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LAW REFORM COMMITTEE

Inquiry into review of the Members of Parliament (Register of Interests) Act

Melbourne — 29 June 2009

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Associate Professor K. Coghill, Monash University.

The CHAIR — Thank you very much for coming to talk to us, and thank you very much for your submission. There are two: the one you originally lodged with PAEC, and also the paper which you have circulated today. We have about 45 minutes. Just before I go through the preliminaries and hand the floor to you, I am sure you are aware that this hearing is operating under the Parliamentary Committees Act and under the Defamation Act, and that you are afforded parliamentary privilege in the context of this hearing. Hansard is recording the discussion, and you will be provided with a copy of the transcript subsequently. You can make minor changes to it as you see fit. Having said that, I will hand over to you and then, as you know, we have a series of questions.

Assoc. Prof. COGHILL — Thank you very much, and thank you for the opportunity to appear before the committee. I will speak to the presentation which I have prepared and which has been made available to you.

I think the first thing to say is that I am really here in two capacities which — happily — coincide: firstly, as an academic from Monash University, where my area of teaching and research is very relevant to this inquiry; and secondly, as a member of an Accountability Round Table which is an informal NGO, not incorporated, which includes former parliamentarians, academics and others with an interest in the integrity of the parliamentary system and in accountability in particular.

I will turn to a number of the matters which have been raised in other submissions and a number of matters which I want to raise myself. I will first make a very general point about the Westminster system. There was a little discussion of that with the previous two witnesses. I think the first question that has to be asked about that is: which Westminster are we talking about, because what we have here in Victoria now is very different to what is at Westminster now, and certainly it is very different to what existed at Westminster at the time when this Parliament was created in 1856.

I think it is also important to recognise that there are other parliamentary systems. There are some significant differences between most Westminster system parliaments and a number of other parliamentary models. For example, the Scandinavian ones operate on a significantly different basis. Just to give one small example, it is a legacy of the Glorious Revolution in Britain that these parliaments — the Westminster parliaments — rely on a governor's message for the right to introduce any legislation which has taxing or expenditure implications. That does not apply in some other parliamentary systems. It is a fairly fundamental constitutional point which just emphasises the differences.

I think another really important difference which is relevant to this inquiry is that in many parliaments in Europe you would find that instead of having one presiding officer, or one and a deputy, they have a presidium which has a responsibility for the overall running of the house. That presidium will be chaired by the presiding officers — speaker or president — but will then have deputies who are representative of the other parties represented in the chamber, and they have very significant responsibility for the scheduling of debate and those sorts of things.

I turn to the register of interests. As was pointed out by an earlier witness, this is about interests which members might have; it is not about wealth, and I think that is proper. It should be about what are the factors which might influence a member improperly in the discharge of their duties. Some of the things that can involve go beyond the formal limits of family members. If I can just draw on my own personal experience, after the death of my father I became an executor of his estate. I chose to declare all the assets of the estate in my declaration of interests. Not everyone does that, but I felt that it was important that I do so. I felt it was caught by the spirit of the act if not by the letter of the act.

When it comes to the issue of the level of disclosure, I believe that full disclosure should mean what the words say. It is clear from Brendan Donohoe's submission, for example, that there are cases where members are not making that full disclosure. Having said that, though, I think there are very legitimate grounds for protecting the privacy of members' residences and their families at those residences. I do not think we should ever get to the stage where a member's residence within a street — if the street is named — can be distinguished by the security measures which are present and extraordinary at that house but not at other houses, and yet there is a danger of that happening.

One thing that is not covered in the act at the moment which I think is worthy of consideration is how blind trusts should be handled — for example, if a minister decides that rather than continuing to administer a

portfolio of assets he or she will place them under the control of a blind trust. It seems to me that in those circumstances it would be inappropriate for that member to provide a detailed list of the assets administered by the blind trust; clearly it would be inconsistent. But it would be appropriate for the member to disclose that there was a blind trust that was operating his assets. The question then, which I do not have an answer to, is whether the blind trust should be required to make a disclosure and, if it is required, whether that should be public or should be something which is available to the officers of the Parliament but not to the public. I do not have an answer to that, but I think it is something that is worth consideration.

As to the disclosure of interests held by family members, to my mind it is important to recognise that to a limited extent family members are already public figures. If a member takes a child, spouse or the entire family to an event which he or she is attending as a parliamentarian, then that is already compromising the privacy of the family member or family members concerned. I think that needs to be kept in mind. Members cannot be too pure about it and say, 'In respect of material interests I should not be required to disclose the assets of my family members, but in other circumstances I am going to allow my family members to have a public role which only exists because I am a member of Parliament'.

