

VERIFIED TRANSCRIPT

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Inquiry into strengthening government and parliamentary accountability in Victoria

Melbourne — 1 August 2007

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Witness

Mr P. Vickery, QC.

The CHAIR — Peter, as I understand it you are a QC with wide-ranging experience particularly in the commercial area of practice and you have strong experience in arbitration as well.

Mr VICKERY — Yes, that is correct.

The CHAIR — I want to invite you to make a statement, and hopefully the members will ask a few questions on this pretty important issue of accountability.

Mr VICKERY — Thanks, Bob. I have been practising at the Victorian Bar for about 29 years now. My chambers are at Aickin Chambers, floor 28, 200 Queen Street, Melbourne. Prior to coming to the bar I was a senior tutor at La Trobe University, lecturing in human rights law, which is a course I founded between 1975 and 1978. More recently, last year, I was appointed by the International Commission of Jurists in Victoria to act as its special rapporteur to look into the situation of David Hicks and report from time to time on those matters and publish accordingly.

More recently, and perhaps of more relevance to the Public Accounts and Estimates Committee, I was invited by Associate Professor Ken Coghill, of the accountability working party, to advise that working party on aspects of its proposed report which is entitled *Restoring Honest Government in Australia* on behalf of the Australasian Study of Parliament Group 2007. That report is due to be released tomorrow, so I do not want to pre-empt it but perhaps concentrate on the particular area that I had involvement with, and that is the area of lobbying ministers and senior departmental officials. With that in mind I have prepared a written paper which deals with what I wish to speak to today, and I will pass that around if I might.

The CHAIR — Thank you.

Mr VICKERY — The report is entitled *Be Honest, Minister!* and is to be released tomorrow. You probably will have seen earlier drafts of that.

The CHAIR — We actually have had a previous report which was done last year.

Mr VICKERY — Yes. This is now the finalised report, which is going to be released tomorrow, so I do not wish to pre-empt the detail of that at this stage.

The issue of concern in relation to lobbying which in fact the working party adopted was this:

The relatively recent practice of hiring professional lobbyists who were often able to achieve invisible and privileged access to ministers and senior departmental officers has become a matter of concern. Such access leads to a disproportionate level of influence on important decisions made by government. Without any requirement to record on a public register those persons and organisations acting as professional lobbyists representing outside interests and the contact they have with ministers and senior departmental officials, the transparency of government consultation in the process of important decision making is brought into serious question.

That was the matter that primarily concerned the working party on accountability.

The concern is reflected in other jurisdictions internationally. In Canada they have a Lobbyists Registration Act in operation, and in the United States they have a Lobbying Disclosure Act, which has been in operation since about 1995. The United States Lobbying Disclosure Act 1995 states in its preamble that:

... responsible representative Government requires public awareness of the efforts of paid lobbyists to influence the public decision-making process in both the legislative and executive branches of the Federal Government.

There is a neat encapsulation of the concern addressed by the United States legislation mirroring, if you like, the concern of the working party on accountability.

In terms of the issues under discussion, I have listed a number of issues which are of relevance: firstly, whether the activity of political lobbying should be controlled at all, and if so, to what extent. That is a primary question. Moving on from there, assuming that there is a need for the control of lobbying to some extent, the question then becomes: what is lobbying? The definition in this context, of course, is crucial. There are a number of alternatives which one can consider, depending on how far the reach of the proposed legislation is intended to go.

In the first place the question arises as to which persons engaged in lobbying activity should be the subject of any control. There are numbers of categories of persons. The first and perhaps most obvious, which is addressed in the United States legislation and also in the Canadian legislation, is the professional lobbyist who engages in lobbying

as a professional lobbyist for fee or reward. The second, which is addressed in the Canadian legislation as well but not in the United States legislation, is the in-house lobbyist — that is, a person employed by a person, company or organisation whose duties of employment include in significant part to lobby government on behalf of their employer. That is broadly the definition used in the Canadian legislation.

The next group of persons is any officer, shareholder or partner of an organisation engaged directly in any activity involving trade, commerce, the provision of services or engaging in a profession. The question might be, if you are going to control the activities of an in-house lobbyist within a company, for example, why stop at that? What is the rationale for stopping there and not including, for example, the managing director of the company who invites the relevant minister to the box at the tennis or the football or whatever?

Going down the scale one can then involve public organisations. Why restrict any control to, if you like, a business engaged in trade or commerce? Why not involve a public hospital, a municipal council, a trade union or any other professional body, for example, the AMA? Then we have the issue of charities. Should officers of charities be subjected to control? Why not any person at all? Why restrict it in any way? Why not include any person who engages in lobbying of the relevant kind to be the subject of controls?

I have already made reference to the Canadian legislation, which is the Lobbyists Registration Act, which includes the activities of professional lobbyists and in-house lobbyists. Although a ‘professional lobbyist’ is relatively easy to define, I would suggest that a number of problems present themselves with any attempt to include an ‘in-house lobbyist’, for example, as referred to and defined in the Canadian legislation. For example, what would constitute a ‘significant part’ of an employee’s duties? How do you define that? And how would you prove that in the event of a transgression? How easily could that control in any event be circumvented by employers who give a number of people the role of lobbying but other duties which could be said to be more significant than the lobbying role, therefore exempting the in-house lobbyist from control?

As I have foreshadowed, perhaps a more fundamental question presents itself. Why control the activities of an employee lobbyist and not the activities, for example, of a major shareholder or unpaid director of a company who arguably has more power in this area in representing their enterprise?

With regard to charitable organisations, there are arguably problems for organisations which lobby government for funds or assistance whether it be a hospital charity, a cancer foundation, an Alzheimer’s foundation or any other like organisation. The question might arise: would registration of their activities discourage approaches to government to address pressing and genuine community concerns or problems? That is a fair question, I would suggest, in this context.

From the perspective of the working party and as reflected principally in the United States legislation and arguably the Canadian legislation, the principal area of concern seems to arise with regard to the professional lobbyist. This is so, it seems, for two reasons. Firstly, a professional lobbyist is just that, a professional hired gun — like a barrister, I suppose.

Dr SYKES — Shoot them!

Mr VICKERY — Worse things have been said. As such, a person in business who conducts the activity of the professional hired gun as a professional lobbyist may well be in a position to achieve a disproportionate level of influence for his or her client or clients compared with other persons who engage in the activity on a less professional basis.

That is one rationale for focusing on a professional lobbyist. Secondly, it might be argued that a professional lobbyist is in a position to conceal the details of his or her client or all of the persons being represented by that lobbyist, whereas the position of a person appointed from an organisation or a company, for example, to approach government, at least in the vast majority of cases, it is suggested, would be more likely to make it plainly obvious which party that person seeks to represent. So there are two bases, if you like, for focusing in on the professional lobbyist as the area of principal concern.

It is suggested that regulation of the professional lobbyist might be achieved by legislation, for example, as in the United States or the Canadian models, whereas the activities of a non-professional lobbyist are perhaps best dealt with by means of ministerial protocol, which applies at least to ministers and possibly parliamentary secretaries. I have addressed these two approaches briefly in the paper that follows.

Having determined which person or persons ought to be the subject of control, the next question arises as to what activities precisely should be controlled. The volume of decisions made by government at different levels, of course, is incalculable, ranging from petty decisions as to whether or not to order serviettes for the minister's sandwiches or, alternatively, the more serious and most serious and far-reaching policy decisions. Anything within that range are decisions arguably of government, and clearly in the latter sense are.

It appears that any workable system of control should be limited to lobbying directed to the big decisions of government — that is, policy, legislation and the like. Everyday decisions which affect individuals, perhaps with the awarding of government contracts put to one side, would appear to be outside the ambit of what is achievable and what is necessary. In fact, in the United States they had to amend the federal legislation, cutting its ambit down. That was made necessary because it was becoming unworkable with the volume of registrations that were required of lobbying, and therefore lack of compliance was an issue. So if one focuses on the big issues of government with a lesser volume of decisions which are the subject of lobbying, arguably compliance is more readily attained. What would not be included, it is suggested, would be a representation made to government by a consultant or other person seeking a social service benefit or a lawyer representing the interests of his or her client — for example, alleging illegal custody by the Victoria Police. That sort of thing would not be covered by the definition of lobbying.

As to how one achieves these objects, I have suggested the definitions which then follow in any proposed piece of legislation which arguably could be workable. On page 3 it says:

'Lobbying' may be defined to mean, in relation to a person who, for payment or reward —

So it covers and focuses purely on the professional lobbyist —

and on behalf of another person communicates, with a public office holder in an attempt to influence:

And then are listed what might be described as big decisions of government:

- (a) any government program, policy, or financial or planning decision;
- (b) the awarding of any government contract;

And that may be outside the ambit of a big decision — for example, the provision of serviettes — but nevertheless government contracts and the awarding of government contracts is the subject of unique public concern from time to time. And:

- (c) the development of, passage of, defeat of or amendment to any bill, legislation or regulation.

The CHAIR — We only have about another 10 or 15 minutes, and we need to allow time for questions.

Mr VICKERY — Absolutely. I will cut it down. 'Public officer' I define to be the top echelons of government, effectively ministers, parliamentary secretaries, members of Parliament and senior public servants et cetera. What then follows — and I will not deal with this in any detail because it is able to be read — is a proposal to register lobbying activities on behalf of professional lobbyists. The object is not to ban lobbying. After all, it does serve a fair public purpose; indeed, arguably, a necessary public purpose, and it is important not to create a barrier for citizens to be heard by government or inhibit access to government. But at the same time, transparency of the process would appear to be an important public objective. As Professor Rush said when he gave evidence to the House of Commons on this issue — Professor Michael Rush is an expert in the Canadian legislation:

The registration of lobbyists should not be seen from a narrow perspective of responding to or preventing abuses, important as that is, but from the wider perspective of open government, providing information about who is involved in the consultation process on public policy.

A proposal is then set out on pages 4 to 5 as to how legislation might be framed to register the activities of professional lobbyists who lobby the relevant people who are the defined public officers, mainly through the use of a website. The points are set out on pages 4 and 5. That can be supplemented, if you like, by a proposed protocol in respect of non-professional lobbyists, which is set out on page 5. What should be dealt with there, for example, is a protocol to be adhered to by ministers and parliamentary secretaries to ensure that dealings with lobbyists, whether they be professional or otherwise, are conducted so that they do not give rise to a conflict between public duty and

private interest. That is perhaps the most important factor in a proposed protocol in this area to supplement any legislation.

That is what I wish to say. I am sorry for speaking a little long; it is a professional disability.

The CHAIR — And in our profession as well. Thank you very much for that, Peter. I will throw it open to questions.

Mr VICKERY — I am happy to attempt to answer any questions.

Mr PAKULA — Peter, there are a couple of, I suppose, equity inconsistencies that I detect in the approach. Example (a): someone comes to me in my capacity as a local member and says, 'I have been engaged by Spotswood community centre. I am having a problem with Hobsons Bay council, and I would like you to intervene'. As far as I can tell, that seems like it would be covered.

Mr VICKERY — Yes, it would — if that person is a professional lobbyist.

Mr PAKULA — Or is a consultant who is engaged for payment by Spotswood community centre — —

Mr VICKERY — To make a representation to you.

Mr PAKULA — Yes. That would be covered, but the CEO of Megacorp comes and sees a minister, and that is not covered?

Mr VICKERY — No, both would be covered.

Mr PAKULA — No, the CEO of a company. The CEO of Megacorp comes and sees a minister, and that is not covered.

Mr VICKERY — That is correct.

Mr PAKULA — That strikes me as a problem. The other scenario is that you have got two companies lobbying government for the same thing. One is a large corporation which has an in-house government relations adviser — not covered; the other is smaller company which does not have an in-house government relations adviser and instead has to engage Gavin Anderson and Company, or any other lobbying company. One would have to be registered and one would not. I see some real equity problems with the approach.

Mr VICKERY — Absolutely. I agree that there are tensions that are created by this structure. The real question when we come back to the definition of lobbying is how far should it go, and why cut it off at the professional lobbyist.

I have provided some answers to that, but it is not the complete answer. Indeed, the CEO of whatever company it is might have much more influence and power than in fact a professional does, because at least a professional lobbyist is up-front about being a professional lobbyist or a consultant, whereas a CEO probably has, in certain instances, more power. Then you have the issue, which you correctly raise, of the two enterprises lobbying on either sides of the table — one having representation and the other not. I suppose the answer there would be that the one represented by the professional lobbyist ought to be registered, because that person arguably has more bargaining power as opposed to the single enterprise of a small company, for example.

Mr PAKULA — But in fact it would be the other way around. The larger company, the more economically powerful company, would be the one more likely to have the resources to have their own people in-house to do this job?

Mr VICKERY — Yes, and it is a question of whether you go as far as — if you go at all — the Canadian legislation and cover in-house people. I am happy to give you a copy of the Lobbyist Registration Act of Canada.

The CHAIR — Please give it to the secretariat.

Mr VICKERY — I will table that for your consideration. I suppose there are problems with it that you have correctly identified. But at the end of the day the question is: is the activity of a professional lobbyist worth controlling at all, and, if so, is there a genuine community need for that to assist in the administration of

government and the public accountability of government? And if that is so, one way to do it is to have a system of registration as proposed. That might create, in certain circumstances, some inequities, but all it requires is a registration. It does not go beyond that. It does not ban or otherwise control the activities of lobbying in any respect. It simply requires public registration of the professional activity of lobbying in certain instances.

Dr SYKES — You made considerable reference to the Canadian legislation.

Mr VICKERY — Yes.

Dr SYKES — I do not know whether I missed it, but is there some independent review that assesses the positives and negatives — the outcomes? Is it the document here that you refer to that is going to include an assessment of the Canadian legislation?

Mr VICKERY — No. What the proposal is in this document which I have handed around — which is in fact mirrored in the document which will be released tomorrow — is simply that public information on lobbying be made available. In other words, it is done through a website of the department or the minister concerned.

Dr SYKES — I am just wondering, given that the legislation is in place and it is the basis of a lot of the thought processes, has there been an objective analysis saying, 'It has been in place for five years. As a result of that, we have been able to make lobbying more professional and more transparent.' Or is it just happening, and there is a bit of tinkering around the edges, without note or public review?

Mr VICKERY — They may well have been studies. I have not had time to review them, I am afraid.

The CHAIR — We have got some information with us. Professor Williams, I think, from Canada has given us some stuff.

Dr SYKES — Okay, fine.

Mr VICKERY — There has been a move in recent times to strengthen the Canadian legislation, and there have been amendments to the United States legislation to also strengthen its conduct. So rather than abandoning it and moving away from it, there has been rather a pressure to improve what is there.

Dr SYKES — You would hope that is based on some analysis of its ongoing effectiveness.

Mr VICKERY — I would suggest that, yes.

Mr RICH-PHILLIPS — Peter, I want to ask you your views on the situation when lobbying is not as transparent, not as obvious, as in the case we were looking at in your paper. This example if a lobbyist comes to me on an issue — and clearly there are lobbyists and we can identify that; if there is a register, we can require the registration. What happens in six months time when, for example, Steve Bracks has lunch with John Brumby and says, 'I am working on a project X', and just lets him know about it. 'It would be good for the state' — that sort of thing. Or Robert Doyle, who is now with a consulting firm, doing a similar thing. It is not an avid lobby, but it is using — —

Mr VICKERY — Influence.

Mr RICH-PHILLIPS — It is using influence by virtue of being a former office-holder.

Mr VICKERY — Yes.

Mr RICH-PHILLIPS — But it is not the sort of thing you would put on a register.

Mr VICKERY — I suppose at the end of the day it really is a question of whether the conduct falls within the definition of lobbying, and that is why the definition is so important. The way it is defined in the suggested formulation on page 3 is 'any person who communicates with a public office holder in an attempt to influence'. You have to work out whether the conduct is an attempt to influence me in respect of a specific form of government activity, whether that be a program, policy or legislation.

