safe workplace” includes a workplace free from bullying, harassment and sexual harassment. Rather, the purpose of the note is to draw to the attention of Members the existence of section 22B (7) and (8) of the *Anti-Discrimination Act 1977* – a legislative provision of which few Members seem to be aware.

Having said that, it should be noted that the text of the proposed new Clause to be added to the Code of Conduct for Members as it appears in the resolution put forward by the Leaders of the Houses is different to that proposed by the Department Heads. Our proposed wording was to include a requirement to treat “staff, each other and all those visiting or working for or with

¹⁹ The current UK House of Lords Commissioner for Standards is Lucy Scott-Moncrieff CBE, former President of the Law Society.

²⁰ In putting forward the joint proposal for a Compliance Officer the Clerk of the Legislative Assembly, the Chief Executive of DPS and I have worked on the assumption that the person appointed would be part-time, on a retainer and would not have an office or staff. They would operate in these respects in much the same way as the Parliamentary Ethics Adviser, being available to deal with complaints as they arise. We are of the view that the Parliament could absorb the cost within the current budget. The addition of the words “within budget” to the end of clause 5 means the cost of any additional expert assistance engaged by the Compliance Officer will also need to be met from within existing resources, until such time as a budget is specified for the position.

Parliament with dignity, courtesy and respect.” These words are based on the Code of Conduct for MPs in the UK House of Commons (with the addition of the words “each other”).²¹ As is their prerogative, the Leaders of the Houses have proposed an alternative form of words which seeks to achieve the same end but in a different way. The Committee may wish to explore with the Leaders of the Houses the rationale for their proposed words. Further if the Committee feels there is any doubt about the scope of “harassment” covered by the proposed new Clause 10 of the Code of Conduct, the word “harassment” could be further defined (so as to make clear that it does include bullying and forms of harassment in addition to sexual harassment).

In relation to proposed clauses 2 and 3 you raise questions about the potential scope of the sorts of “other types of grievances” and the forms of “harassment” that may be the subject of complaints and investigation under the proposal as drafted. These are important questions. For many people the sorts of examples of issues listed in your questions about clauses 2 and 3 are very important and can no doubt form a part of very real and damaging bullying or harassment. At the same time no-one wants the appointment of the proposed Compliance Officer to lead to a proliferation of trivial complaints made and announced by the complainants for political purposes, or for such complaints to result in investigative processes and reports that lack credibility or support. I offer the following comments in relation to this issue.

The proposal as put before the Houses by the Leaders of the Houses includes an important safeguard in relation to all complaints and investigations by requiring the Compliance Officer to receive and investigate complaints *confidentially*. Further, clause 5 (b) of their proposal restricts the Compliance Officer to making a report “if, and only if, the Member does not comply with the order [for reimbursement of misused allowances] or accept the recommendation as the case may be, and the complainant consents to the making of a report.” Although this begs the question as to what sort of recommendations the Compliance Officer will actually be making in respect of a complaint of bullying or harassment,²² the advantage of this formulation is that it will provide an important safeguard against the potential misuse of the capacity to make complaints about bullying, harassment or other types of grievances. If this restriction on the reporting powers of the Compliance Officer ends up being unworkable, this would be a matter the Privileges Committee could come back to the Houses about after an appropriate trial period (perhaps at the end of this parliamentary term). However, it is probably better to start with a slightly restrictive approach to reporting and thereby reinforce confidentiality (as is proposed) at least until there is widespread confidence in the model and support for any such change.

Whilst clause 5 imposes confidentiality requirements on the Compliance Officer, in terms of which matters are reported on, there is currently nothing in the proposed resolution explicitly addressing confidentiality for complainants and Members. Without wishing to in any way inhibit the freedom of speech in Parliament of Members, in order to further safeguard against the potential misuse or weaponising of the capacity to make complaints, consideration could be given to including in clause 6 an *expectation* for Members to generally make and keep confidential such complaints, *except in exceptional circumstances*.

²¹ UK House of Commons, *The Code of Conduct together with the Guide to the Rules relating to the Conduct of members*, 8 January 2019, paragraph 18 (added on 18 July 2018).

²² For some ideas as to the sorts of recommendations that might be made in respect of bullying and harassment, see (UK) House of Commons Committee on Standards, *Sanctions in respect of the conduct of members*, HC 241, 14 July 2020, pp 28-32.