As to the frequency of disclosure, very properly in corporations law we have a requirement for continuous disclosure of the interests of listed companies. I believe there is no logical basis for the holdings of members of Parliament to be treated any differently, and I would suggest that members should be required to maintain an up-to-date register with any change notified and updated electronically within not more than 28 days. Of course that implies that there should be an electronic register which is on a public website. I think the security matters are quite easily addressed. I do not believe there is a significant problem there. If there was a significant problem, we would have members' personal home pages being continuously hacked and distorted, and I do not see any evidence of that happening.

As to the penalties which might apply, my suggestion — building on Dick de Fegely's submission — is that this is a matter that should be dealt with initially by the presiding officer, and the presiding officer should be able to receive evidence from any source and to investigate evidence of a breach of the act using reasonable inquiry and affording the member natural justice — in other words, an opportunity to refute the allegation that has been made. If after that due inquiry the presiding officer is convinced that the member has not made the full disclosure required, then the presiding officer should have the right to name the member in the house and for the member to be suspended from the service of the house until the public record has been corrected. It strikes me that a $2000 penalty is neither here nor there, but there would be a very strong message from the liability to being suspended from the service of the house. That is one suggestion for the committee to consider.

I have a number of comments about donations and gifts, which I will not repeat here. On the matter of ethical principles and the establishment of a more ethical culture, it seems to me that what is really important is the sorts of attitudes facilitated by training which might develop within each chamber. I see that the cultures seem to vary between chambers.

In our international research looking at the training provided for members, about half of the parliaments which have responded to our survey regard training and handling ethical issues as an important part of their training program — the others do not have it. To my mind there is a very strong case for including it as a strong element in the induction and training provided to members of Parliament, as is the case in Queensland as a consequence of the events there in the late 1980s and early 1990s.

The sorts of cultures which can evolve can be quite different to what we see here in the Victorian Parliament. I will just give one example — that of question time in the Danish Parliament. I happened to sit in there once, and it was a very quiet, orderly affair compared to what we see in the Victorian Parliament. In fact, not all of the members were in the chamber. It would be fairly unusual to find any member missing question time here, such is the theatrical nature of question time here. But in Denmark it seemed to be a genuine inquiry for information, which was provided in response to questions. That is not necessarily the case here in Victoria.

But having said that, it remains absolutely and fundamentally important to good governance that there is a contest of ideas and that there is a contest around the competence or otherwise of the government in carrying out its administration and implementing policy. Whilst we may wish to get away from a highly adversarial manner of addressing policy and addressing the government's performance, it remains fundamentally important

that there is a contest of ideas and that there is a contest about the competence of the government in carrying out its public responsibilities.

Having said that, it strikes me that it is really important that there is a set of principles adopted really by each house which, in the opinion of the house, are the principles which should be observed by each member of Parliament. I have given examples here from both Queensland and the UK of what those might be. But I think the really important thing is for this Parliament to develop and adopt its own ethical principles rather than some other body being regarded as the source of all wisdom and its principles simply being adopted holus-bolus.

As to the guidance available to members, it seems to me that it is really important that there is an independent officer of the Parliament, in addition to the expertise available from the clerks, to advise members in this area — in much the same way as with the integrity commissioner in Queensland. One of the important distinctions I would make between what I am advocating and what the clerks have put in their submission is that this is not simply a matter of what the legal position is in regard to declarations of interest or any other matter; it really goes to what the right thing to do is — what standards ought to prevail — rather than what the black-letter law is which members have to conform to.

To me the great advantage of an integrity commissioner model — which I have called a parliamentary standards commissioner, taking the UK terminology — is that that person is available as an independent officer of the Parliament to provide specialist expertise. They may not be a permanent, full-time paid official, they may be available on a retainer, but it would be really important that they enjoyed the status of being an independent officer of the Parliament bound to no-one but the best interests of the Parliament in the advice which they provided.

I think those are the main points that I wanted to highlight out of the submission that I presented today. I would be very happy to respond to it in terms of comments.

The CHAIR — Thank you for that. To start off can I go back to the code of conduct. What we have heard this morning is that we have a number of models for how we might put together a code of conduct. Our own electorate officers' code is an immediate example. We have also heard that in itself it does not do any good; it has to be contexted and aimed towards a cultural shift of some sort, and then interpolated into that is the issue about training.

