# CORRECTED VERSION

## LAW REFORM COMMITTEE

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

Melbourne — 29 June 2009

Members

Mr C. Brooks
Mr R. Clark
Mr L. Donnellan
Mr M. Foley
Mrs J. Kronberg
Mr J. Scheffer
Mrs H. Victoria

Chair: Mr J. Scheffer
Deputy Chair: Mr R. Clark

Staff

Executive Officer: Ms K. Riseley
Research Officer: Ms S. Brent
Administration Officer: Ms H. Ross-Soden

Witness

Ms E. O'Keeffe, director, Transparency International Australia.

**The CHAIR** — I think we might make a start. Elizabeth O'Keeffe, thank you very much for coming this afternoon. We have just a couple of preliminaries. This hearing is covered by parliamentary privilege which is afforded to us under the Parliamentary Committees Act and the Defamation Act. That basically means that for anything you say in the confines of this hearing you are provided privilege to protect you, but if you say the same things outside of this hearing, then you will not be afforded that protection. Hansard staff, as I indicated, will be recording our discussions, and you will be provided with a transcript of that. You can make some minor changes to that, but obviously you cannot change the substance. We have just under 45 minutes. We have got some documents that you have put together that our researchers have provided us with, so we have a little bit of background, but we will leave it open to you to talk to us about the act and your views on it; then we have got some questions on our list and there may be some others that fall out of the comments you make.

**Ms O'KEEFFE** — I have some preliminary comments. I will be quite brief, I hope, in relation to those. I do want to say a bit about Transparency International Australia itself and then talk a bit about the Act and express some views about that. Transparency International, the global organisation, is essentially a global civil society organisation that leads the fight against corruption. It basically tries to put people together in coalitions to help to bring an end to the burden of corruption on men, women and children all around the world.

It has grown from quite a small group. It started in the 1990s. It is now quite an influential NGO. It has got chapters that operate in about 100 countries. Basically what it has done is bring corruption to the forefront of political debate, we think. TI Australia is an affiliate of Transparency International. Essentially we take up our operating principles from those of the international organisation, so we work with government, business and others to promote accountability, transparency and good governance in business and government.

We publish an annual corruption perception index, which is widely publicised and followed, and also a bribe paying index. In Australia we have worked quite closely on a couple of initiatives: one is called Publish What You Pay, and the other is called Whistle While You Work. Within Australia what we tend to do is to work on increasing transparency and strengthening integrity systems at federal, state and local levels. In particular we focus on initiatives in relation to whistleblower protection, disclosure of interests, freedom of information and effective implementation within Australia of UN and OECD conventions on corruption, and also on promoting awareness of and support for anticorruption instruments and integrity systems.

We also have another quite strong strand of activity in relation to the Asia-Pacific region. There we are trying to support the effective implementation of anticorruption initiatives. There we are looking particularly at what the federal government is doing via AusAID. AusAID has a very strong anticorruption policy. We help to implement in the region, I guess, initiatives around particularly corruption in forestry and other resource sectors through building program partnerships, strategic alliances and things like that.

Turning to Australian and national integrity systems and TI's work in relation to that, in 2005, working with Griffith University, TI published a report on Australia's national integrity systems assessment. That document has a number of recommendations in relation to parliamentary leadership and integrity and accountability. That is really, if you like, the basis of the comments that we will make today.

Essentially the report — and it is dated 2005 — noted that there is a lack of effective ethical standard-setting and enforcement regimes governing parliamentarians and ministers. My own comment, or our comment, would be that of course that has got better over the years, and one looks particularly to the commonwealth and the activities that have occurred there over the last couple of years — the minister for integrity, codes of conduct for members of Parliament, a register of lobbyists, reforms to FOI legislation, strengthening whistleblower protection and things of that kind. These developments are quite important.

