

**Submission
No 7**

INQUIRY INTO REVIEW OF INDEPENDENT COMPLAINTS OFFICER SYSTEM (2023)

Organisation: Parliamentary Ethics Adviser

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The Honourable Stephen Lawrence MLC
Committee Chair
Legislative Council Privileges Committee
Parliament House
SYDNEY NSW 2000

Inquiry into Independent Complaints Officer System 2023

Dear Stephen

1. You have invited me to make a submission to the Committee on the Independent Complaints Officer (ICO) establishing resolution of June 2022 and consequent ICO protocol of November 2022.
2. I make the following comments on some of the matters raised in the Issues Paper.

Parliamentary privilege

3. Page 3 of the Issues Paper and discussion questions refer to parliamentary privilege.
4. I feel that some of the problems of the ICO system and protocol relate to the wording of the June 2022 resolution which set out the powers and purpose of the ICO. Some paragraphs are too wordy rather than topics being dealt with in separate paragraphs.
5. There are other drafting aspects of the establishing resolution that I would like to see corrected. For example, the sequential numbering of all paragraphs to allow for easier citation and paragraph numbering instead of the use of dot points.
6. The wording of some paragraphs is confusing and could be better expressed in plain English, such as, the use of “Standing” rather than saying “Who may lodge a complaint?”
7. In particular I feel paragraph 2 of the establishing resolution could be better worded. The use of wording that the ICO “may receive and investigate complaints” of specified matters “not related to conduct in proceedings....” is contradictory.

8. I would redraft the paragraph to specify:
 - (a) the matters that the ICO can investigate – breaches of the Code of Conduct, paragraph 2 (a) (i), (ii) and (iii) and bullying, harassment, and inappropriate behaviour by members.
 - (b) that the ICO must not investigate complaints:
 - (i) involving proceedings in the LC or LA Parliament or a Committee of either or both Houses, or
 - (ii) involving conduct that is a breach of the NSW Ministerial Code of Conduct.
9. There is a useful definition of what encompasses proceeding in Parliament in section 16 (2) of the Parliament Privileges Act 1987 (Commonwealth).
10. I would also include a provision in the ICO protocol that the ICO may consult with the Clerk of the relevant House and the Parliamentary Ethics Adviser (PEA) on complaints which may involving “proceedings in Parliament”.
11. The issues paper at paragraphs 1.15 – 1.19 refers to the need for a procedure to determine complaints involving “proceedings in Parliament”.
12. I suggest that, where a complaint is made that appears to involve proceedings in Parliament, the ICO must refer the matter to the Presiding Officer of the relevant House who will determine whether or not the matter involves a proceeding in Parliament and provide written advice to the ICO as to whether or not the complaint may be investigated.
13. A member, the subject of a complaint, may similarly choose to request the Presiding Officer to decide.
14. I am not in favour of the ICO independently obtaining legal advice on complaints involving “proceedings in Parliament”. If doubt arose following consultation with the Clerk of the relevant House and the PEA then I believe that the Clerk of the House should obtain legal advice.
15. I would be happy to expand on my views on the discussion questions in a meeting with your Committee.

Investigations involving potential corrupt conduct.


16. Page 5 of the Issues Paper discusses investigations of corrupt conduct.
17. I believe that where the ICO forms the opinion that a matter may involve corrupt conduct, the establishing resolution could set out a procedure allowing the ICO to report the conduct to the ICAC and refer any information obtained in the course of an investigation.
18. The present system is cumbersome, and a complainant may be reluctant to lodge a complaint with the ICAC, whereas the ICO may have obtained information that is not available to a complainant.
19. Further, should the ICAC determine that conduct is not a substantial breach of a code of conduct and refer a matter back to the ICO for investigation or other action, the ICO have authority to deal with a matter referred to the ICO under section 53 of the ICAC Act.

Other matters

20. Clause 37 of the ICO protocol requires the ICO to provide quarterly reports to the Privileges Committees. I would suggest that the complaints should be itemised under the relevant House.
21. I would also suggest that like the PEA the ICO should also provide an annual report to both Houses outlining for each House the subject and number of matters investigated and outcome.
22. In matters involving a breach of the disclosure regulations by a member, it would seem to me that in any report of the ICO to the Privileges Committee of the relevant House that the name of the Member should also be confidentially reported to the relevant Committee.
23. The PEA is required to include in the annual report the number of hours spent in the course of duties and perhaps the same requirement should apply to the ICO.

24. I would be happy to meet with your committee to discuss the various questions in the Issues Paper.

Yours faithfully

 John Evans
Parliamentary Ethics Adviser