This morning we have heard from the Speaker that in the case of electorate officers, not many of them turn up, and we have heard from the clerks about the induction program for new members, that it is not bad, but subsequently not really worth it. I put the question this morning: could we in some way mandate that and increase the urgency and the importance of members participating in that? Having said all that, we still get to a situation where we end up having a document that does not get legs. How might we effect that transition?

Assoc. Prof. COGHILL — It is interesting that you raise that. Part of our international research has been to ask the question of whether or not the training provided — this is in national parliaments — was compulsory or mandatory. We were in fact a little surprised to find that in half of the responding parliaments it was mandatory and — surprise, surprise! — the attendance was close to 100 per cent, whereas for those parliaments in which it was not mandatory, the attendance at sessions was anything from 10 up to about 60 or so per cent.

It strikes me that there is good international precedent for making it compulsory, and I would expect that with very little encouragement from the political parties, that could be achieved and a very high level of participation could be achieved.

The CHAIR — Just a follow-up question from that, in that sample of where there was high attendance and participation, from your research is it discernible that there is a difference? Is the culture shifting, or is it about ticking the box — 'We've done our hour' or, 'We've done our 2 hours; let's forget all about it and get back to the real world'.?

Assoc. Prof. COGHILL — At this stage of our research we really cannot answer that question. The research that I have quoted was a survey. We are going to follow up over the next couple of years with interviewing members of Parliament and a range of national parliaments and also the parliamentary officers responsible for providing training. We are keenly looking to see what effect that might have had.

Mr CLARK — I want to follow up on some of the things you say on page 4 of the submission you have given us today. Near the top you rightly refer to 'pecuniary or other interests', with an emphasis on 'other' — of members' own or another political party. The question is: how do you go about acquiring disclosure of these other interests?

In your recommendation you have focused mainly on beneficial private interests, but you then get into a range of other entanglements — for example, former trade union membership or membership of other bodies, to the extent to which you are beholden to an outside body for support in preselection or what have you. How do you go about or do you attempt to go about requiring and regulating disclosure of those sorts of interests?

Assoc. Prof. COGHILL — I think the really important thing is to change the culture so that it becomes a matter of standard practice, the norm of behaviour, rather than thinking that you can achieve your objective simply by writing more and more detailed, prescriptive regulation. I do not have a simple answer in terms of some regulatory provision, but what I do place great reliance on is measures to enhance the cultural norms which operate within the Parliament as a whole and in particular within the cabinet of each individual government.

Mr CLARK — If I could follow on from that, I think that is a very laudable objective. Later on you refer to the Nolan Committee principles, implicitly with support for them. One of those relates to honesty. But again when you look at the detail, that is only about a duty to declare private interests and conflicts; it does not extend, for example, to urging or compelling members not to engage in misleading and deceptive conduct in the way they conduct themselves as MPs.

I suppose I am asking two things: how far can you go in mandating these things? And then, what do forms of words achieve in the end? I suppose by way of analogy you may or may not know that in recent times the Assembly's standing orders have been amended to require that answers to questions be direct, factual and succinct. I think it is fair to say that is generally observed in the breach rather than the compliance. How far can words go, and how do you go about promoting that ethical behaviour to which you rightly refer?

Assoc. Prof. COGHILL — I think if this Parliament were to adopt some variation of the Nolan Committee principles, it would be important to expand the narrative beyond the particular text that is in my submission so that it is very clear to the members that it is intended to have a much wider remit. But again, the really important thing is changing and developing the culture so that it discourages deceit, misleading conduct and what have you.

That has reminded me of one thing I should have said, and I will just revert, if I may — that is, my understanding is that in the recent United Kingdom case there was some advice provided by parliamentary officers which parliamentarians relied on, which was subsequently found to have been flawed. I think that just emphasises the risks of leaving these matters subject to the advice by the clerks or people operating under the clerk's authority; whereas if there is an independent officer of the Parliament, it is less likely that he will get it wrong.

Mr CLARK — You could say there is a UK parliamentary standards commissioner and yet the UK has still got itself into all sorts of problems?

Assoc. Prof. COGHILL — Yes, and I certainly hope that they learn and that we can learn from that.

Mrs KRONBERG — I am very interested in the example of the UK standards commissioner. Can you comment on the background or experience or relationships of such a person?

Assoc. Prof. COGHILL — Of the individual holder of the office, do you mean?

Mrs KRONBERG — Yes. What would seem to be optimum for them at that time when that appointment was made?

Assoc. Prof. COGHILL — I do not have information about how the individual holders of that office have been selected, I am sorry.