The report says that in relation to jurisdictions with disclosure regimes for ministers and parliamentarians the issue is really the lack of any effective implementation or enforcement capacity. The report gives examples of enforcement capacity, the obvious one being the establishment of an independent parliamentary standards commissioner to investigate alleged breaches of codes of conduct, or giving those sorts of powers explicitly to an integrity agency. Of course in Victoria I think that would be seen as the Ombudsman at the moment.

Finally, the report suggests that traditional arguments of parliamentary accountability through the ballot box and scrutiny from electors and through the media are not adequate to ensure integrity. Basically the report takes the

view that the ability of MPs to gain independent ethical advice only works if the failure to seek that advice and to act on it has significant consequences through a subsequent investigation for a breach.

I will talk just briefly about codes of conduct and then about disclosures, if I could. Essentially, as I said, the issue is around a lack of any effective enforcement or implementation capacity. There are some jurisdictions which have independent ethics advisers, but they do not have an investigatory or an adjudicatory role. The report recommends some new base standards in integrity regimes, which also — I thought quite interestingly — included a restoration of effective accountability of the executive government to Parliament through boosting the independence of the authority of Parliament's presiding officers, through having parliamentary authority over, if you like, a kind of gazettal of codes of conduct, and also through the parliamentary appointment of an independent parliamentary standards commissioner.

The report says that statutory codes must include, at a minimum, restrictions and disclosure requirements about secondary employment and other non-official interests — and I noted with interest the discussion about secondary employment with your previous witnesses; post-separation and post-retirement employment of ministers in particular; abuse of parliamentary privilege; abuse of cabinet privilege in relation to documents requested under FOI; and, finally, honesty in public statements.

There are some quite specific recommendations in the report. Do I assume that you have those or that you will have access to them? As you are nodding, I will not need to read them into the record. But the point I will make is that there is an assumption that there would in fact be two positions rather than one: there would be a parliamentary integrity adviser, who would have the role of advising, of providing confidential advice and of being the registrar and the publisher of information and summary information in relation to disclosure of interests; and then there would also be a parliamentary standards commissioner, which would be an independent body whose terms of appointment would much more resemble those of, say, the Ombudsman or the Auditor-General. The person in that position would have the ability to investigate allegations of breaches because of a complaint or on their own motion and to make recommendations to, initially I think, a privileges committee of Parliament and to the Premier or Prime Minister of the day, and then subsequently, if deemed necessary, in a more public report to Parliament and the public.

I want to turn now to disclosures of interest. Basically the report is premised on citizens' rights to know about interests and issues that could reasonably be expected to influence the conduct of officials, including MPs. The report notes that requirements for disclosure of material personal interests are now pretty much standard. However, the report concludes that there is growing evidence that these systems are fundamentally ineffective because, although they require technical compliance with disclosure obligations, like lodgement of returns or completions of registers, in ways that may encourage MPs to avoid conflicts of interests, they do little to make sure that citizens or affected persons are informed of these things at an opportune time. The example the report gives, which I know is not relevant to today's hearing but which is still interesting, is in relation to electoral contributions, which are typically not disclosed until after an election is over. The report basically takes the view that citizens are casting their votes based on incomplete knowledge. It recommends, picking up on the corporate sector's obligation of continual disclosure and applying it to the disclosure of interests by MPs using modern IT systems.

They are the general outlines, of TI's views on these matters as set out in this report. I would prefer to now conclude this statement and have questions and answers and discussion rather than statements.

**The CHAIR** — I will start off. In your presentation you talked about having two positions — one being an integrity adviser and the other one being a parliamentary standards commissioner. We may not need to go into the actual technicalities of how that might be, but what has been observed by earlier witnesses is — the clerks, in fact, told the committee this — that over the last 30 years, I think it has been, since the act came in there have been only two cases of breaches of privilege and neither case proceeded because they were unfounded. The conclusion was that generally things are going on quite well and that parliaments, such as the Victorian Parliament, would not really need to appoint a full-time officer or to go to that kind of expense, as that would be a much smaller scale activity. Would you agree on that kind of course? The way you are talking, the inference is that there is sort of a major problem here, but the other evidence we have received and I guess our own experience is that it does not seem to be in that class.