Mr RICH-PHILLIPS — Arguably in that scenario a person known to you — and the particular reason I used the example of the former Premier talking to the current Premier is that it is probably likely to be, firstly, a lot

more subtle, and secondly, a lot more influential than an unknown lobbyist coming to see the Premier putting a project on the table. Now the unknown lobbyist is the one who is likely to be registered, but the chat with the former Premier, which is far more subtle, probably would not be picked up.

Mr VICKERY — Well it depends on whether Robert Doyle or Steve Bracks are taking a reward or payment for what they are doing. Under the proposed formulation the legislation would only cover the professional lobbyist in that example. An informal approach by someone who is not paid happens all the time — when citizens approach their members or whatever. That could not be covered by this.

There is another aspect of it. It might be that at the football, for example, Steve Bracks comes up and says, ‘Look I am paid by the AMA’ — it is unlikely — ‘I am paid by the AMA to make a representation about this, this and this’ — about drugs being free-listed, for example. That happens at the football. ‘I would like you to do this’, and there is a chat and a few beers and what have you. Very often members of Parliament and ministers will be approached informally when their guard is down, when they are not ready for it — there has been no appointment made, it is just an informal chat. There is a facility in the proposed structure for that to be covered with a seven-day period of grace. In other words, if the minister or the person approached thinks at the end of the day, ‘That was a definite lobby. There is no question about it’, within seven days that has to be reported and registered. So there is a facility to cover the informal approach where the minister or the member is off-guard and it is clearly a lobbying exercise.

The CHAIR — Okay. We will very quickly take two more questions.

Mr VICKERY — There is an awful lot in this.

The CHAIR — I know. I realise that.

Mr VICKERY — I am sorry, I will not have time to deal with it in much more detail.

Ms MUNT — It has been covered.

Mr WELLS — Just very quickly — in regard to ‘reward’, are you saying that is financial reward? I mean some people might be lobbying for tougher sentencing, and at the end of the day they get tougher sentencing and that is their reward because they believe they are getting a better society. What actually is a reward? Is it specified that it must be — —

Mr VICKERY — It would have to be a material reward I think, otherwise it is too amorphous to basically be the subject of control. As you say, ‘reward’ can be all sorts of things. The reward can be, ‘I feel good for having done this’ — as amorphous as that. I think ‘reward’ in the legislation would have to be defined more precisely as material reward of some kind — for example, some armchairs arriving for the lounge or a new fridge or something.

The CHAIR — Okay — because there may well be some professional lobbyists and some professional lobbyist organisations who may be seeking to change legislation — they may well be seeking, for example, to enable that a lump sum be given for superannuation rather than a non-lump sum, and they set themselves up as the Lump Sum Superannuation Committee.

Mr VICKERY — Yes, certainly. I hope what I have presented here is food for thought. It is a question of whether there is an identifiable need that needs to be addressed to assist with the strengthening of government and parliamentary accountability in Victoria.

The CHAIR — Thank you. There are all sorts of issues arising.

Mr VICKERY — Yes, there certainly are.

The CHAIR — Even the privileges of members of Parliament, of course.

Mr VICKERY — That is correct.

The CHAIR — This is a very long-held and closely held right for members of Parliament to be able to be accessed by anybody. That has been an unfettered right.

Mr VICKERY — That ought not to be discouraged because that could be quite contrary to the strengthening of government, but at the same time if there is a perceptible need for control of the professional lobbyists in particular, or others in that category, then these are the issues, as I identified them.

Ms MUNT — It could be very difficult because in the course of the day, for instance yesterday, I was probably lobbied by 20 people on 100 different matters at four different functions. For me then to know that that is a professional lobbyist who happens to be in the crowd or that that person is not a professional lobbyist who is also in the crowd and then to have seven days to recognise which one was a professional lobbyist who came to me and who I have to register, it could actually be a very difficult process to manage.

Mr VICKERY — That is correct.

Ms MUNT — Then if you are talking about lobbies involving open access to MPs, it makes the process quite difficult.

Mr VICKERY — I suppose at the end of the day what everyone has to do is relate it to the big decisions of government, specific government programs, policies or planning, for example, or the specific defeat or passage of a particular piece of legislation.

Ms MUNT — Once again, in the course of our day in our lives that happens all the time.

Mr VICKERY — Yes, undoubtedly — but anyway, food for thought.

The CHAIR — Thanks very much. We appreciate the fact that you came along and have taken the time out of your very busy schedule to give us some thoughts, and particularly you have taken the time to actually write this paper on lobbying and put research and effort into it.

Mr VICKERY — I suppose what we have in the United States of America and in Canada is the perception of a need and an attempt to address it. It is a question of whether we go down the same path.

The CHAIR — Thank you.

Witness withdrew.

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Witnesses

Mrs J. Maddigan, MLA, chair, and
Ms S. Hyslop, secretary, Victorian Chapter, Australasian Study of Parliament Group.

The CHAIR — I welcome Judy Maddigan, MLA, wearing her hat as the chair of the Victorian Chapter, Australasian Study of Parliament Group.

Mrs MADDIGAN — I have also brought with me today Sarah Hyslop, who is the newly elected secretary of the group.

The CHAIR — Very good. Congratulations, Sarah. Judy, do you want to give us a bit of an introduction?

Mrs MADDIGAN — All right. The Australasian Study of Parliament Group is an organisation that was set up 30 years ago next year for people who are interested in the processes of Parliament and the studies of government. Each state and New Zealand have chapters of it, and it covers Australia and the South Pacific. The Victorian chapter has about 50 members, I think, at the moment, mainly consisting of academics, parliamentarians, parliamentary officers, journalists and other people interested in the area.

It runs a number of meetings here each year with guest speakers. There is a journal that is put out by the central group twice a year. We have an annual conference — as you know, because I know, Bob, you are attending it — in August this year in South Australia. I do not know if any of the rest of you are coming across — but you are, aren't you Bob?

The CHAIR — I am, yes.

Mrs MADDIGAN — You are speaking at that.

The CHAIR — I am speaking very briefly about our inquiry.

Mrs MADDIGAN — That is where major policy decisions et cetera are made for the ASPG.

The CHAIR — I am being reminded of a number of papers being put around on why accountability must be renewed. *Renewing Accountability*, which has the Australasian Study of Parliament Group thing on it, also reminds me — and I am trying to be non-partisan here, but it is a fact — that the Australian Labor Party had a policy paper on accountability and referred to the paper here. It said that it would set up a committee or an inquiry dealing with matters put forward by this paper. That is the origin of our current inquiry. We have got a copy here. I thought you might wish to address or otherwise clarify it.

Mrs MADDIGAN — Probably clarify, and I do not know that I can answer many questions that will be very useful for you. Prior to the election you will all recall members were sent out a paper from Ken Coghill under the ASPG address. It was not in fact a paper of the ASPG and it has never been endorsed by the ASPG. It was a private paper that was done. The treatment of it did come before a Victorian chapter ASPG meeting where Ken sought some actions which were knocked back by the Victorian chapter.

The CHAIR — So it was Ken and — —

Mrs MADDIGAN — Yes, the previous president, whose name has gone out of my head.

The CHAIR — Mr Hunt.

Mrs MADDIGAN — Yes, that is right, and one other.

The CHAIR — Was there another one, a third person?

Mr PAKULA — Race.

The CHAIR — Yes, Race Matthews.

Mrs MADDIGAN — That is right. So it is not in fact an ASPG paper, nor does the ASPG have a formal position in relation to it. It has never been endorsed. The working group that Ken refers to is a working group that he set up. It has not been endorsed by the central organisation, of course, because it only does that at its conference, which is not until next August. In terms of the ASPG, there is really no official position that we have in relation to the paper that was prepared by Ken.

The CHAIR — There is no working group and the paper has not been before the Victorian chapter?

Mrs MADDIGAN — He set up a working group. It certainly was never endorsed by the ASPG in any way, and the paper is not an ASPG paper. You would have got a second email I think, or you should have got one, from Stephen Redenbach at the time, who was the secretary, pointing out that in fact it was not an ASPG document.

Mr RICH-PHILLIPS — These two pages that carry the ASPG — —

Mrs MADDIGAN — Have never been endorsed by the Victorian branch of the ASPG. It came as a surprise to us too. We saw it and we said, 'What is this?'. Ken has since acknowledged that it is not an ASPG paper.

Mr WELLS — Which one did the Labor Party — —

The CHAIR — I think the 'why accountability' was the one that the Labor Party — —

Mrs MADDIGAN — Which was the one he circulated incorrectly as an ASPG document.

The CHAIR — I think he launched it on the first day of the election campaign. He and the other two members did so.

Mrs MADDIGAN — And it was around before then.

Mr RICH-PHILLIPS — This other one is?

Mrs MADDIGAN — No, it has not been. None of them has been endorsed by the ASPG. Now he may be putting them up to the federal conference in August, but if he has, he has not informed us of that at this stage.

Mr BARBER — Then is it part of what ASPG does to make these sorts of recommendations, or do you just study Parliament?

Mrs MADDIGAN — It can vary. We do have at our conference a capacity for people to make recommendations generally about how parliaments might behave. It does not happen an awful lot. At the conferences that I have been to previously there have mainly been people giving papers on things that have actually happened in the parliamentary system and on matters that they have a particular interest in. Certainly the meetings that the Victorian chapter here has are not decision-making ones as such; they are really more information evenings about various aspects of parliamentary life.

Mr WELLS — Judy, where does your chapter fit in in regard to addressing some of the terms of reference?

Mrs MADDIGAN — Our chapter does not have a view on any of those things because we have never actually discussed the things that you have had referred to your committee. A number of those things actually do not appear in the report anyway, so your review is slightly different to some of the things that were in the paper prepared by Ken Coghill.

Mr WELLS — Right.

Mrs MADDIGAN — That is why I said that I am not quite sure that Sarah or I can be of much use to you, because we have never actually discussed your terms of reference, nor have we ever determined a position in relation to them.

Mr RICH-PHILLIPS — Do you, as a former Speaker, have views on some of these issues?

Mrs MADDIGAN — Yes. I am quite happy to give you views as a former Speaker, but they are personal views; they are certainly not views of the ASPG. If you want to ask me about it, that is fine.

Mr WELLS — We need to make that clear.

The CHAIR — We will need to make it clear in the Hansard record that you are speaking from the heart.

Mrs MADDIGAN — That is right. I do not want anyone else speaking on behalf of the ASPG. Choose someone else who is doing it.

Mr DALLA-RIVA — It is pity we cannot get Ken Coghill in here and — —

Mrs MADDIGAN — That is right. They are definitely personal views; they have nothing to do with the ASPG at all.

The CHAIR — The six issues which have been referred to us are: parliamentary committees; question time procedure; standards of parliamentary behaviour; overseas travel; modernisation of Parliament including the permanent abolition of wigs and other archaic practices; and reform of the process of dealing with petitions. I invite you to comment particularly, since you are a former Speaker, on question time procedure and perhaps standards of parliamentary behaviour.

Mrs MADDIGAN — All right. It always seems to me that question time is really a time for the opposition perhaps more than the government, so I have some sympathy with some parliaments that in fact give the opposition more questions than the government. I do not know of any government which would willingly give us questions, though, because it would see it as an opportunity for its ministers to provide information about the activities that they are undertaking, and the public certainly has a right to know what they are.

In fact I think the process now of having 10 compulsory questions is much better than it used to be. Certainly I can recall that when I was first elected in 1996 some question times would have only three or four questions, which would mean the opposition got only two. So I think having a minimum number of questions rather than a minimum of time is a much fairer way of operating question time.

In relation to the behaviour of members in question time, realistically the Speaker can only operate the Parliament in the way that political parties wish it to operate. As you all know, question time tactics are very clearly scripted by all parties, and parties normally operate question time in the way that suits them. I think that if the Parliament or anyone else tried to impose restrictions on parties' behaviour in question time, it would not work, because in the end the Speaker can only run Parliament if the members of Parliament are prepared to accept the rules under which they are operating. Certainly I think it is always convenient for parties to talk about behaviour in question time, but as you all know all parties discuss tactics they are going to use in question time and how their members will behave in question time from time to time, and I would have thought that any suggestions to political parties, whether they be in government or opposition, to change that practice would be very strongly resisted by parties in our Parliament.

Mr DALLA-RIVA — It raises a question that has been brought to us previously. It relates to how we as a committee can impose certain procedures, such as question time procedures, when it is the houses themselves that set those parameters. I think that was brought to us by the upper house.

Mr RICH-PHILLIPS — One of the clerks.

Mr DALLA-RIVA — By one of the clerks in the upper house, who said that it is all good that you have this review, but essentially it is the house that determines the procedures. Do you see that as — —

Mrs MADDIGAN — No, that is correct. I would have thought that the only power your committee has is to make recommendations.

Mr DALLA-RIVA — Yes.

Mrs MADDIGAN — It would be up to both houses to decide whether or not they wished to accept them, and presumably most of the decisions made about how the house will operate are taken through the Standing Orders Committee, or indeed by the government of the day. Certainly it is the house itself that decides how it operates which really comes back to what I was saying about question time. Basically it is the members of the house and the parties that are represented that decide how the house will be run.

The CHAIR — We accept that we will need to meet with the Standing Orders Committee, and there are some other issues. We will also possibly have to talk about privileges, and that is what we intend to do.

Mrs MADDIGAN — It would be an interesting legal point if you really wanted to push it, but I am not quite sure that it would be terribly productive.

The CHAIR — I am not suggesting either course. Do you have any thoughts on the standard of parliamentary behaviour? I know there are many rulings by the Speaker.

Mrs MADDIGAN — Obviously it would suit the Speaker if all the members sat quietly in their chairs and never opened their mouths until the Speaker suggested they should do so. Realistically that does not happen. Question time was actually only brought in in the 1960s, so it is not as if it has always been a traditional part of the Parliament. But it is in fact a media event, as I think we all now know. Certainly the media has a very strong role in encouraging members of Parliament to behave in a particular way during question time. It goes so far as to suggest questions to members of Parliament, and indeed how they should behave during question time.

I guess Victoria has always had a very robust style of parliamentary debate, although perhaps that is changing now in that I think instead of members in general debate debating bills or debating issues, they tend to give standard speeches rather than relating to each other, which I guess some people would see as unfortunate because it limits, I guess, the interchange between the individuals and the parties in the house. Certainly when I was Speaker many members of the public expressed surprise about the way members behave. It is really in question time though. If you think about the rest of the time in Parliament very rarely is the house as noisy as it is during question time. I guess it is always a moot point. If you had the cameras there all the time, would that change the behaviour of members at other times or not? I have discussed this with other Parliaments, and their view is that it does not really make much difference.

Once again I feel strongly that unless political parties wish their members to behave in a different way, there is very little that the Parliament itself can do to change the way members behave in the house.

The CHAIR — You mentioned having cameras there all the time. There have been suggestions, and indeed I think there have even been parliamentary inquiries, about having the Parliament on radio or on television — and these days streaming or on YouTube. I know Mr Barber has some thoughts on this as do other members. Do you have any?

Mrs MADDIGAN — Yes. I am strongly of the view that the political process should be as open and as accessible to as many people as possible. Certainly the Parliament has done a significant amount of work on what sort of broadcasting or downloading of systems would be appropriate here. Because it is an old building there are a number of technical problems, but they are certainly problems that could be overcome. But it is my view that as many people as possible should be able to see their members. In fact, perhaps if more of the community did see the way that members behave at question time, members might be inclined to be less noisy.

The CHAIR — Has it just been a matter of cost? I know in the federal Parliament when you go into every member's office, it is on TV. I guess 130-odd TV monitors is quite an expense, but there have been some suggestions like streaming it on the internet.

Ms MUNT — They also have it on TV in the New South Wales Parliament.

Mrs MADDIGAN — And in Western Australia. Most Parliaments are online now. In the end it is up to the government to fund it, I suppose, as it funds everything else in Parliament.

The CHAIR — That is true.

Ms GRALEY — I recall when the Clerk was talking to us about recent innovations in the Parliament he was talking about members statements being a relatively new process. I was wanting you to comment on whether you think they are effective. He was suggesting that they may be extended. I notice that people try to fit in a lot, and I do myself, but could you comment on whether they have been an effective means of members having an opportunity to speak, whether in fact they have been successful or not and that maybe consideration could be given to extending the amount of time given to them.