Clause (4): As the Chief Executive Officer is not identified as a decision maker in the appointment of the Compliance Officer, what is the rationale for having the CEO as the key decision maker in the process for the dismissal of the Officer?

You are correct to point out the anomaly of this provision as the Chief Executive of the Department of Parliamentary Services is not the employer of the Compliance Officer.

Clause 4 (b) could be omitted, leaving the circumstances in which termination is permitted to be set out in the contract of appointment. This is what occurs in relation to the Parliamentary Ethics Adviser – clause 12 of the contract between the two Clerks and the Ethics Adviser sets out the circumstances in which the Clerks may terminate the contract.

If clause 4 (b) remains, though, it needs to be amended to refer not only to the Chief Executive of the Department of Parliamentary Services but also the two Clerks, as each of us have an equal stake in all matters concerning this proposed position and should each be signatories to the contract for services and, in the unlikely event it were to occur, any dismissal.

Clause (5):

- (a) should the clause specifically note the development of protocols to deal with issues of 'harassment' in addition to those involving matters that might involve the ICAC?

Clause 5 (a) provides that the Compliance Officer shall, within three months of his or her appointment, develop a protocol concerning the handling and investigation of complaints, including the referral of matters between the Compliance Officer and the Independent Commission Against Corruption and other bodies. This is based upon the model for the ACT Commissioner for Standards, where the resolution of the ACT Assembly required the Commissioner to develop such a protocol within three months of appointment. A draft protocol has been prepared as a guide only and can be provided to the Committee if requested, but it has to be emphasised that it is only a draft.

Clause 5 (a) includes provision for the protocol to address the referral of matters between the Compliance Officer "and other relevant bodies." That allows for the protocol to include provision for the referral of matters to the most appropriate body in respect of "harassment" matters, but it would also be open to the Committee to recommend this be specified by adding the words "including the most appropriate body in relation to harassment matters."

- Can the parties including Members involved in any investigation have access to legal advice and representation? Who will pay for it?

The proposal and draft protocol are silent on the question of access to legal advice and representation. This is because the Compliance Officer is designed to provide for the expeditious resolution of complaints, ideally without the need for legal advice or representation. However, there is nothing to prevent this issue being explored in the protocol that is presented to the Privileges Committees by the appointee.

- Can the parties including Members involved in any investigation have access to representation by their union?

The proposal and draft protocol are silent on the question of access to representation by a union. This is because the Compliance Officer is designed to provide for the expeditious resolution of complaints, ideally without the need for such representation. However, there is nothing to prevent this issue being explored in the protocol that is presented to the Privileges Committees by the appointee.

- What appeal mechanisms are available to the decisions made by the Compliance Officer?

The current proposal does not include provision for an appeal mechanism.

The 2014 recommendation from your Committee for the appointment of a Commissioner for Standards included provision of a role for the Privileges Committee, along the lines of the UK House of Commons Standards Committee, for the Committee to consider any reports from the Commissioner which recommend sanctions.²³ Sanctions would then be determined by the Committee. That proposal also gave the Committee a gatekeeping role in relation to reports, as well as a de facto appeal mechanism role.

However, this role for the Privileges Committee was not part of the Legislative Assembly Committee's 2014 proposal for an Ethics Commissioner. Consequently, during all discussions about a potential model for such a position in 2016 and 2017 and in the concerted effort to come up with an agreed model in 2019, such a role for the Privileges Committee has not been further explored.

Should your Committee wish to receive the reports of the Compliance officer, as per the model recommended in 2014, this might result in the Legislative Council having different reporting framework to the Legislative Assembly.

- Do the investigative and decision making powers extend to Ministers?

Yes, there is no distinction in the proposal between Ministers and other Members of Parliament.

- Do the investigative and decision making powers extend to Ministerial staff when present at Parliament House?

The proposal does not provide for the Compliance Officer to be able to investigate complaints about staff, including ministerial staff. There are already existing mechanisms and authorities under which misconduct matters, including bullying and harassment, involving staff can be

²³ The arrangements in the UK House of Commons in respect of investigations and recommendations in relation to bullying and harassment have recently been updated. Whilst the Commissioner for Standards is responsible for conducting these investigations in relation to Members, the Standards Committee will not have any role concerning sanctions – this role will now be undertaken by an eight person Independent Expert Panel:

<https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/parliaments-behaviour-code/independent-expert-panel-appointed/>. The members of the panel were appointed on 25 November 2020.

investigated as disciplinary matters. However, if the question is about whether ministerial staff can be the makers of complaints, the answer is yes.