**Ms O'KEEFFE** — Yes. I think we have to remember that this was an Australia-wide report which dealt with both the commonwealth and states in particular. I suspect that what happened was that the report took the worst possible situations and identified ways of dealing with those. Having said that, I think it is a bit chicken and egg. In other words, I think it is probably not wrong to say, 'Look, things may not be terrible', or 'There might be many, many breaches that we just do not know about'. Having said that, it is probably quite important that members of Parliament have access to very expert advice on what constitutes unethical behaviour.

The other comment I would make is that I think these issues are interlinked. Depending on what a code of conduct covers, it may well have a bearing on the kind of advice that members may seek, which may in itself have a bearing on the amount of time that would be required to fulfil that role in an effective kind of way.

**Mr CLARK** — I want to follow up on the question from a different direction. In terms of Transparency International's priorities — you went through some of them in your introduction — I do not know whether you have got specific priorities for Victoria or whether your priorities are at a national level, but in the scheme of things, if you could make a start on fixing up problems that TI saw in Australia or in Victoria, what would your priorities be? What would be topping your list? Where would the sorts of things we are talking about today rank in your order of priorities?

**Ms O'KEEFFE** — It is fair to say that most of our focus tends to be at the national level. We have spent a lot of time talking at the national level around implementation of UN and OECD conventions and also talking at the national level about effective and coherent national systems to deal with corruption, in the broad sense of the word.

We have also spent a fair amount of time building relationships with AusAID in particular and working quite closely with Asia-Pacific countries, smaller states in particular, to assist them in strengthening their own national integrity systems, which — without wanting to say anything in any way derogatory about those countries — perhaps have much further to go and are much less sophisticated than those in the Australian situation.

In terms of our own internal priorities, they have been very much around things like trying to get more coherence within what would be regarded as integrity systems. I am acutely aware of the conversation going on in Victoria and what can be seen as a sort of knee-jerk reaction with 'Victoria needs an ICAC'. Certainly there has been a fair amount of discussion about that.

I am also acutely aware of the kind of response that says there is a range of integrity systems in place that fulfil the functions that ICAC would fulfil. The only comment I would make about that issue is to say that I think there is probably some scope for more overt expression of coherence perhaps than there has been to date. In other words, I look at what has happened at the commonwealth level with the appointment of Senator Faulkner as the minister for integrity and developments like that.

I do not think it is possible to underestimate the value of having a senior government minister with that role and the brief of pulling together — or being seen as pulling together — a number of those functions. That would be one area where there might be some room for development. In terms of our own system, we have put a lot of effort into whistle blowing; we have put a lot of effort into things like saying a fair amount about the reform of systems, more transparency in relation to electoral donations and things of that kind. They are the sorts of issues which we have been focusing on quite strongly.

**The CHAIR** — I just want to go back to codes of conduct. You said in passing that firstly there should be codes of conduct, but then you said the problem with codes of conduct had to do with lack of enforcement as the main area. Let us say that this committee decides that the code of conduct in the act should be examined and developed in some way and located in the legislation where it was appropriate — do you think it would have a value of its own, leaving aside the issue of enforcement? Or would it be useless without an enforcement mechanism?

**Ms O'KEEFFE** — No, it will never be useless. I think it is really important. It is important because, in a sense, it is setting expectations for members about what they are meant to be doing, but it is also a public statement of expectations so that other people, particularly citizens, are able to see what it is that the Parliament is saying about what it expects of its own members. To that extent, it is really important.

**The CHAIR** — From your experience with the organisation, let us say we get a code of conduct and parliamentarians go through a training program — and our experience here is that inductions are not well attended other than by MPs who are first selected; it does not have a good track record of people engaging in debate — can you talk to us a bit about how that might be improved: should it be mandatory? How could it be done? And then, in terms of the wider community that you alluded to, how might a code of conduct like that be promulgated or talked up, promoted, in the community so that it starts to make a difference?