Mrs MADDIGAN — I think members statements are a very useful way of allowing members to speak about things that normally they would not be able to. If you think about the other processes in Parliament, legislation is quite limited in the area you can cover when discussing bills, and the only other area you have for

more general comment perhaps is on MPIs, matters on which you have a strong view. But even so, that is quite restrictive in allowing members to raise things of interest to themselves, make attacks on other people, I suppose, or other governments, or raise other things to do with their electorates. Certainly I know in our party, and I am sure it is the same for the other parties, they are keenly contested by members and are very popular, and they seem to me to give an opportunity for a much broader coverage of topics in the house that would not be available if we did not have them.

Ms GRALEY — What about the length of them?

Mrs MADDIGAN — I always think it is good to be succinct in Parliament myself, so I do not believe you should ever allow members to have too much speaking time.

Mr RICH-PHILLIPS — I want to follow up on Ray Purdey's comment, which was in the context of reducing the number of government questions so that statements that are made by ministers in question time could be made as short ministerial statements in the context of longer members statements. Do you have a view on that trade-off, maybe 5-minute members statements so ministers could make short ministerial statements rather than using question time?

Mrs MADDIGAN — I am not quite sure that that would achieve perhaps the aim that the ministers wish when they are asked questions about policy. I guess that depends, again, whether you are being telecast or not, because I would have thought the point of question time for all parties was to try to get as much media attention as possible, so therefore people would wish the media to be there. If you were telecast all the time, perhaps other systems would be more welcomed by both parties in terms of getting various points across. That possibly would encourage that more than the current system, I would think.

Mr DALLA-RIVA — Let us cut to the chase, Judy, and get to the really hard issue of the terms of reference under (e). What is your view on the permanent abolition of wigs? How do you see that as being important in terms of the make-up of Parliament and the strengthening of government and parliamentary accountability in Victoria? Do not hold back.

Mrs MADDIGAN — I guess it does sound silly off the top of it, but I think it is actually meant to infer something slightly different, in that it seems to me that wearing the dress of 150 or more years ago does make people, when they come into Parliament, see it as perhaps an irrelevant, old-fashioned body. Because of some of the traditions of Parliament many younger people think they have walked into some sort of mausoleum when they come in here, because it is a very old building and they see someone sitting in a chair with a wig on their head. I know when we last had a wig in our house between 1996 and 1999, it certainly used to make all the schoolchildren laugh their heads off, which is possibly not the goal of it.

I guess at the time also the more traditional form of dress was worn by the Speaker, which included the frills at the wrists and the throat and all the rest of it. There are some traditions in Parliament that are really good, but there are some traditions that make the Parliament look very old-fashioned and out of touch with modern-day life, and I think wigs certainly fall into that category.

Interestingly some parliamentary staff did say to me once that they regretted the removal of the wigs, because they thought the wig was a symbol of authority for the Speaker and it identified the Speaker. In fact the person who was speaking to me about it compared it to the police and said if police did not wear uniforms, you would not know who they were on the streets. That might be relevant to you, Richard. But of course that is not the same for presiding officers and speakers, because everyone knows who they are because of where they sit in the Parliament, and I have never been convinced that wearing a dead sheep on your head improves the respect that people have for you.

The CHAIR — It is actually horsehair.

Mrs MADDIGAN — I think it is a symbol of trying to modernise the Parliament so it is relevant, particularly to younger members of our community.

The CHAIR — Just to follow up on that, do you have any views on other archaic practices — for example, we run around with maces and black rods and things like that?

Mrs MADDIGAN — Actually, speaking of wigs, the clerks used to wear wigs here until 1999.

Mr WELLS — They don't want them back, either.

Mrs MADDIGAN — And in the upper house I think they wore them until the last Parliament, when Monica Gould became President.

Other archaic practices: I think the mace is a symbol of the Parliament and the Speaker's authority, so I do not really have a problem with the mace. People actually like the mace, because in fact it is an historical item. I am not quite sure about the black rod, but certainly the Speaker has the name of every Speaker who has been in the Victorian Parliament — there are not that many — including famous historical figures like Peter Lalor. Certainly on Parliament's open day the mace is one of the most popular things to have your photograph taken with. I do not think people see that as funny, whereas I do think people see the wig as funny.

The CHAIR — I think people could relate to the term 'Serjeant-at-Arms', but 'Usher of the Black Rod' is a bit like 'Lord Master of the Cinque Ports'.

Mrs MADDIGAN — Usher of the Black Rod is not an historical position. Wayne would know better than me, but I think Usher of the Black Rod was created only in about the 1960s. It was fairly recent, whereas the mace, of course, has that tradition.

The CHAIR — It got lost at one stage.

Mrs MADDIGAN — Wayne has just said they have only had an Usher of the Black Rod since they have had a black rod, which does make sense, of course. Otherwise it would make no sense at all, would it!

The CHAIR — I am sure we will do a bit of research, but it does raise a question. It is maybe not archaic, but I am not too sure what an Usher of the Black Rod does.

Mrs MADDIGAN — I do not know that anyone knows about the black rod outside of Parliament. Certainly people in the community know about the mace and the symbolism of the mace. I have never had anyone ask me a question about the black rod.

The CHAIR — Any other archaic practices in Parliament?

Mrs MADDIGAN — Parliament has changed over the years. It does operate in a different way to how it did before. I have not really thought about other archaic practices. Certainly a lot of practices have been changed in probably the last nine years.

The CHAIR — Including language.

Mrs MADDIGAN — Yes, including language, of course. The update of the standing orders that was done in 2003 was the first major update since about 1896, and certainly that changed some of the practices and removed a whole lot of archaic practices, particularly in relation to the committee of the whole and the Chair's position. I think that has made it clearer what those jobs are.

There are always things you can change, I suppose. I am still not quite sure why we introduce bills the way we do when we have a first reading, which does not tell you anything, and then a second reading some time after. I am not quite sure if all that is necessary.

The CHAIR — The clerks raised that as well.

Ms MUNT — I have got a couple of things to raise. We have been talking about internet access and the openness of the Parliament to the general public, and I am going to put that with a seminar that I attended in Parliament last week when we talked about privilege in Parliament and how that privilege is actually contracting in relation to what you can say in Parliament and how you can say it. The first part is that I am a bit concerned about the reduction of privilege in Parliament, the openness of speech, what you can say and how you can say it. Then, if you had broadcasting or internet access to that dialogue and those words, how would you mesh that together?

Part of the discussion at this seminar last week was that if I say something in the Parliament, I cannot repeat it outside. That was a fairly recent ruling made in 2001–2002, according to the seminar.

Mrs MADDIGAN — It was not a ruling; it was a court case, actually.

Ms MUNT — A court case where the court ruled.

Mrs MADDIGAN — That is right.

Ms MUNT — The first part is that the court is telling the Parliament how it can act, and I find that worrying; and the second part is, then what do you do if you want to increase the access to what happens in the Parliament?

Mrs MADDIGAN — I guess that is a slightly larger question. I think the concept of privilege is in some ways one that is not perhaps as relevant to Parliament as it was when it was first introduced when it first came across from Westminster. If you go back to when privilege first came in, there were no controls at all in terms of other legislation — legislation passed by Parliament on things like auditors-general, ombudsmen, freedom of information and other ways by which members can get information on the Parliament.

But if you look back to the way privilege has been used in this Parliament, it has very rarely been used for the correct purpose, which is to try to provide information about a wrong in the community which if said outside would cause a person to be sued or some legal action to be taken against them. In most cases privilege cases have related to members complaining about what someone has said about them either in the newspaper or in Parliament itself. Especially if you go to the history of privilege cases in Parliament, there are very few times when it has actually been used in the way it was set up in the first place.

Ms MUNT — But even if it has not been used many times, don't you think that opportunity should be there? Is it worrying that the court is dictating how Parliament can operate?

Mrs MADDIGAN — I personally think that if people raise questions of privilege in Parliament, they must do so in the knowledge that whilst they have the right to raise matters they also have the responsibility to raise matters in a way which is fair to the person whom they may be speaking about in the Parliament. We actually now have the process of the right of reply which has been in this Parliament since 1998, which means the person at least gets some chance to respond.

In relation to the court interpreting privilege, there have been a huge range of court cases over the years in relation to privilege. Privilege is understood differently in all parliaments. For example, the commonwealth Parliament extends privilege much further than we do here. We tend in Victoria to consider privilege to be the statements that people make in the house. In some jurisdictions it relates to statements people might make in their electorate office and other things like that.

I would have thought the court case you referred to was in fact considered to be an endorsement of people saying something in the house which they then endorse publicly, which removes that right of privilege. I do not really have a problem with that, because I would have thought that, if you raise privilege matters properly, you should not discuss them outside the chamber in which you raise them because that is the whole point of the exercise. If you go outside and then talk about them publicly or say, 'Yes, I agree with what I said', you are then engaging in a public debate with a journalist or someone in the public, and therefore that is incorrectly using privilege. I think members, if they raise matters of privilege, should not discuss them in any other place except the house.

Ms MUNT — How would that fit in with streaming of the Parliament?

Mrs MADDIGAN — In the same way you have the *Hansard* record now. If you raise a matter in *Hansard*, that is the official record of the Parliament. If you are listening to a tape of Parliament, that is not the official record of Parliament. I do not see that it is any different. It is just a different way of delivering the parliamentary process. The media tapes every moment of Parliament, so it is not as though there is not already a public broadcast of Parliament that is available out there in the community. I do not see it is any different.

Ms MUNT — That is my first question. My second question is the reform of the process of dealing with petitions, because I think that is an interesting one. People sign a petition and they truly believe the Parliament sits

down and reads that they have signed that petition and they think and believe it has an impact in the Parliament, but really it is just 'I table that'. Do you have any thoughts on how to do that better?

Mrs MADDIGAN — I guess there is a slight process through members statements where members have the right to speak to petitions if they wish. Members certainly take that right occasionally. In relation to the treatment of them, some ministers — and I am not referring to particular governments here — actually respond to people who sign petitions. Some do not.

I would have thought a situation similar to that for dealing with committee reports would not be a bad thing for petitions so people can have the opportunity to express those concerns. You already have that, I guess, through members statements. It is my view that, if someone signs a petition, they should get some response to that, even if it is only the member telling people who respond that they presented it to Parliament. I think if you had a formal situation whereby every petition had to go through some process, that really would be very difficult. Some petitions are on very obscure subjects, and in fact, as you know, can be signed by one person. So to bring in any mandatory process for every petition that was presented to Parliament would I think cause a considerable amount of problems.

So if you wanted to bring in some process that dealt with petitions, I think you would have to look very carefully at what sorts of petitions and if in fact you have to have a certain number of people signing them, because otherwise I think you would be able to use it as a very clever device for bringing issues before Parliament so you could just go out and for every issue you had an interest in get one person to sign it, whip it before the Parliament and then you could be discussing all those issues forever. I think you would have to be fairly careful about having any formal process.

Mr WELLS — Just to follow up, should it be one of the recommendations of this committee that ministers are compelled to respond to a petition? I guess taking into account the issue you just raised about having just one or two signatures, maybe if there are more than a certain amount the minister is compelled to respond, because obviously, as Janice has said, there are lots of people in the community who strongly believe in the petition that they are tabling and nothing happens.

Mr PAKULA — Can I clarify the question — 'respond to' who, Kim? Are we talking about individually responding to every petition or responding to the member who has tabled the petition?

The CHAIR — It normally goes to the person who is the first signatory of that petition.

Mrs MADDIGAN — In some cases ministers do respond to every signature on a petition. I am aware of that happening in the past. I would have thought the recommendations of this committee might perhaps have to be done in a way where there are options. I think ministers should respond to petitions. It might be just a letter saying, 'I have received your petition'. 'I do not agree with you'. might be the necessary response. There might be other ones which are significant areas that the Parliament might wish to debate at length, so perhaps there should be a number of ranges and it should be up to the Parliament to decide what action should be taken in relation to petitions. I think people have the right to get a response. I do not think that is unreasonable, but what that response might be perhaps has to be left either to the minister's discretion or to the Parliament's discretion.

The CHAIR — There would be some also which could be related to the minister as far as the minister covers government business, but if you had a private members bill, for example, changing the arrangements for the Institute of Public Health — —

Mrs MADDIGAN — The petitions, of course, are always to the Speaker or the President.

The CHAIR — That is correct.

Mrs MADDIGAN — I do not think realistically anyone would expect the Speaker or the President to make a response in relation to issues which are normally raised about government policy. Most of the petitions that come to Parliament relate to the government. You do not see petitions relating to the opposition.

The CHAIR — Sometimes they relate to things relating to a private members bill.

Mrs MADDIGAN — Yes.

The CHAIR — I guess what I am saying is that there is a range of options.

Mrs MADDIGAN — Yes, indeed, and I do not think you could just put out one recommendation for every petition. That would cause considerable problems, so I think there needs to be a range of options of what you can do with petitions, but I do think people should get a response.

Ms MUNT — If they are real people. I have just had a petition with 2000 signatures and there were only 500 actual ridgy-didge signatures on it. It included Paris Hilton and others.

Mrs MADDIGAN — If it is signed by Donald Duck, I do not think you need to respond to those.

Mr RICH-PHILLIPS — I would like to ask you about our fourth term of reference which is overseas travel by members of Parliament. Members of Parliament, out of their electorate office budgets, use \$4000 and \$8000 with a carryover, which has been at that level since I have been in Parliament.

Mrs MADDIGAN — A long time.

Mr RICH-PHILLIPS — So it is diminishing in real terms, and following overseas travel they are supposed to submit a report to the Presiding Officer. Presumably you have received and read a lot of those?

Mrs MADDIGAN — Yes.

Mr RICH-PHILLIPS — Do you have a view on the value of members of Parliament undertaking their own self-referenced overseas trips and reporting back through that current mechanism? Has it been successful? Do you see value in it?

Mrs MADDIGAN — I think it is very important that members do travel overseas. You can learn a great deal in terms of actions taken by other governments that are useful for members of Parliament to know and it helps to give them a broader appreciation of issues. I guess it has been \$4000 for a long time. I would have thought it is probably time for that to be slightly updated in terms of members allowances. Members electorate office allowances are, I think, updated on a CPI basis occasionally.

The CHAIR — They are.

Mrs MADDIGAN — Perhaps that should extend to that part of it as well. I do not think the reporting process always works as well as it should. Some members do it very well. I think the standard is perhaps not as high as it could be. I would have thought perhaps a more formal response in terms of the Parliament requesting specific information might be a way for people to look at for the future, but I do not have problems with members funding overseas trips from electorate allowances as long as they are used in a sensible way and a way that is of benefit to themselves, the Parliament of Victoria and the people of Victoria.

Mr RICH-PHILLIPS — Do you think those reports should be tabled?

Mrs MADDIGAN — Yes, I think that is probably a good idea. Or, people give — which I did once on a trip — a report to the house. I do not see why members should not be asked to respond, perhaps through members statements or some other mechanism, to give a short report to the house about why they undertook the trip and what recommendations have come out of it. I think that would probably be useful for other members. It would probably be more effective than leaving it for members to read.

Mr WELLS — On that point, would it not be easier and more transparent if the member sought permission from the Speaker?

Mrs MADDIGAN — To go overseas — beforehand?

Mr WELLS — Yes. Then there is a sort of accountability mechanism. There is a checking thing. I used to write to the Speaker and say, 'I am doing this', and I used to get a nice letter back wishing me well. But if the Speaker thought, 'This does not have enough detail', and wrote back and said, 'You have to do this' — because with every trip there is an enormous amount of media scrutiny, which is all fair. I am just wondering whether that is another mechanism that could be looked at.

Mrs MADDIGAN — I think that is sensible. There are guidelines that are supposed to be followed in terms of you must say who you are seeing and what your recommendations are, but I would have thought that to

get the Speaker or the President to approve it before you go overseas is not a bad idea at all. At the moment the only thing they are required to approve is the cost of your travel, if it looks as though there is something strange about it. Normally, it is just approved by the parliamentary officers. But I think that would probably be a positive step — yes.