Clause (6):

- Can the Compliance Officer require the production of relevant documents and records from Ministers?

The proposal does not distinguish between Ministers and other Members of Parliament, so the answer is yes in respect of documents and records relevant to the investigation of a complaint by the Compliance Officer.

- Are all documents and records presented to the Compliance Officer considered privileged? Under what provision? Can another investigative agency require their production?

Clause 7 of the proposal deals with documents and records produced to the Compliance Officer. As records of the House, and to the extent the records of the Compliance Officer are sufficiently connected to proceedings in parliament, they would be privileged. The provision of documents between the Compliance Officer and the ICAC and other relevant bodies will need to be addressed in detail in the protocol to be developed by the Compliance Officer under clause 5 (a).

Clause (7): what is 'paragraph 12 of the protocol'?

This refers to the draft protocol, and probably should be omitted as the protocol will be developed by the appointee and approved by the Privileges Committees. (Paragraph 12 of the draft protocol deals with the referral of matters between the Compliance officer and the ICAC.)

Clause (12): suggest including 'to meet at least annually'

I agree that the Compliance Officer should be required to meet with the Privileges Committee at least annually.

I would be happy to elaborate on any of the matters outlined in this submission, or to respond to any further questions or issues, either at a deliberative meeting or hearing of the Committee if that would be of assistance. I am keen to assist the Committee in any way I can in relation to this matter, hopefully with a view to seeing a Compliance Officer appointed by the middle of 2021.

Yours sincerely,

 **David Blunt**
Clerk of the Parliaments

Appendix One

Extract from speaking notes – Clerk of the Parliaments

Induction Program for newly elected Members of the Legislative Council

17 April 2019

Bullying and harassment

It is no exaggeration to say that there are parliaments around the world that are tearing themselves apart now over the issues and incidences of bullying and harassment. My clerkly colleagues at the UK Parliament have observed that there is a “tsunami” of allegations of bullying and harassment about to hit the UK Parliament with a report on the treatment of Members’ staff to be tabled shortly. Here in NSW we have very recently seen a Leader of the Opposition resign. We have also seen members of both Houses the subject of investigations by their political parties, with a Member of the Legislative Council recently forced to stand down from his party’s ticket for the Legislative Council election. If one thing is most likely to prematurely end or at least taint your parliamentary career, or at the very least divert you from pursuing your real interests for substantial periods of time, it is an allegation of bullying or harassment.

As I said at the beginning of my presentation about the code of conduct, I do want you coming to see me for advice about parliamentary law and practice, not about how to resign, and it is important you know at the start of your parliamentary career exactly what the rules and expectations are in this important area.

Sexual harassment

There is no place for sexual harassment in parliament.

In 1997 the NSW Parliament enacted amendments to the *Anti-Discrimination Act* to prohibit sexual harassment. These amendments included specific reference to Members of Parliament and other workplace participants in Parliament. This definition includes your staff. Sections 22A and 22B of the Act are included in your materials. I specifically draw your attention to the definition of sexual harassment:

22A Meaning of “sexual harassment”

For the purposes of this Part, a person sexually harasses another person if:

- (a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or
- (b) the person engages in other unwelcome conduct of a sexual nature in relation to the other person,
in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

I also draw your attention to subsection 22B (7):

- (7) It is unlawful for a member of either House of Parliament to sexually harass:
- (a) a workplace participant at a place that is a workplace of both the member and the workplace participant, or
 - (b) another member of Parliament at a place that is a workplace of both members.

If a complaint of sexual harassment is made to the Anti-Discrimination Board, the Board will seek to conciliate the matter. If conciliation is not possible and the complaint is upheld by the relevant Tribunal a Member may be **personally liable** for the payment of up to \$110,000 in damages.