**Ms O'KEEFFE** — I will go to the second issue first. I think that it is probably quite important that a code of conduct is a publishable document. At the moment this one — for obvious reasons, including how long it has been there — is in need of strong updating and being couched in language that everyone can understand perhaps a bit more clearly. It is very hard to be heavy-handed about this — of course it would be nice to say this should be mandatory and everyone should do it and there should be refreshers and all that kind of stuff.

I think the real problem is that most people, probably including most MPs, probably recognise the value of it only after they have been in Parliament for quite a while and realise that that kind of framework, if it is more in the forefront, is probably going to be quite a helpful thing for them, rather than being an obligation and imposition. I think most public officials, including public servants, would feel the same way — the rules and regulations that are in place actually end up being of assistance to do your job properly rather than being an obstacle.

There is an issue about the extent to which citizens in general are terribly interested in the workings of Parliament, apart from the things that they see in the newspaper and that kind of thing. I think it is a matter more of assurance than huge involvement; the assurance is that there is a code and there are some mechanisms, if you like, to reassure the community that Parliament works to make sure that its members adhere to those standards.

**The CHAIR** — I guess that the kind of difficulty — I guess if I can speak for my colleagues and the research team — that we face is that we have got a piece of legislation that has been there for 30 years; the general view was that it was very advanced legislation, a first in Australia when it came up; it has stood us in good stead for 30 years; things have been tracking along quite well, but at the same time we know that politicians are not held in high regard, and we know there are explosions that occur from time to time.

What we want to do is improve the integrity and reputation of members of Parliament and the institution of Parliament. The question is: how do we go about it? The third part of that is that we saw the UK, which is a jurisdiction which we are directed to as having some of these things in place, blow up in the most alarming way over the last few months. You have to ask the question: do we basically just tweak this or do we really give it a big rethink? And then — does it make a difference in the end; is the field too narrow; do we have to do broader things in the community to start to lift the position?

**Ms O'KEEFFE** — Yes, the UK struck me as quite interesting, because it seemed to me that it was very much an in-house effort; by that I mean, yes, they have got their code of conduct which is a very broad and generalised sort of document, which is fine, and they have got, I think, a parliamentary committee which monitors that. I know they have a parliamentary standards commissioner, but that is an advisory role and to my way of thinking it does valuable work but I am not actually sure how relevant it is to the day-to-day behaviours for MPs and so on.

Looking at the act it just seemed to me that there are three or four really key things that seem to be a good thing. They are interrelated, but one of them relates to timing of disclosures, and the other one relates to the method of disclosures. From my recollection of the act it says that when you are sworn in as a member of Parliament, you make your first or initial declaration within 30 sitting days or 30 days.

**Mr FOLEY** — Thirty days, I think.

**Ms O'KEEFFE** — Thirty days, that is good, but then it appeared to me, and I may be wrong about this, that after that, you basically put it in an annual update. It struck me that that is now way out of kilter and that it is much more desirable that there be a requirement on disclosure again within 30 days of something that actually requires disclosure, rather than waiting for an annual update.

The second issue, which it seemed to me PAEC raised last year, which I think is probably quite important, is that there seems to be huge disparity in the amount of information that different members make available. Some

make a lot available — 'extensive' I think was the word used — and some make very little available, in fact so little that it is hard to actually deduce whether there might be a conflict of interest or not.

So it seems to me that it is probably desirable to have some way, whatever it is —a registrar or the clerk of Parliament or whoever it is — who is actually running the system, to be able to indicate, in perhaps greater detail than has been the case to date, the level of information that ought to be made available by members in relation to the register.