Mr PAKULA — As a new member, some of these things are a little bit mysterious to me. As I understand it, the allowance is \$4000, and it can only be used towards the cost of the airfare. If a member goes overseas alone and uses \$2800 on the airfare, what is the rationale behind the other \$1200 not being available for accommodation, for instance?

Mrs MADDIGAN — I do not think there is any real rationale there. If you think about it; if you want to take your partner you could actually get more value for money for the two of you if you go overseas on that basis. I am not aware of where the \$4000 even came from, Martin. It has been there for as long as I have been here. I do not know if anyone has been here any longer than me or the same amount of time. I think it is an arbitrary sum. The way it was determined, it was only for airfares. I am not quite sure of the rationale before that, so I really cannot assist you with that. I presume it is an attempt to make members not spend a whole lot of money in staying in really expensive hotels. I really do not know the rationale, but it would seem to me that it was probably because of concerns about media scrutiny about how members might spend that money, if they are entitled to spend it in other ways.

Mr PAKULA — It would be pretty difficult to stay in expensive hotels once the money for the airfare is spent. It would only be a few bob.

Mrs MADDIGAN — If you were the only one going you could do all right.

Mr PAKULA — That is true.

The CHAIR — Thank you very much, Judy, for your personal views and also on behalf of the Australasian Study of Parliament Group, Parliament of Victoria chapter.

Mrs MADDIGAN — Thank you.

Witnesses withdrew.

VERIFIED TRANSCRIPT

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Inquiry into strengthening government and parliamentary accountability in Victoria

Melbourne — 1 August 2007

Members

Mr G. Barber	Mr G. Rich-Phillips
Mr R. Dalla-Riva	Mr R. Scott
Ms J. Graley	Mr B. Stensholt
Ms J. Munt	Dr W. Sykes
Mr M. Pakula	Mr K. Wells

Chair: Mr B. Stensholt
Deputy Chair: Mr K. Wells

Staff

Executive Officer: Ms V. Cheong

Witness

Ms K. Lovering, Victorian convenor, Women's Electoral Lobby.

The CHAIR — Welcome, Kerry, to our hearing on strengthening government and parliamentary accountability in Victoria, particularly on the six issues which we have been asked by the Parliament to consider. Thank you for your submission, which is very much in the form of a motion passed by your organisation.

Ms LOVERING — Yes, that is right

The CHAIR — Would you like to give us a brief breakdown of that and to speak to your submission and motion?

Ms LOVERING — I am the convener of WEL — that is, the Women's Electoral Lobby — in Victoria. As part of WEL Australia I also submitted this motion to WEL Australia. It said at this stage it would not pick it up as a WEL Australia initiative but in fact WEL Western Australia, WEL South Australia, WEL New South Wales, I believe, WEL Queensland and the ACT all agree with it.

In essence WEL believes, as we have said here, that women fought hard to get the vote, and we do not want governments to fail to fulfil their promises and policies by a lack of accountability. We believe that legislation is the only way forward in ensuring that accountability of any promise or any policy be implemented. We think that it is all very well to put a motherhood statement on the books and think, 'Oh that is sweet and charming', but unless something happens, it does not happen.

We believe that having got the vote — in 1908 in Victoria and in 1902 nationwide — in many ways those early women thought all would be well. They said, 'Hooray, we're right!'. That is not the way politics or Parliament works, and we are aware that in fact every step of the way has to be argued and implemented.

For this reason our motion, which I will read out, demands of all political parties:

the restoration of accountability of our governments by the introduction of legislation to
codify ministerial responsibility —

I think in many ways the recent political goings-on in the last week in all governments would make this a very important factor. We need to codify ministerial responsibility.

We need to:

establish a parliamentary standards commissioner to monitor and enforce accountability and apply it equally to all ministers for all time.

In that regard I would like to say that one of the things that was passed by the federal government was the removal from the health minister of the responsibility for the introduction of the abortion drug RU486. That has been implemented by the government but the accountability does not happen, as it turns out, because the implementation of importing that drug into Australia depends on other factors, and indeed needs to be picked up and looked at in other ways.

We also want to:

amend the freedom of information acts to limit exceptions to the rules

and we want to:

control the lobbying industry by requiring registration of all lobbyists, including WEL —

we are perfectly happy to be registered —

and by preventing ministers, their personal staff and senior public servants from acting as lobbyists until they have left their positions for at least two years.

We believe that there is much too much information running around with senior persons for them to turn into lobbyists immediately.

We want to:

limit the duration, level and proportion of contracted staff in any government department.

We believe that public servants are the right people — and I was a public servant, so I am aware of this. I believe ministerial advisers have overstepped the mark in all sorts of ways, and I believe that public servants, with a right to exist under all governments and to carry out the policies of all governments, should be protected by not being upstaged by personal staff.

We would also:

require ministers' personal staff and the senior public servants to assist parliamentary investigations.

I believe at this stage they have been let out, particularly in the federal sphere. I am not so sure if it happens to the same extent in Victoria.

Mr RICH-PHILLIPS — It does.

Ms LOVERING — I have not looked up the Victorian constitution for a year or so, but I am very well aware of the Australian constitution and I am very concerned with section 61 of the Australian constitution, which vests the executive power of the commonwealth in the Queen and the Governor-General, with no accountability whatsoever to Parliament.

This is of concern, I believe, in all sorts of areas. It is particularly of concern, of course, when sending troops overseas. Even America has to front up to its parliamentary areas; the President cannot send troops overseas without consulting the American parliaments. But both Prime Minister Hawke and Prime Minister Howard have been able to send troops overseas without any legislation or any bill to Parliament.

Of course the government of the day will naturally have numbers, and there would be no problem with that, but the debate would happen, and I believe this is one of the important things about accountability, that you need to have accountability so that it goes to Parliament where the debate can happen. The government of the day will no doubt succeed in passing its legislation, but a debate is mandatory, I believe, for democracy.

The CHAIR — Thanks very much, Kerry. Before throwing it open for questions, can I just ask you about one item in the WEL submission regarding limiting the duration, level and proportion of contracted staff to any government department. How does that relate to strengthening accountability?

Ms LOVERING — If public servants have their responsibilities clearly delineated by ministerial responsibility, then they will do the job of bureaucrats. I know as a bureaucrat that was my responsibility, and you do the job for the government of the day — a ministerial staffer does not.

The CHAIR — I am trying to clarify first of all, as well as get the argument behind the statement from WEL, that for contracted staff you are talking about ministerial staff or is it just somebody contracted within a department?

Ms LOVERING — Ministerial staff; or whatever else they contract, yes.

The CHAIR — Of course many people are on contracts these days, rather than necessarily traditional public servants as you may or may not be describing; so you are talking about ministerial staffing?

Ms LOVERING — I am talking about the ministerial staff should be accountable as much as public servants are and should be.

The CHAIR — You are talking about limiting the duration, level and proportion, presumably, of ministerial staff?

Ms LOVERING — Yes.

The CHAIR — Could you explain a bit more of what you mean by that?

Ms LOVERING — If you go to see a minister, you usually have to go through several ministerial staff rather than either the head of the department or the minister. It is the minister's PA — and they are very good, I have to say, I have not got any objections to any of them — but the important thing is that the implementation and the carrying out of government business is the business of the public service.

Mr SCOTT — I want to try to put a conceptual framework around what underlies and reins in the points you are making. It would seem to me that at the heart of what you are saying is the desire to rein in what you perceive as excesses in the executive, and to bring that more under the control of the legislature within the Westminster system. Would that be an accurate characterisation?

Ms LOVERING — Absolutely, yes.

Mr SCOTT — You are also seeking to establish formal mechanisms within that process to codify and limit the behaviour of the executive?

Ms LOVERING — As separate legislations, but yes, certainly.

Mr SCOTT — You are seeing people like the ministerial staff as being an arm of the executive?

Ms LOVERING — I am seeing the ministerial staff as being assistants to each minister, obviously, but that they should not have executive power. In fact, what I am saying is that if you want to see a minister, then you should go through the appropriate public service venues. Sure, the ministerial staff will no doubt be there to help the minister, but it is the responsibility, or it should be the legislative responsibility that the minister conveys to the public service.

Mr SCOTT — You are saying that the Parliament should limit how the executive structures itself to give further control to the — —

Ms LOVERING — To the Parliament.

Mr SCOTT — No, but the public service is not part of the Parliament, it is part of the executive. Are you saying that the Parliament should legislate to give greater control over how the executive structures ministerial departments in order that the established bureaucracy has greater precedence as opposed to the personal staff of the minister?

Ms LOVERING — Yes, I would say that.

Mr PAKULA — I detect an inconsistency in this approach as well, particularly in regards to the establishment of the parliamentary standards commissioner. We are talking about the supremacy of the legislature, and yet you want to, as I understand your proposal, set up an unelected statutory office-holder to hold the legislature or the parliamentarians to account. I wonder how it is consistent with the idea of responsible government to say that the behaviour of members of Parliament should be monitored and enforced by an unelected statutory office-holder. That is my first question.

Ms LOVERING — You have got a good point there. I would see it more as an ombudsman type of approach, which would be able to audit what is happening, so that if you wanted to know what was happening in a particular portfolio — health or education — then it would be an auditing job, virtually. There would be an organisation that would audit what is going on. Mere citizens do not necessarily know what is going on; there needs to be an audit situation. I guess auditing is really probably what is there.

The CHAIR — Much the role of the Public Accounts and Estimates Committee?

Ms LOVERING — Exactly.

Mr PAKULA — My second query relates to your description of controlling the lobbying industry. I suppose my very simple question is: how do you define lobbyists? Would it extend for instance to a local community group?

Ms LOVERING — Yes. I guess it would not be to individuals, but it certainly would apply to any group. It is interesting WEL does not receive any moneys from governments, but certainly any group that receives money from governments should be registered but able to lobby. The idea that charitable organisations are not allowed to advocate a position, I think, is appalling and should certainly be removed but register them as lobbyists. Otherwise you will have every Tom, Dick, and — I was going to say ‘Harry’ — coming up and doing whatever they want without being registered. Unless you have a legitimate group, the minister will not know whether they are legitimate or not.

Mr PAKULA — You could capture almost everybody under this. Anyone who is anyone other than an individual voter or an individual member of the community, unless you define ‘lobbying’ in a restrictive way, could theoretically be captured.

Ms LOVERING — If you are going to be lobbied by a group — a Right to Life group, for instance — then you need to know that they are a registered group to lobby. I am sure they do. I am not a Right to Lifer, I have to say.

Mr PAKULA — Would you include, for instance, any corporation?

Ms LOVERING — Yes. Certainly the BECA.

Mr PAKULA — No, but perhaps, for example, Standard Electricals, which has a shopfront.

Ms GRALEY — Any registered company.

Mr PAKULA — Any registered company, a retailer that is incorporated who wants to lobby government about a railway crossing in their street. Where do you draw the line?

Ms LOVERING — Yes, it is an interesting question, isn’t it? If they are lobbying you silently without people knowing that this little shop is lobbying, there might be a community group which, if it knew about it, would lobby on the opposite side. I think it is probably safer to register them. I would not suggest that they cost money, but at least you would know where they are coming from, and people will be able to look on the register and say, ‘This shop is a lobbyist, we will need to see what it is’. In a sense it is an auditing process.

Ms MUNT — I do not agree with you that access to ministers should go through government departments, and I am not going to address that. The part of the resolution that interests me is:

Women fought hard to get the vote and we do not excuse or condone the actions of governments which fail to fulfil their promises and policies by a lack of accountability.

That interests me very much. Way back in the old days, when I was just a nip of a girl, I had a very good friend called Betty Olle.

Ms LOVERING — I knew her; Betty Olle was a friend of mine.

Ms MUNT — Betty Olle was one of the founding members of the Women’s Electoral Lobby. I spent many evenings sitting in her lounge room while the Women’s Electoral Lobby was put together. The idea was to have a voice for women to improve the lot of women. It seems to me, with particular note of what you have said here about governments being accountable to women because we fought hard for the vote and for everything else, that the best way to strengthen government and parliamentary accountability for women, which is really what the Women’s Electoral Lobby wants, is to support women in Parliament and all of the flow-down effects of women in the bureaucracy.

Ms LOVERING — Absolutely.

Ms MUNT — So that rather than talking about the bureaucracy getting access to ministers, I, as an old campaigner for the Women’s Electoral Lobby, think we should be talking about having women as ministers and for it to flow down. I am just making that statement.

Ms LOVERING — Yes, I would utterly agree with you — and in fact, of course, we do lobby for women in both Victorian and federal elections.

Ms MUNT — And it is the most effective way, I would imagine, to have accountability for women.

Ms LOVERING — Sure, but I still think we should be registered as a lobby. We clearly obviously are because it is part of our title, but I am very happy for the Women’s Electoral Lobby to be registered so that people know what we are doing. I am perfectly happy for that. In fact, I think it is very appropriate so that people know.

Ms MUNT — I know what you are doing.

The CHAIR — Thank you for that. I must admit that the Liberal Party was partly founded by a women's group.

Ms LOVERING — That is right.

The CHAIR — I know because my wife wrote a thesis on it.

Ms LOVERING — That is right, and Dame Beryl Beaurepaire is of major importance in that area.

Mr RICH-PHILLIPS — There is equal representation through the structure.

Ms LOVERING — Absolutely.

The CHAIR — I will get you a copy of my wife's thesis, if you like.

Dr SYKES — I am interested in the issue of the duration, the level of employment time of staff, particularly ministerial staff. I have had good and bad experiences in dealing with ministerial staff in my short time as a member of Parliament. Some of them are truly excellent.

Ms LOVERING — Yes.

Dr SYKES — Most of them do have a focus of protecting the minister, because that is what they are there for. But that said, the most important thing when I am dealing with ministerial staff is for them to have an experience of the portfolio, an understanding of the issues and an ability to get things done. Regardless of the person's priority, if they have got that, you have a chance of making headway with that person and achieving an outcome. If they have limitations on their time — —

Ms LOVERING — If you have a bad one, though, then you have a problem.

Dr SYKES — Yes, that is for the minister to sort out because if they are bad for me, they should be bad for the minister, and the minister would need to move them on.

Ms LOVERING — Yes, and as you say, they are protected — and I am not talking about Victorian parliaments.

Dr SYKES — I think there is merit in having them there for an extended period of time. I have a lady working with me who has been with me for 10 years. While she, rather than me, is a public servant, I am sure that the service she delivers to people out there and other people is substantially better than it would be from someone who came in on a short contract.

Ms LOVERING — You will note that we have not put a date. We said 'limit the duration'; it is not two years or anything in that sense. But I believe that those sorts of positions need to be reassessed, perhaps, every couple of years. I am not running ministerial staff, but from my experience at the public service board in Canberra it is very important to have a turnover of ministerial staff.

Dr SYKES — Yes, I think you need the infusion of new blood.

Ms LOVERING — That is right. If you are stuck with troglodytes in some areas, you have got a problem.

Dr SYKES — I think the onus comes back on the minister to have good management.

Ms LOVERING — Yes, but unless the minister is accountable or is aware that maybe he or she should keep an eye on the ministerial staff, there may be a problem.

Dr SYKES — I think that is where, and I think the general thrust is that, a lot of responsibility comes back onto the shoulders of the minister to be an effective minister — —

Ms LOVERING — Yes, that is why the minister must be accountable to Parliament on these sorts of things.

Dr SYKES — And if the minister is up to the position of being a minister, arguably he should be able to get his or her own staff sorted out and incorporate regeneration and get rid of the dead wood.

Ms LOVERING — We hope so.

The CHAIR — I think there were a few troglodytes on the public service board in Canberra when I was there, let alone working as ministerial officers.

Ms LOVERING — It was an interesting time to be on the public service board before it was got rid of.

The CHAIR — I was an administrative trainee with the public service board.