Mrs VICTORIA — You have said in your submission that a five-year cooling off period might be a good idea for members of Parliament to be able to take up outside positions on boards or in consulting roles,

especially if they have held a position as a minister. I think South Australia has a two-year period; is that right? I am just wanting to know how it is that that is administered and, if they break that, who are they then responsible to? What are the ramifications of taking on a position if it is a five-year cooling off period that you are suggesting?

Assoc. Prof. COGHILL — I suppose part of the reasons for your question relate to the five years as distinct from the two years. Quite frankly, I have put that as an ambit claim. I think that it should be more rather than less. As to how it might be policed, that is not an easy thing in practical terms once they have left the Parliament, clearly. But I suppose one way of enforcing it would be to deny government contracts to those who are using the services of that individual. It is pretty harsh on the people who are using those services; nonetheless, that is one way that is likely to be pretty effective.

The CHAIR — When we were discussing with professors Costar and Given about the broader context, and you have touched on that in terms of the culture, Professor Costar talked about the role of political parties in this. I raised the question about the role of the media. You yourself talked about the attention given to question time that is out of proportion to other kinds of activities that go on in the Parliament. There is also the role of schools, your own institution, the kind of work that it does. Could you talk about that a bit and the role of those various institutions and activities in our society that might have bearing, and how we might work more positively in those other areas to try to get some leverage and some improvement within the specifics of the Parliament?

Assoc. Prof. COGHILL — With all due respect to Professor Costar, having regard to my own experience as an elected member and now a rank-and-file member of the Australian Labor Party, I do not have a lot of faith in the capacity of political parties to initiate such reform unless there is an incentive in it for them to do so. To my mind that incentive has to come from the leadership of the Parliament.

If it becomes obvious to the political parties that the people who are going to succeed in Parliament are the people who behave more ethically, then there will be an incentive for the political parties to preselect and support candidates whose conduct is apparently of a higher ethical standard than other candidates seeking preselection. That in turn may lead those candidates and political parties to actually introduce their own training regimes or other ways of encouraging that sort of conduct among candidates seeking preselection.

The media, I think, is quite different. What I have previously advocated is that the Parliament itself really should develop a closer relationship with the media. In my view there is a role for the Parliament through the presiding officers to be quite proactive in drawing attention to the things the Parliament is trying to achieve and the standards which it is trying to have observed amongst its members.

I would hope that would include a type of induction program and, following that, a fairly constant liaison with members of the parliamentary press gallery so that they remained familiar with the ethical and other issues concerning the Parliament and were, in the very least, conscious of those matters in their reporting. It is certainly my observation that a number of prominent commentators in the media in fact spend very little time and maybe have never spent very much time in the Parliament and have very little knowledge of how it actually operates or of matters such as the ethical conduct and conflict of interest, register of members' interests and the like.

Mr CLARK — Could I ask about your recommendations about having a parliamentary standards commissioner? There are several aspects. First of all, you recommend the commissioner would both provide advice and investigate complaints. The question is whether you think those two roles are compatible.

More broadly, you suggest that person be an independent officer of the Parliament, which makes sense — similar to the Auditor-General and Ombudsman. You may be aware the PAEC in the last Parliament recommended that the electoral commission, the Ombudsman and the Auditor-General be made independent officers to the Parliament on a similar basis, each reporting to their own committee.

My concern about a parliamentary standards commissioner on their own is it would be a relatively narrow role and whether you would be better off having instead a general anticorruption commission which would play a role, being a standards commissioner for MPs as well as investigating other potential corruption across the public sector. Do you have any views on that proposition?

Assoc. Prof. COGHILL — There are two things there. Firstly, this submission does not propose an investigative role for the parliamentary standards commissioner, whereas in my previous submission to the PAEC I have proposed that, but I have been persuaded by the arguments.

Mr CLARK — Yes, I see it here, page 7.

Assoc. Prof. COGHILL — That is the first point. What was your second point?

Mr CLARK — Whether or not instead of having a freestanding Parliament we should have the establishment of an anticorruption commission.

Assoc. Prof. COGHILL — I think they are two separate things, and it really goes back to the issue of who should have the investigative power. In my view, the standards commissioner would be an advisory role and should be freestanding as an independent officer of the Parliament. As to the investigative role, it is certainly my view, as my colleague Associate Professor Lewis has argued very cogently, that it is appropriate for there to be an independent anticorruption body in Victoria with the capacity to inquire, including of its own motion, into allegations of corrupt behaviour by any person.

The CHAIR — Thank you very much, Professor Coghill, for your time and your contribution. You will get the Hansard transcript, and we may well contact you for any further information if we need to.

Witness withdrew.