Bullying

I am sure you do not need me to tell you that politics can be brutal. In fact I have recently been reading the words of one of you, which has described modern politics in Australia as having "culture of distrust and mutual dishonesty." That book also quotes from an older MP advising a new member to always remember that "you are surrounded by assassins in here." There is a ruling from a former President that is quoted in the Legislative Council from time to time when proceedings get particularly robust, to the effect that politics is not an occupation for sensitive people.

Nevertheless, what I observe in the chamber and committees is that most Members of the Legislative Council usually act towards one another with a fair degree of courtesy and consideration. The President and Deputy President uphold order in the House to ensure a level of civility during even the most controversial debates and will not tolerate attempts to disrupt proceedings or prevent a member, no matter how unpopular their view, from being heard. If a member is going through a personal crisis, most members will support that member, or at least give them space, regardless of their political allegiances. Members of the Legislative Council do also find ways of working with one another across the chamber that is not seen in the lower house, which to quote the Deputy President, is "more (politically) tribal."

In October 2018 Dame Laura Cox produced a report tabled in the UK House of Commons into the Bullying and Harassment of House of Commons Staff in Westminster. You have a couple of extracts from her report in your folder. I would draw your attention to the list of forms of bullying behaviour endured by parliamentary staff in Westminster on pages 63-64:

160. The behaviour alleged by members of House staff included the following:

- frequently targeting a member of staff with personal abuse;
- constantly criticising or making derogatory remarks about their work;
- shouting or speaking aggressively at staff, and often junior members of staff, for not doing something they wanted, or not doing it sufficiently quickly;
- telling them they are useless and humiliating them in front of others;
- taunting, mocking or mimicking them;
- deliberately belittling them in front of other Members;
- making offensive personal comments about their appearance or perceived characteristics, or questioning them repeatedly about their personal life;
- using offensive or discriminatory language about other staff or MPs;

- challenging the staff member's authority if asked to follow a particular procedure or rule;
- belittling someone's junior status;
- obstructing staff from properly carrying out their job;
- imposing wholly unrealistic and inefficient work demands or deadlines;
- questioning their annual leave entitlements or telling staff to remove themselves from contractual rotas/responsibilities or from scheduled training courses;
- suddenly holding unscheduled meetings or making new demands at a time when they knew that staff had to leave because of childcare commitments, and in a way that was described as "poisonous, vindictive and deliberate;" or
- repeatedly subjecting them to lengthy and humiliating tirades of criticism and abuse in front of colleagues.

I am pleased to say that, with the exception of point three ("shouting or speaking aggressively at staff"), I have not personally witnessed any of these forms of bullying of parliamentary staff from Members of the Legislative Council in the 23 years since I moved from the staff of the "other place."

The Legislative Council is not that sort of place. Parliamentary staff, including the staff of the Legislative Council, treat all Members with courtesy and respect and are strictly non-partisan. Members of the Legislative Council treat the staff of the Department of the Legislative Council with courtesy and respect. Any member who does not do so soon stands out. Although we are here to support you and seek to provide an excellent level of service we will not always give you the advice you want to hear – but the advice we provide will always be consistent and provided respectfully. If you do not receive the support you expect in a timely fashion or it is not up to a standard that you require – I want to know about it, or in the case of DPS matters, Mark Webb will want to know about it. What neither of us want to hear about though is parliamentary staff being spoken to disrespectfully. (This is exceedingly rare for Department of the LC staff to experience. Unfortunately it does happen from time to time to DPS staff, particularly those dealing with things like members' entitlements, HR and also security. On their behalf I would ask that you and your staff always treat the staff of DPS with the same courtesy you treat as the Legislative Council staff.)

As stated in the LC Members' Guide at page 17, "Parliament is a harassment free workplace and all those working here should treat each other with respect."

Perhaps the biggest risk you face in the area of bullying and harassment is your own office arrangements. Your relationship with your staff will be critical in determining the sort of experience you have as a Member. Your staff know everything about you. It is an unusual office arrangement – you and just one, or in the case of cross bench members, two, staff. If your principal place of residence is outside of Sydney, your staff will be working alone in the office under your remote supervision for periods of time. My advice to you is to choose your staff very carefully and not agree to employ someone simply because someone in your party is expecting you to do so. Also to select someone who will be able to resist coming into conflict with Members or staff from other political parties (or your own party).

The most important advice I can give you, though, is to never bully or harass your staff and never act in a way that could even be remotely interpreted as bullying or harassment.