Mr RICH-PHILLIPS — Kerry, can I ask you about your proposal that ministerial staff and senior public servants be barred from working as lobbyists for two years after they leave their office? I think I understand where you are coming from with that, but how do you protect the interests of those individuals for that two-year period? Are you required to continue to pay their salary for two years after they leave their office, particularly in the case of staff and senior public servants, because obviously they are going to be at a disadvantage if you are barring them from what could be a large section of the workforce?

Ms LOVERING — Well, they do not have to act as lobbyists. Having worked with government, they can get plenty of other jobs in the commercial area. It does not mean they become lobbyists.

Mr RICH-PHILLIPS — But in restricting the employment they can take you should provide them with some sort of compensation. What form should that take? If you are binding them for two years after they have left their office, should you be paying them for two years after they have left that office?

Ms LOVERING — No, not necessarily at all. What we are saying is that they should not be lobbyists. They can get jobs in — I do not know — the banks or whatever area they happen to have expertise in; after all, they would not have been employed as ministerial staff or public servants if they did not have expertise in some particular area. If they move into the private sector, they are perfectly able to do any job they can, but they should not be lobbyists.

The CHAIR — Can I just follow on from that? If, for example, they became the manager of government affairs for BHP — —

Ms LOVERING — Yes.

The CHAIR — They are effectively there as a lobbyist for BHP, given their previous experience — let us say they are an adviser to the minister for minerals.

Ms LOVERING — It is unlikely they are going to move straight into that position. As a retiring minister I guess that is very unlikely. The interesting thing about the job of a public servant is that it is different to work in the private sector. It is quite a different mindset. I have never forgotten that I did an MBA at Monash. One of my lecturers was doing a swap, which they do, with the public sector.

The CHAIR — Yes.

Ms LOVERING — He came to the public service board where I was, and he was a complete failure because he had no idea of the culture of the public service or how to operate in that area, and the opposite would be true for many people. I do not think you would be at the top of BHP immediately.

The CHAIR — I am talking about being a manager of government affairs.

Ms LOVERING — Yes.

Mr RICH-PHILLIPS — Would you see an issue with a person moving from, say, SEITA, the authority set up to oversee the construction of EastLink, to the company that is building the road? They would not be a lobbyist.

Ms LOVERING — So long as they are not a lobbyist. They can bring their experience, and they certainly will. I am just saying that they should not come back then and lobby the minister or whoever it was they happened to be dealing with.

Mr RICH-PHILLIPS — You see no problem with someone going from being the regulator to being the regulated party?

Ms LOVERING — Not really, so long as they are not turning into a lobbyist.

Ms GRALEY — I have a little difficulty with this issue as well, and I will pose a scenario — —

Ms LOVERING — With what?

Ms GRALEY — This idea of a lobbyist and who a lobbyist is in an organisation. I pose the scenario of, for example, a minister leaving — and as you suggest there are plenty of jobs in banks — and going to work in a bank. When that minister leaves the public service or stops being a public figure, he does not leave behind all the knowledge that he has developed.

Ms LOVERING — No.

Ms GRALEY — He goes to the bank, and whether he is the head of corporate affairs or the head of finance — —

Ms LOVERING — Yes.

Ms GRALEY — He still has all that corporate knowledge which he is then able to give to other people in the organisation. That is his value.

Ms LOVERING — Absolutely.

Ms GRALEY — So whether he does the lobbying or a lobbyist does the lobbying does not really matter, does it?

Ms LOVERING — Yes. I think it is a personal thing. When you turn up to see a minister and you face a minister, as I am doing here, across a table or whatever, it is a personal interaction. In WEL it is certainly very obvious that it is the relationships between people that matter then. You can bring all that knowledge in, say, if you move into a bank. You have got all that knowledge, you know who is who and what is what and you tell everybody, but it is not up to you to go back to the minister and say, 'I know all this, and when I worked in this job you did this and this'. In other words, it is a personal interaction.

Ms GRALEY — So you would object to that person going to a corporate golf day or a president's lunch at a football club and talking business?

Ms LOVERING — I have no objection to them talking business. What I am saying is they should not be lobbying government.

Mr PAKULA — I am sticking with the same issue as well. When a government loses office all ministerial staffers lose their jobs. Are you saying those people should be barred from taking jobs as lobbyists even though the government has changed and even though the ministers will now be from the other political party?

Ms LOVERING — An interesting question, isn't it. I think they would still need to be registered. I imagine that the ministers of the opposition party might well have a problem with them, so I would doubt that they would actually act as lobbyists in that sense, in reality.

Mr PAKULA — The reality is that there are a number of lobbyists who operate in the public sphere today who are former members of the non-government party. I also wonder whether the Women's Electoral — —

Ms LOVERING — That is fine. It is fine for lobbyists as they are now. Registered lobbyists are fine. What we are saying is when somebody leaves government — and to your point about a change of government and whatever — then they are not really in the pocket of the government, as it were, when they are coming back. It is a personal interaction.

Mr PAKULA — Do you not think that the Women's Electoral Lobby's position is putting in place more and more disincentives for people to enter public life?

Ms LOVERING — No, not at all.

Mr PAKULA — I will put it to you this way: we are already in a situation where, because of recent changes, the parliamentary super scheme has been closed. The Women's Electoral Lobby is now proposing that if you have been a minister or a ministerial staffer or a public servant, not only are we restricting you whilst you are in those roles but we are going to place restrictions on you after you leave those roles.

Ms LOVERING — I am only saying they should not be a lobbyist. I am not saying they should not have a job.

Mr PAKULA — Also this suggestion that there are enormous employment opportunities for members of Parliament, particularly once they leave office, I think is a fiction.

Ms LOVERING — Yes, I think it may be too.

Ms MUNT — And ministerial staffers.

Mr PAKULA — I think the reality is that for many members of Parliament and ministerial staffers a lobbying or a government relations kind of job may be the only employment opportunity many of those people have. I think that is where Mr Rich-Phillips's question becomes relevant, because the reality is that what you may be doing is actually ensuring that these people can find no employment whatsoever.

Ms LOVERING — I doubt it. I think that would not be a problem for any good ministerial adviser.

Mr DALLA-RIVA — Andrew Brideson did a report on politicians leaving Parliament and found quite substantially that there are significant problems for MPs trying to find work once they leave Parliament.

The CHAIR — Are there any other questions? You have obviously engendered an interesting little debate, which I am sure was your purpose.

Ms LOVERING — I absolutely agree with Janice that we need more women in Parliament, because women are very accountable for things. They can add up. Women can actually think it through — that is, women of all parties; I am not saying one particular party. It was very interesting with the RU486 debate, which happened in the Senate of course, that women from all parties joined together to ensure that the drug is available when we can get it brought into the country, which is the problem at this stage.

Ms MUNT — Back when I sat in Betty Olle's lounge room, there was no equal pay. There was barely a woman in Parliament.

Ms LOVERING — That is right. We have done a lot.

Ms MUNT — If you got married and you were a flight attendant, you had to leave the job — even in the bureaucracy.

Ms LOVERING — That happened to me.

Ms MUNT — Look how far we have come since those days.

Ms LOVERING — Yes. Women's Electoral Lobby has worked for legislation all the time, too.

Ms MUNT — Absolutely. Well done.

Ms LOVERING — That is the interesting thing. It is all very well to have motherhood statements and whatever, but it is legislation that matters.

The CHAIR — Thank you very much, Kerry.

Witness withdrew.

VERIFIED TRANSCRIPT

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Inquiry into strengthening government and parliamentary accountability in Victoria

Melbourne — 1 August 2007

Members

Mr G. Barber	Mr G. Rich-Phillips
Mr R. Dalla-Riva	Mr R. Scott
Ms J. Graley	Mr B. Stensholt
Ms J. Munt	Dr W. Sykes
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Witness

Dr J. Faulkner, senior lecturer, RMIT University

The CHAIR — I reconvene the parliamentary Public Accounts and Estimates Committee hearing into strengthening government and parliamentary accountability here in Victoria. I welcome Dr Julie Faulkner who is a senior lecturer at RMIT University. Welcome, Julie. Would like to tell us just a bit about yourself for the record and also you might wish to make a presentation on your submission.

Dr FAULKNER — Thank you, Bob. I have been in the education system for all my working life. I was a primary school teacher, secondary school teacher and now a teacher educator at RMIT. When I was asked by a former head of English if I would write a submission, I came to it very much from an educator's point of view. I think probably the written submission reflects that and that of my colleagues who are also in education in various aspects.

The CHAIR — That is Michael Crowhurst and Dr Gloria Latham?

Dr FAULKNER — That is right. Rather than actually preparing something, I have just written draft notes. If I am off track I will depend on you to bring me back — —

The CHAIR — Okay, no problems.

Dr FAULKNER — I was really quite unprepared for what exactly — —

The CHAIR — We have got about half an hour so try to divide the time between a presentation from yourself and some questions from the members.

Dr FAULKNER — I might start from an educational point of view. I gather some people on the committee have educational backgrounds. I am not sure how up to date you are with changes in policy, but the new curriculum is called the Victorian Essential Learning Standards, which has come fully on board. It was trialled in English and maths last year and is now fully in schools, and schools are reporting against it this year. One of the domains, which is the big overarching picture, is Civics and Citizenship. I will just read from what those of us who teach need to address. We are told that in level 5, which is years 9 and 10, so the middle years moving into the senior years of secondary schooling, students need to understand their rights and responsibilities as citizens and democratic values and principles such as democratic decision making, representative and accountable government, freedom of speech, equality before the law, social justice and equality.

There is a very specific reference there, I think, to governments being accountable, and it is incumbent on teachers to work out how we best communicate that concept. I suppose as modelling is one strong pedagogical technique, we look to perhaps things like question time as an exemplar of the democratic process and we think, 'Well, the examples are often sadly lacking in terms of how we design curriculum that reflects these kinds of goals', which are quite specifically articulated for those of us in secondary schools. I suppose I started from the point of view of these intersections between education and government and curriculum and where we found disjunctions, which is my starting point for my very rough notes.

The second point I would want to make about being part of the education profession is that we are very strongly professionalised, or have become so since 2002 when the Victorian Institute of Teaching was set up as a regulatory independent body. I am a member of the accreditation subcommittee, which has the role of accrediting university degrees and reaccrediting — in this case a diploma. On that committee I worked with leading teachers, other academics, principals, members of peak professional bodies and parents' associations. They were fairly high-powered people, Working voluntarily we sit and we workshop and work towards — and this is an early draft of future teachers — guidelines and standards which carry consequences and work to articulate and professionalise professional teaching.

This did not exist before the Victorian Institute of Teaching, but there are very strong codes of ethics and professional standards which make clear statements to us. That led me to think a little bit more about the question of development standards, and I wrote these notes this morning. I guess the thing about standards for teaching is that they need to be both dynamic and responsive to changing demands, but also robust — that is based on evidence — and capable of dealing with new issues or dilemmas in an informed way and not become subject to, and barometers of, a whim of the moment or sort of knee-jerk reactions. I think the media often positions the teaching profession and parliamentarians in particular ways.

Parliament works like this too, especially through the work of inquiries and the rigour of debate in the house where visions for the future are tested against the evidence of history — the so-called tried and the true. However, the vagaries of question time, where vested interests bump up against current issues and where emotion can drive debate, illuminate the need for the work that standards can perform in new contexts. Any consideration of the role of standards in teaching is not too dissimilar from this, so I am working from the processes of developing standards that I was part of as a member of a subcommittee and how I felt that rubbed up against the kinds of processes that I imagine are the business of this committee. That was my thinking about standards, and what they involved.

I became aware of the other aspect of this when I spoke to my colleagues, Gloria Latham and Michael Crowhurst, and asked them for their points of view seeing they could not attend today because they are teaching. Dr Michael Crowhurst has worked with the Salvation Army and particularly worked with young people and sexuality. He has looked at gay and lesbian students; he has looked at transgender students; and with his work and his PhD in that area he became very aware of the issue of access. By that I mean that the research literature tells us that there is quite a growing crisis in schools among students who are feeling marginalised and very isolated by virtue of the fact that schools might not be responsive to their identities.

Michael, in his research, was concerned about the access to information. When I asked, ‘What does accountability mean to you?’, he said, ‘Part of that for me is gaining access to information that would help me as a researcher to work in ways with schools that tend to the wellbeing of students’ — and we know about the suicide statistics. This is the sort of thing he is involved in. He needs information. He needs to be able to access information in order to work as an academic with schools on programs for students who are marginalised, who are isolated, who are unhappy. And the statistics reflect some of the unfortunate consequences of students in this kind of situation.

Michael also asked me to mention that he felt there were some problems with the tendering process sometimes. When tenders were sent out in this area of wellbeing, student mental health and so on, it was almost impossible to gain a tender unless you were connected to one of the major NGOs such as the Salvation Army, the City Mission — the major people he has worked with in the past. Those kinds of strong bodies, again for various historical reasons and their structures, do not deal with things like sexuality and those sorts of mental health issues with students, so he wanted me to mention that he had found that the tendering process had equal opportunity kinds of accountability aspects connected to them.

The last point I wanted to mention, which is additional to what I wrote, was that as an educator I am also concerned with countering what I see as quite strong cynicism amongst young people towards parliamentary processes and politicians. That concerns me again as someone who is looking at curriculum policy on the one hand that says I am to attend to matters of responsible and accountable government, and on the other hand being aware of youth formations, how young people think — my own research was in popular culture — and seeing that young people feel they have a participatory role in decision making. That, to me, involves things like active listening, which is a very difficult kind of aspect of full participation when there are agendas. To me agendas mean that people do not actively listen. They listen with a view to what their goals are in the first place. I think young people often feel quite profoundly alienated from processes such as that and their role as decision-making young individuals within that. I think that is probably where I will stop with my scribbled notes.

The CHAIR — Thank you very much, Julie. I might just pass it over for some questions, particularly using the analogy of the education sector.

Ms GRALEY — Thank you for your presentation. I have been a teacher, so I put up my hand as a member of the committee who has taught in the classroom for a significant period of time. I share your concern that young people are fairly cynical about politics and politicians in particular. I am just wondering, taking your standards of how you believe people should behave, how you think young people would be further educated about politics, not just for the purpose of advancing politicians’ personas in public but also so that they can learn more about politics and become more active, as you are indicating you would like them to be.

Dr FAULKNER — By ‘politics’ do you mean decision making, responsible decision making?

Ms GRALEY — Yes, decision making. How do you think the Parliament could change? We are on about increasing our accountability or improving our image — along those lines. How do you think we could participate in the educational process and actually do that sort of job?

Dr FAULKNER — I am aware that in many ways parliamentarians are accountable, but I think if students turn on question time — and I mean federally as well as state — they do not see accountable behaviour in many instances. There is a public perception there that I think needs to be dealt with.

With my pre-service teachers we work from problem-based learning scenarios, so we try and involve interdisciplinary learning in ways that students will take on a real problem, whether it be quality of water in the local catchment area or something like that. We say, ‘Right, bring in your legal studies knowledge, bring in your budgeting skills, bring in your writing skills. How do you work as a team, then, to negotiate this often complex social, political, economic problem?’. I think seeing that modelled — again, I am not quite sure how politicians would do it — and seeing something of the complexity and the depth that needs to be brought to bear on big decisions that affect lives is the way the educative process would work best. How that plays out in a political scenario, I am not sure.

Ms GRALEY — It is just that question time is half an hour of the parliamentary performance each day. What I would like students to see is the whole context of what you are calling decision making and what we are interested in as the Parliament — the performance of the Parliament and the performance of the minister. I am just wondering how educators could actually take question time as a significant portion of the day, when it is just one small part of what politicians do.

Dr FAULKNER — Who chooses which half hour is shown?

Ms MUNT — The press.

Dr FAULKNER — So you have no control over whether a dorothy dixer appears as part of that half hour or not?

Mr WELLS — Nor should we. That is a role for the media.

Ms MUNT — Even if they show question time, question time has a place within the day of the Parliament. It has a function.

Ms GRALEY — It has a function. It might be a performance, but it is an essential part of the working of the Parliament and the drama of the Parliament as well. That is a small part, but how can the whole concept of the Parliament be more effectively part of the educational process?