The third issue which seemed to me to be pretty critical is that if it is an annual publication as a parliamentary paper, it is way out of date in technology terms and it would be a far more proactive thing to do, to have a web-based system, not even a CD-ROM but a web-based system which allowed citizens to actually look the declarations pretty much on a continuous basis because it was being continually updated. That is partly why I think the resources that are currently available may be okay once the system is up and running but there is an initial hump to get a system like that actually going.

In terms of the sorts of interests that the register should disclose, I think this act was very far reaching when it was put together in 1978 but I think there are now other jurisdictions that perhaps have gone further in terms of a broader range of interests to be disclosed, possibly too far, but I think it is worth starting big, at least in looking at it and then moving back, rather than grudgingly moving forward from a fairly narrow base.

**The CHAIR** — What sort of thing should be added to this?

**Ms O'KEEFFE** — Queensland has got this enormously long code, as you probably know, and I think that is possibly overkill, but then we do not have the history of what happens in Queensland, but they do seem to include things like debentures, savings and investments, sponsored travel and accommodation which may be included in ours but does not necessarily appear to be in this specific list. It is those sorts of things. I do not think we are talking major categories of things; I think we are talking about an extension of the kinds of interests which appear there already.

**Mrs KRONBERG** — In terms of the register of interests, do you see that revealed on the basis of a hierarchy in terms of authorised access before the detail of those principles?

**Ms O'KEEFFE** — Yes.

**Mrs KRONBERG** — So a general descriptive overview or statement, and then people who have the right to make an inquiry would have that right to do that at that time, for whatever reason that they found they need to justify it?

**Ms O'KEEFFE** — If we are saying more interests should be disclosed, you have to have a mechanism which allows for protection of individual MPs' disclosures of their interests, their right to privacy and the right of their families to privacy. It is important that those things are disclosed, but it is also important that there is a hierarchy — that is, that what is publicly available is the bare bones and that information is available to the registrar and other people who are authorised to inquire into that.

**Mrs KRONBERG** — I have a question which is a slight deviation. Through Transparency International you have had the opportunity to look at things from a global perspective. In terms of how our parliaments here, national and state, address these issues, how would you rank us as a society and the accountability to our Parliaments on a scale of 1 to 10? Do you think the fact we have compulsory voting in this country may have something to do with where you may or may not rank this country?

**Ms O'KEEFFE** — On the *Corruption Perceptions Index* — which is pretty much all the countries of the world, so we are talking of some hundreds — Australia has traditionally been in the top 10. That is because of a range of factors, including such things as the fact that the elements that make up integrity systems at a national and a state level are very well developed. We can argue that they should be able to work together more coherently than they do, but they are very well developed. That applies to our legislature, which is a fundamental part of those integrity systems. I think we do very well, and we deserve to do very well, because our systems are strong and robust systems.

In terms of compulsory voting, it is not an issue which has ever come up as a variable, although I suppose it comes up in its absence. One sees elections where 20 or 30 per cent of an eligible population is voting, which can hardly be regarded as democratic in the end. Although we have not consciously addressed that, there may be a connection. I do not think there is compulsory voting in Britain or America, yet those systems would see themselves as very robust.

**Mrs KRONBERG** — To me, people seeking public office have a double sell. They have to persuade people in other jurisdictions firstly to vote and then vote for them, so there are two opportunities for malfeasance or whatever at that point.

**Ms O'KEEFFE** — Yes.

**Mrs KRONBERG** — Would we then conclude that our system of compulsory voting provides us with some kind of protection or a buffer, perhaps amelioration or offset?

**Ms O'KEEFFE** — Perhaps, as you say, it results in fewer opportunities.

**Mr CLARK** — Can I come back to the issue of ICAC-type bodies, which you touched on in some of your earlier remarks. Does TI have a view as to whether ICAC-type bodies are desirable, either in general or to tackle the potential issues before they would have to happen?

**Ms O'KEEFFE** — TI's public position is that ICAC bodies are desirable, yes.

**The CHAIR** — Thank you very much for your time, Elizabeth, and your contribution. You will be sent a copy of the transcript.

**Committee adjourned.**