Ms MUNT — Can I answer that?

Dr FAULKNER — Please do.

The CHAIR — I am sure Julie will be very happy for you to answer that one.

Ms MUNT — I have work experience students who come into my office, and they have never ever learnt politics or government in the entire time they have been at school. You are talking about VELLS, and I would like to put it back into the curriculum so that students do learn about it. They have absolutely no idea.

Dr FAULKNER — It is mandated.

The CHAIR — Is this under SOSE?

Dr FAULKNER — No, SOSE has gone, thanks to the power of the history department lobby, for better or worse. I do not know how much you want to know about VELLS, but I think it is part of the social, personal — anyway, it has been moved away from the domains, which are the specific subject areas. There is maths, English, languages other than English, humanities, science and — —

The CHAIR — History?

Dr FAULKNER — History is part of humanities. SOSE has been moved away to history, geography and economics — that is humanities. There is disciplinary learning with your five discipline areas, then you have civics and citizenship, and then you have interpersonal learning and personal learning, and you have got creativity and technology. So they sort of sit as something that should influence overall. Who teaches it and how that plays out in

schools, I do not know, because I work in a university, but as I go out to visit my pre-service teachers I will be watching that. It is designed to come back and be part of everyone's life up until year 10.

Ms MUNT — Good.

Dr FAULKNER — Now whether it does, I cannot guarantee, but that is the plan. I will be back to see if your work experience students have had direct experience. If you just go into VELS, up will come your civics and citizenship. It is at every level — six levels of schooling up to VCE — and it is quite comprehensive.

Ms MUNT — Does that cover structure of government?

Dr FAULKNER — Very specifically. It covers parliamentary processes. They are invited to re-enact their own. It is the Victorian Curriculum and Assessment Authority that has designed that curriculum.

Ms MUNT — Your submission says:

... It is our submission then that state political representatives agree to similar standards of professional practice that we — the teaching profession —

do. We argue that elected representatives should develop a code of practice similar to that of other professional bodies, conforming to accountability standards and responsible behaviour.

Do you have any view on what that code of practice should be and what that should include?

Dr FAULKNER — I would not presume, but I am very happy to leave you ours. I am sorry; I have not thought that through, because it was only yesterday that I decided that I would be free to be able to present, so it is a slightly rushed kind of overlay that I have given you today. I would need to put some more thinking into that before I answered it.

Ms MUNT — That is the code of practice for the Victorian Institute of Teaching, isn't it?

Dr FAULKNER — Yes. I had just better check that is not an earlier draft, but I am happy to leave that with you because certainly that has been ratified by the council now. It does not say 'draft', so I think I can leave that with you. How far you find it transfers — —

The CHAIR — Thank you for that.

Dr SYKES — Is there some form of monitoring of the implementation of the code so that what you do is measured in some way to see what compliance there is? If you do not comply with the code, is there some remedial action taken?

Dr FAULKNER — Andrew Ius, the CEO of the Victorian Institute of Teaching, has just brought in that teachers need to do 100 hours of professional learning, presumably around areas that deal with the standards. They are still developing that. I think at the moment there is certainly no punishment unless you transgress the code of ethics, in which case you are called up to defend yourself in front of a committee, and people are suspended and barred from teaching. Certainly around issues of behaviour there are consequences.

At the moment I think this is a bit of a blue sky, an ideal, situation. We are still in the first five years of these standards being developed — in 2002 — so at the moment we are encouraged, and it has been brought down that we do need to do 100 hours professional development over the next five years so that we are being continually renewed in terms of what our standards are and how we are maintaining our professional dimensions. So not yet.

Dr SYKES — I am a veterinarian by background, and we often have codes of practice for the management of animals or we have a professional code of practice. One of the issues is that the way it is actually managed is that rather than managing it per se, failure to comply with the code of practice can be used as evidence against you if a prosecution comes against you in relation to animal welfare or unprofessional conduct. That is how the code is managed from a veterinary point of view.

Dr FAULKNER — Yes, and of course teachers can be sued too, in schools.

Dr SYKES — But do you have the failure to comply with the code of practice being used in evidence against you, because that is a great way of encouraging compliance?

Dr FAULKNER — That is true. I will suggest it to the Victorian Institute of Teaching.

Mr DALLA-RIVA — In your submission — my reading of it is — you talk about this lack of standards set on politicians and a perception about how rowdy we are. I just draw you to some of the calculations: question time in an ordinary week in Parliament, assuming we sit for three days, is 3 hours; ordinary debate accounts for 20.5 hours. I think it was raised earlier that, whilst there may be a focus on question time, in fact the majority, a significant amount, of time in parliamentary debate is rational, reasoned, argument-based communication between opposing groups. But I think what happens is that there is this sort of view that Parliament is always like question time, when in fact it is not.

There has been discussion about perhaps having Parliament online, as it were, so that there could be accessibility for hearing state Parliament at all times of the day, and perhaps in your case students could listen to the debate. I want to hear your views about that particular issue. If we were to begin streaming — live communications — of Parliament in the non-question time parts of the day, then maybe students would hear it and say, ‘That is pretty boring’. When it is all said and done, they have this perception of what they see in the media or the news grab or when they come to visit. Do you have any views on that?

Dr FAULKNER — Have you watched the program *Behind the News*? That is used often in primary schools, and I am just wondering if there was some possibility there, with the way that program deconstructs the news for upper primary levels and makes it a little bit more packaged in the way that decisions are made, rather than going online, which is one step away from reading *Hansard*. It is not really gripping and engaging people in the political processes.

I understand your point. I think parliamentarians, like teachers, do suffer an image problem. How do we reflect the kinds of more intelligent wrestling that go on, to change the way young people think about decision-making processes. I am trying to think of the time that *Behind the News* is on. It was an ABC program that used to be on during the morning. Because I am out of primary now I have lost touch with it, but I think it is still going on. I would imagine that talking to people who were presenting news to secondary and primary audiences might be the way to think about perhaps rejigging perception.

The CHAIR — Do you think that the Parliament should take an active role, with some group of teachers, in terms of a civic course? I do not know what your perception is of question time: is it just an unruly mob which should not occur in the schoolroom?

Dr FAULKNER — I do not watch it, but of course I have watched it.

The CHAIR — Or is it a fundamental part of our democracy and therefore — you were talking about deconstruction — an informed criticism of question time and the depth behind the question time is really fundamental to the way our democracy works, so it is understood that there is a meaning behind it which is not good behaviour or being on your best behaviour — Scouts honour behaviour. It is really fundamental to the democratic process and an understanding of that.

Dr FAULKNER — Yes, but is that the way people read it when they see something that is — there is just deep cynicism around it, I think, and that is a problem. It is seen as too often attacking the man rather than the issue and those kinds of things. But I agree: robust, vigorous debate is something that should be modelled and seen as part of the democratic process.

Mr DALLA-RIVA — In relation to your submission, you talk about the power to deregister a teacher who has breached provisions of the code. Could I argue that perhaps politicians have a significant amount of scrutiny in terms of not only their professional life but their personal life.

There is also an overarching issue that you may have considered, and I just want your comments. We have two processes called preselections and elections, where we can be kicked out of our jobs if we do not live up to the professional standards that are expected by our relevant parties or, indeed, by our electors in subsequent elections that follow. I just want to hear your views. Maybe you are not seeing the broader picture in that there are accountability levels already in place for politicians that maybe teachers do not have.

Dr FAULKNER — Would you describe these as the checks and balances?

Mr DALLA-RIVA — Yes.

Dr FAULKNER — Are there others, or are they the two fundamental checks and balances?

Mr DALLA-RIVA — They are the significant checks and balances, because if you are not elected or preselected, you are out.

Dr FAULKNER — That is right, but there is cynicism over how selection is done too, is there not? It is a bit tribal.

Mr DALLA-RIVA — Can you define that? It makes it difficult. What do you do?

Ms MUNT — There are processes behind preselection, so it is not just tribal.

Dr FAULKNER — Yes, I am sure there are.

Ms MUNT — That is also part of the democratic process, and it is quite complicated sometimes.

The CHAIR — There is also scrutiny by the media and scrutiny by the electorate.

Dr FAULKNER — Intense scrutiny.

The CHAIR — The electorate's scrutiny often comes out in the local papers, for example, does it not?

Dr FAULKNER — I appreciate all that as a mature-aged educator, but I do not see it being acknowledged by secondary school children who are the people we need to recruit really, do we not, to active citizenship? That is where I see the problem being, at a communicative level.

The CHAIR — Thank you very much for that.

Witness withdrew.

VERIFIED TRANSCRIPT

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Inquiry into strengthening government and parliamentary accountability in Victoria

Melbourne — 1 August 2007

Members

Mr G. Barber	Mr G. Rich-Phillips
Mr R. Dalla-Riva	Mr R. Scott
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Witnesses

Mr A. J. Hunt, A.M., and
Associate Professor K. Coghill, department of management, Monash University

The CHAIR — We have a former Speaker and a former President now before the committee Welcome, Alan and Ken. Thank you very much for attending and appearing before us. This is very familiar territory to both of you, I am sure. Thanks very much also for your submissions. We have about an hour, presuming you might wish to either in tandem or jointly speak to your submissions. I will leave that to you.

Assoc. Prof. COGHILL — It will not be a duet, it will be in series. The submission which I have made is a personal submission, but it does attach to it the original document which has led to this inquiry.

The CHAIR — Is it this one?

Assoc. Prof. COGHILL — Sorry, it is this one here.. The first one you held up was a discussion paper, which was issued about a year ago, and then subsequent to that, after receiving comment on it and reviewing the application of that to Victoria in particular, we produced the *Renewing Accountable Government* document. We see this very much as the next phase of reform, as your terms of reference suggest, and what I, and Alan I am sure, would be keen to emphasise is that Victoria has made some very significant reforms over the last several years which affect accountability, not the least of which is the restructuring of the Legislative Council. The fact that the present Premier was one of the driving forces behind that lends support to the suggestions that there is the opportunity for further reforms to now proceed.

So far as the group which prepared the first couple of documents is concerned, it is a group which got together informally and was then constituted under the Australasian Study of Parliament Group rather than under the Victorian chapter. There will be further formalisation of that at the forthcoming annual meeting later this month at the conference in Adelaide.

I will very briefly summarise what I see as some of the key points in my submission. On the particular references that you have been given, in respect of parliamentary committees, I have dealt with that as an area requiring modernisation of the Parliament. I draw attention to the fact that in many jurisdictions now — outside Australia, but less so within Australia — it is commonplace for there to be portfolio or policy area committees to which legislation is routinely referred for inquiry and report, which very often invite public submissions and where appropriate involve public hearings.

The second issue is that of question time. I am conscious of the discussion you have just had with the previous witness. I think it is important to recognise that the present basis of questions without notice in Australia and in Victoria is a ruling which was made 106 years ago in this building when it was the seat of the federal House of Representatives. That ruling gave a discretion to ministers as to whether or not they answered, which in my belief is not consistent with accountability.

The third point relates to standards of parliamentary behaviour. One of the proposals put forward in my submission is for the creation of a parliamentary standards commissioner. There is such an office in Britain now, there is a similar office in Queensland and there are similar offices in Canada. I see the role that this would play as being, firstly, a preventive role — in other words, advising and educating members about appropriate behaviour and appropriate ways of resolving particular dilemmas they might face. Complementing it there should be a code, and there are many precedents now in other parliaments of draft codes and codes that have actually been adopted. In the last resort the commissioner would investigate complaints against members, whether they be ministers or ordinary members, and report — but not adjudicate — to the Parliament on the outcome of the investigation. Again I emphasise that training and advice on ethics and like matters would ultimately be the most important role the parliamentary standards commissioner would play.

In regard to information, as the previous witness said, this is really about access to information rather than just the operations of the freedom of information legislation, and that principle of the right of public access to information needs to be restored. One mechanism we have suggested for easing it would be to have an arbitral role for the Ombudsman or some similar person where there was some dispute about the volume of material that had been asked for or some other matter was in dispute.

I have also made some extensive recommendations regarding lobbying. The committee will be aware that Western Australia has recently made some reforms in that area, but there is a wealth of other information provided in my submission.

In summing up, before I pass over to my colleague, I believe the package of proposals that I have put here is a natural successor to the sorts of reforms which have occurred in the last several years and are reforms which could add enormously to the standards of government accountability in Victoria and again place Victoria back at the head of the pack rather than leaving it trailing, as it is currently in some areas.

The CHAIR — Thank you very much, Ken. Alan, do you want to say a few words?

Mr HUNT — All right, I will say a few words. Accountability is the cornerstone of democratic government. Democratic government cannot be effective unless ministers are fully accountable to Parliament, and hence to the public. Any evasion of questions or information is an evasion of the public's right to know. It is an evasion of the facts which should help them determine for whom they are going to vote.

Pretty well all the writers on democratic government see three aspects to it. The first is representation; you represent your electors and you represent your party. The second is law-making and upholding the law in all its forms. The third is accountability, and that is a vital element in any democratic government. Around the world accountability has tended to be brushed aside a little as ministers personal staff have increased and as they have been surrounded by spin doctors. If you have been able to read my submission you will have seen the story of Bolte's advice to me as a new minister; it is very revealing. Bolte demanded absolute honesty from his ministers. He took the view that everyone makes a mistake sooner or later, and that the only sensible thing to do when that happens is to admit it, and if you want to explain it a little then do it very briefly. As a result Bolte was trusted by the public. They knew he told the truth and they knew he demanded that his ministers told the truth, and democracy worked and accountability worked.

Now we get things like the McMullan principle, and I think you all know what that is. Ministers say, 'This was a decision made not by me but honestly and in good faith by one of my assistants', and that is an end to it. Instead of giving you the information, instead of a ministerial adviser being accountable and the minister being accountable, no-one is accountable. That is an absolute perversion of democracy and a perversion of accountability, and yet it is happening in many state parliaments and in the federal Parliament under both parties, and it should not.

Australia is not alone in this; Victoria is not alone. In Canada a body of academics and lawyers called itself the Citizens Circle for Accountability, and it got this issue on the agenda. Stephen Harper, who was then in opposition, took it up, promised to do something about it and was elected Prime Minister of Canada. He immediately made a statement that he would tighten the rules on accountability to ensure that the public's right to know was respected, and he did it. One of the first acts to be passed when he became the new Prime Minister of Canada was the Federal Accountability Act. That act is now in place and I suggest you have a look at it.

He went further and produced a 60-something page statement on accountable government called *Accountable Government — A Guide for Ministers and Secretaries of State*. Strangely enough we had been going along similar lines, and this is on very similar lines, not that I suggest for one moment that we should adopt another country's statement, but we should learn from it. It is available on the web. I will pass it over to you if you would like — —

The CHAIR — Please.

Mr HUNT — But I would prefer not to; I prefer to keep it.

The CHAIR — So long as we get the web reference.

Mr HUNT — I hope that you will have a look at it. It is not alone. In Great Britain similar concerns were being raised by the public under a Labor government that the government was not accountable enough. Gordon Brown took it up and in his first week as PM made a statement. Jack Straw made a statement called *The Governance of Britain*, which again is available on the Web, and it is very interesting. It promises greater accountability. It promises new rules to make ministers more accountable. It respects the public's right to know. I do not want to spend a lot of time going into this. I think if you read it yourselves, it will be very, very useful and very, very helpful, again, not that we adopt everything that another country is doing. By the way, these are promises of what will be done rather than what is actually being done at this stage, so you need to bear that in mind.

What has led us to this position? I believe it goes back to the Coombs royal commission in 1976. The Coombs royal commission finally put an end to the old doctrine of ministerial responsibility. When I came into Parliament I believed it. I believed the doctrine of ministerial responsibility was still as pristine as it was 100 years ago. It was

not. I have given in annexure to my paper the 10 principal reasons that the Coombs commission found that the doctrine no longer applied. The most important of those reasons was that times have changed. The burden on ministers is enormous compared with what it was 100 years ago. The sphere of government is vastly broader and new rules are needed. What became important was not the doctrine of ministerial responsibility, but it has never been fully replaced by a doctrine of ministerial accountability. Ministers sought to avoid responsibility, thinking that responsibility in a way meant blame. That is a pretty foolish sort of assumption, but it happened.

What is needed is a replacement for the former doctrine of ministerial responsibility by a doctrine of ministerial accountability. You would never get away with, 'That was a decision made by my sidekick'. That should not be possible. They should be accountable. Lots of authors have talked about it and discussed it. Coombs did, and some of his recommendations have been accepted; others have not yet happened. John Howard made a valiant effort with his ministerial code, but he did not abolish the McMullan principle. Ministers still hide behind that and will continue to hide behind it, whether it is a Liberal government or a Labor government, unless the rules are tightened up.

You have seen our reference to the need for a parliamentary commissioner to help with the enforcement of the rules. That is based on a British precedent, but you will find when you read *The Governance of Britain* that they now propose to go further in that. Similarly in Canada they have an ethics commissioner to advise ministers on their responsibilities and give them a rap over the knuckles if they do not do it. Democracy is very fragile, but it is certainly worth protecting and preserving, and it is certainly worth taking steps to ensure that it is protected and preserved and that the rights of the public are protected and preserved. I hope that you will assist in that task. An accountable government is a good government, and no matter how good a government may be in other respects, it is not a good government unless it is accountable.

I would like to refer you to several books. Chapters 7 and 8 of *Deliberative Democracy in Australia* by John Uhr, is, I found, the best reference of all. It is a very good reference. March and Olsen, *Democratic Governance*, 1995, is worthwhile. You have two 2007 books in your library, one by Clive Hamilton and Sarah Middleton called *Silencing Dissent*. That has in it a major article by Harry Evans, the Clerk of the Senate. He says that a non-government majority in the upper house is one way of assisting to ensure accountability. Anyway, you will have a look at that, I have no doubt. There is a book by Patrick Weller called *Cabinet Government in Australia*. If you want to go back to older material on accountability, E. L. Normanton published in 1966 *The Accountability and Audit of Governments*, and it is well worth looking at. I suggest that the staff read some of these and summarise them for you, because it would be too much reading otherwise. I am happy to answer any questions.

The CHAIR — Thank you very much, Alan, and thank you, Ken. I appreciate your submissions. You will notice our terms of reference talk about accountability, which is what you have emphasised, Alan. I notice you are still talking about responsibility here in your report rather than accountability, Ken. I also appreciate the fact that you also focused on the six areas which the Parliament has asked us to particularly focus on in this inquiry that we are holding here. We are always happy to take broader views, of course.

I might throw it open to my colleagues, but I am sure everyone is dying to ask you, Alan — particularly since we have been given some bios here and one has a lovely photo of you with a wig on — whether you have any views on the modernisation of Parliament, including the termination of the wearing of wigs and other archaic practices. We will get that out of the way before we really get started.

Mr HUNT — No, I do not have a view one way or the other on that. I think the day of the wig has probably passed.

Mr RICH-PHILLIPS — Do you have a view on it being included in an inquiry like this?

Mr HUNT — No. It is a side issue at best, is it not?

The CHAIR — We had some views from Ken on other archaic practices, some of which were probably taken up in terms of a bill which was introduced into Parliament in the lower house.

Mr BARBER — In relation to the parliamentary standards commissioner on page 61 of your latest document, dot point 2 has the commissioner providing advice on a confidential basis to individual ministers, members and senators about the interpretation of the code, and then the second-last dot point has the commissioner investigating evidence of possible breaches of the guide or code by ministers, members or senators. If that related to

the one ministerial decision about which I sought advice beforehand and then the commissioner had to investigate my conduct afterwards, do you think we would get ourselves into a bit of a pickle? Should we look at splitting this into an adviser and a commissioner as two separate officers?

Assoc. Prof. COGHILL — I think the greatest danger would be if the commissioner had to make a decision — in other words to arbitrate or adjudicate — on some behaviour on which the commissioner had previously advised, and we have very carefully avoided that risk. But the ideal would be that you had sufficient resources that would allow you to have both someone who could advise on dealing with a particular issue and then someone independently investigating how the individual had acted on that same issue. It seems to me that there is a much lesser problem if the role is not one where the commissioner makes a determination but rather simply reports on the case.

Mr DALLA-RIVA — Who appoints the commissioner?

Assoc. Prof. COGHILL — It would be the Parliament. We have not gone into the detail but it would be an all-party appointment similar to the way in which the Victorian Auditor-General is appointed.

The CHAIR — Or a committee presumably, whatever the committee might be, whether it is Public Accounts and Estimates Committee.

Ms GRALEY — I have got two questions for Alan. The statement made by Premier Bolte, I presume, was made in the 1960s?

Mr HUNT — That was made in 1971.

Ms GRALEY — 1971. Do you think that levels of public scrutiny — and I suppose the fact we were talking about before, about the amount of monitoring that goes on of political behaviour and even public servants behaviour — would change that advice?

Mr HUNT — 1971 is 36 years ago. That is hardly a vast framework. There has been a noticeable change, but what I am suggesting is we put something in place to stop the adverse changes. There will be changes for the good and I hope you will make findings that will result in changes for the good.

Ms GRALEY — My second question is around when people talk about ministerial responsibility or ministerial accountability, and I have not been in the position of being a minister so this is just something I am looking at as a public person. Would ministers or politicians think about being more accountable or more honest about accountability if they thought they did not have to resign their commission? I think what actually happens in these circumstances is that people can make mistakes and maybe the only alternative is to resign. Is there something in the code or your thinking, something before you had to resign which would actually make people more willing to be more accountable?

Mr HUNT — That is very sensible. I think the committee should look at that. Bolte took the view if you made an honest mistake, people would forgive you anyway. Just being accountable was enough. There were several cases of ministers who offered to resign and were not accepted. Pressure to do so was not followed through because they had told the truth.

Assoc. Prof. COGHILL — If I could just follow up, on page 7 of my submission there is a suggestion there are six different levels at which accountability might operate. The simplest is where the minister is not the person who should have been asked about it, so they sent it off to someone else, and then the extreme is the resignation. It suggests there are a whole lot of other measures which are appropriate and in my view the grounds on which a minister should resign are basically where he has either been dishonest or is incompetent to exercise the responsibilities of a minister in a particular portfolio area. Those would be the two principal grounds.

Ms GRALEY — So do you want to attach an example to that, a recent example? Would you say the AWB or the Cornelia Rau case?

Assoc. Prof. COGHILL — I think that the AWB case in fact does reflect that because there are at least two federal government ministers who failed to ensure that their departments were policing the United Nations sanctions. That applies to the foreign affairs minister and in the case of the minister responsible for agriculture — I

forget the portfolio title — but he had a responsibility for the oversighting of the AWB exclusive licence. And again that oversighting did not occur to a competent standard.

The CHAIR — Can I come back to our six areas — the first one being parliamentary committees, and you have addressed them specifically. In terms of parliamentary committees, you are suggesting the establishment of policy-specific legislation committees. Do you want to talk about that a bit more?

Assoc. Prof. COGHILL — There are now many places in the world — and I suppose New Zealand is the one that is closest at hand — where the default position is that a piece of legislation will be referred to a portfolio committee. Those committees exist to cover all of the portfolio areas but do not necessarily correspond to just one or perhaps two. They might cover a range of, let us say, social policy areas rather than just, say, health and something else. Those committees need not be chaired by a government member. The New Zealand practice is that there is a mix of chairs who are government and non-government, and the committees seem to work equally well whether they are chaired by a government member or not.

Then there is always the option for the Parliament to decide, ‘No, in this particular case this legislation is not going to be referred to a committee. We are just going to deal with it on the floor of the house’. That may be because it is something very simple or it may be because there is a very stark choice before the Parliament on some political issue, but the general practice would be to refer it to a committee, for the committee then to invite submissions and, depending on the nature of the issue and the extent of submissions received, to hold public hearings. The advantage of that is that you in fact end up with better decision making because you get a lot better input into legislation — a lot easier identification of unintended consequences, to use a term from Paul Keating’s years.

The New Zealand experience has been that governments have taken a fairly relaxed view of it and have been prepared to accept amendments proposed by committees even where those amendments have had significant policy implications — in other words, they departed from the policy which the government had in mind when it introduced the legislation. That is the model, as I say, which is very widespread in the world outside Australia now. For some reason it has not taken off in Australia.

The CHAIR — I think the Senate had this process. I am not sure that the current Senate actually uses it a lot. We are looking at it here in Victoria, of course. Do you see these as joint committees, or are you looking to multiply the number of committees?

Assoc. Prof. COGHILL — I do not think it matters a lot whether or not they are joint committees. I think the really important thing is the culture which operates in the Parliament and the culture which operates in each parliamentary committee. Where that culture is, as it has traditionally been in Victorian committees, one of a lot of consensus building within the committee, that is when that process is most successful. It can break down if someone decides to be bloody-minded and try to force a partisan view through a committee’s deliberations, but by and large the experience of New Zealand and other places is that that is not what usually happens.

Mr SCOTT — Just a couple of things. Firstly, I note, Mr Coghill, one of your recommendations was banning donations to the Liberal Party by individuals, limiting it to \$1000. I suppose one issue I would raise, particularly in places like the US where you have quite extensive legislative limits on donations, is the development of some soft money where you get Swift Boat for Truth or something emerging, which of course is not part of the Republican Party, but it will run ads for a particular purpose in an electoral process. It is actually very difficult. I am not sure that anything I read here would deal with those sorts of issues directly, where you get indirect political campaigning funded for specific purposes which circumvents legislative control.

The second question is, I suppose, seeking a response to an observation. There seems to me, reading your reports, to be a fairly fundamental disconnect between the understanding implicit in your submissions about how the Westminster system should function and how it has actually developed over the years, particularly with the rise of disciplined modern political parties and, in effect, the advance of the executive at the expense of the legislature as a result, and furthermore the role of the electoral process, particularly in the lower house, as being a competition to select who is the executive, not who is the legislature — where you have got the rise of a presidential system, in effect. That is not really, I have to say, in things I read about the Westminster system as common, and it is not really reflected in the discussion both within your paper and what that means, as to how accountability functions and dealing with the actuality of that, rather than what should be an idealised, greater emphasis of the legislature on accountability processes.

Assoc. Prof. COGHILL — There are two major issues you have raised, and thank you for the comments. The first one is on the donations. I think the more appropriate model is the Canadian model. There are peculiarities with the American model which are peculiar to America. They are particularly so because it is an executive presidency, but not only that, because the American executive presidency is, again, different to most other executive presidencies. The sort of example which you have cited is virtually unknown in parliamentary systems. I do not understand the full socio-psychology behind that, but it is extremely unusual to have that sort of Swift Boat campaign that you gave as an example.

Mr SCOTT — I was not really talking about the actual political tactics used in the campaign. What I am raising is the more general issue of those who are not directly contributing to political parties seeking to raise funds and using funds, even if they are limited to donating to political parties.

Assoc. Prof. COGHILL — I did understand that. What I am saying is that the experience of parliamentary systems is that that has not been seen to develop in the same way as it has in the American version of the presidential system. What I would propose is a model which is much closer to the Canadian model, where the sorts of things they have already introduced go a long way towards reducing the capacity of big money, whether it is union or business, from distorting and biasing the operation of the democratic system. From what I know of the Canadian model, the sort of risk that you have foreshadowed just does not seem to have emerged. Again taking your point about practice versus theory, I am comforted by the observation of the practice in Canada and in other parliamentary systems.

I then come to your second point, which is about disciplined parties versus the ideal of the Westminster system. There was a really interesting article in the spring edition of the *Australasian Parliamentary Review* last year which makes a brief comment about the fact that changing the rules in New Zealand was successful in shifting the balance back towards the legislature. That gives me some comfort that by changing the rules you can influence the behaviour of the political actors involved and move back towards a more accountable system than we see, particularly federally at the moment and to some extent in Victoria, in the sense that I think further improvement is possible in Victoria.

The CHAIR — Can I get back to our list. Question time procedures are the second one. As a former Speaker — and I am sure Alan, as a former President, will have some views on this as well — I notice you have given us your ruling in 1992, which is quite an extensive ruling. I note, for example, that you pointed out that our questions should not be read out. This, of course, is very little observed.

Assoc. Prof. COGHILL — Honoured in the breach.

The CHAIR — That is right. You have made some suggestions — namely, about the 1901 ruling. Do you want to tell us a bit more about that? The normal ruling is that the Speaker does not direct the ministers as to how they might answer questions.

Assoc. Prof. COGHILL — Alan and I wrote a joint paper on this quite some time ago now. My view and our view, then and still, is that that Speaker's ruling in 1901 was not consistent with good democratic practice. It was not consistent with accountability. He was within his rights to make such a ruling, but Alan and I profoundly disagree with it and think that it is inconsistent with a representative democracy. The only way in which it can realistically be reversed now is for there to be a quite deliberate and overt decision taken to reverse that 1901 ruling, because a whole lot of precedent has built up on it over the last 106 years. Simply dealing with it casually is not going to be adequate. It really does need a change to the standing orders to ensure that the house itself, through the standing orders, has directed that ministers must provide the information which has been requested, with the obvious exceptions of where there is — —

The CHAIR — Security or criminal issues.

Assoc. Prof. COGHILL — Administration of justice issues or, in the national scene, genuine issues of national security.

The CHAIR — On page 24 of your submission you quoted the recent Canadian guide, which says:

... ministers are required to answer parliamentary questions within their areas of authority as clearly and fully as possible.

Assoc. Prof. COGHILL — Yes.

The CHAIR — Would you see that as sufficient in terms of what you are saying in your recommendation?

Assoc. Prof. COGHILL — That is putting it very simply, and I think that that is what is required, actually. It needs a very simple and forthright statement. You would be aware of course that in Canada they do not have questions without notice, except the supplementary questions, and that the primary questions are questions on notice, as in most other jurisdictions.

The CHAIR — Would you favour us moving to a questions on notice, say, if they were given 24 hours or 12 hours?

Assoc. Prof. COGHILL — I have not ever argued for that. I think that there are strengths in our system as it is. In New Zealand, I think, it is minimum of 2 hours. But in terms of having ministers demonstrate that they are on top of their portfolios, questions without notice is something which I find quite acceptable.

Ms MUNT — And do you favour supplementary questions? They do operate at the moment in the upper house, of course.

Assoc. Prof. COGHILL — I think generally that is right. If an answer is incomplete, then there should be an opportunity for a follow-up question.

The CHAIR — Do you have any views on the sorts of questions? For example, is a question like, ‘In view of the accident down the road between the tram and the truck, does the minister believe that he should resign?’ — actually a reasonable question, and should speakers or presidents direct the questioner to more meaningful and more accountable questions?

Assoc. Prof. COGHILL — The first thing is that it has to be something which falls within the minister’s portfolio responsibility. That is a threshold.

The CHAIR — The question is whether the minister should resign. Does that fall within his portfolio?

Assoc. Prof. COGHILL — I suppose the simple answer would be, ‘No, I should not resign over that matter’. There are some things which, on the face of them, appear to be simple and trifling matters, and may be in fact issues of very great moment. I would be very reluctant to say that there were matters falling within a portfolio which a minister should not be asked. What I think is a practice which is too little used — and I did see it used very successfully by people like Ian Smith — is when they did not have the information to simply admit that they did not have the information and undertake to obtain the information and make it available to the member or to the house.

The CHAIR — I understand that, and thanks for that clarification. My point is that often the questions are phrased in such a way that the question itself is actually a hypothetical or a statement and actually bears no relationship to the minister’s responsibility.

Mr HUNT — In that case I believe the Presiding Officer should rule it out.

The CHAIR — So the question that I gave, which is nothing about the minister’s portfolio, it is just asking whether the minister should resign; should we have views on that?

Assoc. Prof. COGHILL — I think you will find, at least in the Assembly and I expect in the Council, that there are already Speakers rulings and precedents which make it clear that hypothetical questions are out of order and a string of other inappropriate styles of question.

Ms GRALEY — I have got a follow-up to that. Do you think there should be a time limit on any answer, because that is something that has come up in other papers that have been presented?

Mr PAKULA — We removed time limits in the upper house this year; we had time limits and we removed them.

Assoc. Prof. COGHILL — It is hard to know what the appropriate time would be, but I think it is appropriate to have some sort of ceiling on the time available to a minister to provide an answer. I know that that has applied in a number of chambers and does not seem to create a problem, where there is a time limit.

Ms MUNT — We have had other evidence today that suggests that the whole of question time looks unseemly on the telly.

Mr HUNT — The way it is conducted at the moment, yes.

Ms MUNT — Do you have any suggestions for that, to help with the public perception of question time at all, because it is the part that the press focuses on?

Mr HUNT — If members have to make their questions relevant, it is equally fair that ministers should make their answers as brief and as relevant and as informative as possible. Tony Blair in a very recent speech said the press thrives on controversy. If you make anything controversial, it is published, but an honest answer does not create controversy and hence does not get reported, at least in the main. Yes, the rules should ensure that ministers answer succinctly, to the point, and as honestly and simply as they can.

Assoc. Prof. COGHILL — Just to give my perspective — firstly, I fully endorse what Alan has said. My experience of the Legislative Assembly is that there has been — and I have not watched Assembly question time for a while, I must say — a culture developed there where it is acceptable for members to shout at each other across the chamber and to talk loudly amongst themselves during question time, so it is partly a cultural thing. But I think it is exacerbated by the fact that ministers have the capacity to evade questions, which itself is provocative, and the nature of questions is sometimes also provocative, which I think comes back partly to the chairman's question earlier. So that if the rules were improved in the way in which I suggested in my 1992 ruling, then I think that would change the atmosphere. There would be an expectation that questions were going to be answered and there would be an expectation that questions would actually be genuinely seeking information rather than to make a point for the headlines in the news that night. But there is also the issue of the culture, which I have certainly observed in the past in the Assembly.

The CHAIR — Mr Pakula, let's see if we can move on to some other topics as well — overseas travel, for example, is of interest.

Mr PAKULA — That was not going to be the one. I must say, Ken, I would like to deal with a range of the things you have dealt with, but some of them are not in the terms of reference, so I should indicate that your positions on both post-parliamentary careers and lobbying are ones that I would question at some point.

Assoc. Prof. COGHILL — But you are still so far from a post-parliamentary career.

Mr PAKULA — Yes, indeed, but it does not mean I am not concerned with questions of fairness. But I will limit it today to this issue about archaic practices. You seem to suggest that the confrontational nature of Parliament is in itself an archaic practice and that the way that the Parliament or the Assembly is configured is itself archaic and we ought to have both chambers configured more in the style of the US Senate where we are standing up and talking to the front.

I suppose I wonder why you would consider the notion of two competing parliamentary parties and others facing each other and expressing disagreement to be in itself archaic and why this notion of the gentlemanly sport of the US Senate or the US House of Representatives is more representative and more democratic.

Assoc. Prof. COGHILL — I must admit I was not thinking of the United States chambers when I was presenting an alternative model. I was in fact thinking of virtually all of the parliamentary systems outside the Westminster system, and a few of the Westminster systems, which have gone for a hemicycle-type of configuration. But it really comes back to the whole nature of the chamber being a deliberative chamber to make important decisions. You will be aware that the convention is that you do not address your opposite number when you are speaking, you address the Chair, which is again a reflection of that. My point is that having opposing rows of seats derogates from that principle of it being a deliberative chamber and prejudices the atmosphere in favour of simply being a two-party, adversarial contest rather than a deliberative chamber trying to make better decisions on behalf of the people of the state.

Mr PAKULA — As much as you might like to say that, surely the adversarial nature that is recognised by the configuration of the chamber is the reality that we are in fact dealing with?

Assoc. Prof. COGHILL — You might say the same about the hemicycles. In all of those cases there is a contest of debate, a contest of ideas. When you have got a system such as we now have in the Legislative Council, where it is not a simple contest between two opposing views but in fact there are three or four strands of ideological views put there, it is appropriate to focus the debates on the question before the chamber rather than simply a brawl between two opposing sides of a particular question.

Ms GRALEY — I have some questions about overseas travel, and I can see that you talk positively about that. I was wondering, though, how you actually think that should be funded? You say in the last paragraph that you think it should be generally available. What actually does that mean? The third thing is that we had a person here this morning who was suggesting that maybe parliamentarians who were considering overseas travel should make some sort of submission to the Speaker before they undertake that sort of study or travel.

Assoc. Prof. COGHILL — Firstly, as to how it should be funded: in my view it should be funded by the Parliament and not by the executive — if that is your question. The model that used to operate was that the funding came through the CPA branch, which by and large I thought worked reasonably well. In practice what happened, at least in the Labor Party — I cannot speak for other parties — was that there would be a certain number allocated on a party basis and the Labor Party would, through its deep and mysterious mechanisms — —

The CHAIR — Seniority, Ken!

Assoc. Prof. COGHILL — Not always. It would make decisions about who would get the travel awarded in the particular year. I think that there is a case for members having to make out a case as to the value which they and the Parliament would get from them undertaking their proposed course of study in a study tour.

I think there is some value in that. As to who should actually make the determination, I would see it as more appropriate to the presidium, which I have mentioned in another context here, as being the body which should appropriately make the decision.

Ms GRALEY — And the availability of the reports?

Assoc. Prof. COGHILL — The availability of the reports. They should be public documents, yes, absolutely.

Ms MUNT — I just have a clarification on petitions. You say that, subject to the petition not being unparliamentary, to post each petition on a website for which the committee has responsibility. Just on a point of clarification, do you mean this committee, PAEC?

The CHAIR — Or the Standing Orders Committee?

Assoc. Prof. COGHILL — The way it operates in the Scottish Parliament is that there is a petitions committee. I would see it as a specially constituted committee.

Ms MUNT — So it is put together as a committee that is set up specifically?

Assoc. Prof. COGHILL — And it would be a single-house committee, because petitions are to a particular house.

Mr HUNT — Chair, I missed something. In preparation for this hearing I sat down one evening and tried to summarise on one page all the advantages and important features of accountability. I took it to the Australasian Study of Parliament working group and there were various comments on it, but I did not make any changes. I will pass it over to you so that you can look at it. It tries to set out in one page the important details of accountability. I think that you can improve upon it, with your diversity of views and of knowledge, and it just may assist you at some stage.

The CHAIR — Thanks very much. I notice your emphasis on ‘accountability’ as a new word rather than ‘responsibility’.

Assoc. Prof. COGHILL — The distinction between the two is interesting. If you look at some dictionary definitions, they are interchangeable.

The CHAIR — I think we have pretty much covered the issues. We have another witness coming in as well. Do you have any final comment you might wish to make?

Assoc. Prof. COGHILL — Thanks very much for the opportunity to present our case.

Mr HUNT — I think it is a very, very important committee indeed. I am sure you all treat your duties very responsibly. I am looking forward to some worthwhile results from the committee.

Assoc. Prof. COGHILL — I suppose my concluding comment would be to say that other jurisdictions in Australia will be looking at your report, because it is a fairly rare opportunity for parliaments anywhere to have the sort of reference that you have got at the moment. The significance of this one will not be lost on any other Parliament.

The CHAIR — I take it that you are making this available to the committee? And we promise not to put it up on the Web tonight. You wish to make this as a formal submission to the committee? I know it is an Australian one.

Assoc. Prof. COGHILL — Yes.

Mr DALLA-RIVA — What is it called, for the record?

The CHAIR — *Be Honest, Minister! — Restoring Honest Government in Australia.*

Assoc. Prof. COGHILL — It will be launched at a press conference at Parliament House, Canberra, tomorrow at 11.00 a.m.

The CHAIR — We thank both of you.

Witnesses withdrew.

VERIFIED TRANSCRIPT

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Inquiry into strengthening government and parliamentary accountability in Victoria

Melbourne — 1 August 2007

Members

Mr G. Barber	Mr G. Rich-Phillips
Mr R. Dalla-Riva	Mr R. Scott
Ms J. Graley	Mr B. Stensholt
Ms J. Munt	Dr W. Sykes
Mr M. Pakula	Mr K. Wells

Chair: Mr B. Stensholt
Deputy Chair: Mr K. Wells

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Executive Officer: Ms V. Cheong

Witness

Professor M. Prior, AO, school of behavioural science, department of psychology, University of Melbourne.

The CHAIR — Welcome. Thank you very much for both putting in a submission and for attending today. Hansard staff are recording this hearing. I invite you to give us a few brief words about yourself and then speak to the submission, after which no doubt the members will have a few questions for you.

Prof. PRIOR — Thank you. I am a professor of psychology at the University of Melbourne. My work has been mostly concerned with families and children for more than 30 years. I am an academic, but I am also a clinical psychologist. I do — still do — quite a lot of clinical work and have trained lots of clinical psychologists. I have had the opportunity to work with and observe literally thousands of children and families over a long period, so I have an enormous concern for children and young people and their futures.

In terms of my submission, I think what I wrote was mostly relevant to your term of reference (c), rather than the other more formal parliamentary issues. My focus is particularly on social, psychological and cultural issues and what is happening in society with the lack of accountability, evasion of responsibility and the sorts of lies and evasions that we have heard so much about and seen so much of; and what that is doing to our society in general.

It seems to me that assumptions of truth and honesty have shifted in the last maybe decade or two, and I think a very salient illustration of that — or it was for me anyway — came a few days ago when Steve Bracks resigned his premiership claiming honesty as a special feature of his tenure. As a distinguishing feature he noted that he was honest. It seems to me that this is something one would assume in somebody in a leading position, not the kind of thing that one would want to defend, if you like. And, of course, we have recently seen Howard distancing himself from wrong or problematic decisions made by his ministers disclaiming responsibility. That seems to happen all the time. My concern is that lies and evasion are becoming acceptable; the main thing is to get away with it. I see that kind of behaviour as in danger of becoming what we call normative — that is what everybody does.

Just referring to my work with families and children, I see them mirroring and echoing and taking on this ethos and the standards of society they observe, because with children and young people what they see is what they pay attention to. You can proselytise all you like about morals and honesty and that sort of thing, but they know what they see, especially in stars or prominent people. I think they see a lot of things which might first of all disgust them, but then they pick it up and think, 'That's okay'. I am worried about a general deterioration of social mores and a loss of trust.

With regard to parliamentarians, who are very high profile, I have argued that they should be models of probity and responsibility for everybody. Similarly in business we have high profile models of deviousness and a refusal to accept responsibility. What kind of a model is that for our young people? I see the long-term effects as negative and not what we would wish for our society. That is taking that kind of psycho-social view about what it does to a culture.

I think the only other things that I would like to say concern the recommendations. I have probably seen some of the same documents that you have seen — —

The CHAIR — These, yes.

Prof. PRIOR — Yes. I have seen quite a few of those.

Mr DALLA-RIVA — The unauthorised versions.

Prof. PRIOR — I do not know about that.

The CHAIR — There is one coming out tomorrow as well — this one here.

Prof. PRIOR — No, I have not seen that. I guess I would just like to endorse at least most of those recommendations about codification of ministerial responsibility so that that is clear; that there are follow-up processes to deal with problems that could come up; that they are transparent; and that that should also apply to personal staff and to advisers, just as it should apply to ministers.

Freedom of information has been raised as a problem. We need to stop the creep towards increasing secrecy and escape clauses that are used so that access to information is diminished. The one about the lobbying industry I think is also important, and so the proposal that there should be a three-year gap between when a parliamentarian leaves government and is able to become a lobbyist I think is probably a minimum, because of the — —

The CHAIR — Two or three?

Ms MUNT — You have written ‘two’ in your submission.

Prof. PRIOR — Yes. Well, I have seen two, and I have also seen three. I think I would prefer three.

The CHAIR — Thanks very much, Margot. I notice that in your recommendations you are focused very much on, I suppose, ministerial responsibility rather than necessarily parliamentary accountability.

Prof. PRIOR — Yes. I probably should not have done it that way. I should have said that I am after parliamentary — —

The CHAIR — There is no criticism there. It is just a note.

Prof. PRIOR — No, I am criticising myself. Parliamentary accountability is what we need, absolutely. I guess there is a bit of a focus on ministerial responsibility because that is what you see so often in the media. Ministers are often the ones who are in the firing line. But of course it should be absolutely across the board. If you had greater transparency, then I think one might hear more about the entire Parliament instead of just the ones the media focuses upon.

Ms MUNT — What do you actually mean by ‘transparency’? People talk about transparency, but I just wonder how to put that transparency in place, because since I have arrived in Parliament and seen how Parliament works, I have learnt that it is impossible to keep a secret. Trust me. There is a great deal of transparency already, so what is it that you feel is not transparent enough?

Prof. PRIOR — I think the fact that we have this, if you like, cultural shift is partly due to lack of transparency, because if some people feel that they can evade responsibility and not be honest about things they need to be honest about, not be clear about what their interests and their connections are, then there are temptations there, if there are no processes which are followed up. I know that there are written processes about those kinds of things, but it seems to me that we have gone in a direction where they can be abated.

Ms MUNT — It is very difficult, to tell you the truth. For instance, I went to my accountant the day before yesterday, and I said, ‘Just ‘fess up to everything, everything that you can possibly think of’, because it is very difficult to keep anything back.

Prof. PRIOR — Some people are very clever about that, and we see lots of examples of people being clever for many, many years. Some of them are discovered, but many of them are not. That is, I think, part of a cultural shift that anything goes as long as you can get away with it, and of course tax evasion is a prime example.

I do not think that is quite to do with what one might think of as transparency, but if things like what is good practice and what are the consequences of less than good practice and less than honest practice in government were followed and everybody knew (a), what the rules were; and (b), what the consequences were for not sticking to the rules, you would have greater transparency both for the public and also for parliamentarians, for whom, if the rules are a little bit vague, that is an invitation to say, ‘I didn’t know’ or ‘I interpreted it this way’ or ‘Well, everybody does that’ or ‘It doesn’t matter. There are no consequences’.

Ms GRALEY — Professor, I know that you have not mentioned question time in your submission, but that is one of our references. I am very interested in how you think that children or members of the public may see question time — that is something we have discussed a little bit here today — and how you think that may impact on their perception of politicians, of parliamentary responsibility as well and just of general standards of parliamentary behaviour.

Prof. PRIOR — I am sure it really depends on how much exposure children have. The truth is that the average child, despite studying civics and things like that in the classroom, does not really have a good understanding of question time and what people are talking about. Maybe senior students who are interested in politics and who perhaps have the opportunity to experience question time gain some understanding, but the average child out there on the street, unless they are really studying it in school in an intense kind of way, really is unlikely to know very much. That being the case, I would predict that there would be only a very small minority who would have a view. If they have the opportunity to express that through some of the work they do at school or through family discussion, then fine; but it is a minority, I think. I am one who believes we should be doing much

more in terms of education about civics and civil society and about understanding the processes of government, but the curriculum is very crowded, so it is a difficult one.

Mr PAKULA — You are not the first person who has made a submission today who has been questioned on this issue of lobbying. I wonder why, in your submission and in the submissions of others, people involved in the political process are set apart as a class of people who are restricted in their employment opportunities post their existing job. I will give you the example of a ministerial staffer, who may lose his or her job because of a change of government, being barred from certain jobs for a period of time. Why, in a public sense, is there any more validity to that than, say, a doctor prescribing drugs being barred from working for a pharmaceutical company?

Prof. PRIOR — This is not an area that I have any expertise in at all, but my understanding of it is that it is about special knowledge that people who have been in government have which they can use to lobby to push a particular line, and in many cases to also look after themselves very well. I think people are worried about the use of special knowledge in a way which might unduly influence a minister or a member of Parliament rather than that person being given, perhaps, a more objective view.

I understand that lobbying is not about being objective, but I think there have been some worrying examples of the use of special knowledge, especially if the lobbying is by only one group and with only one point of view and other people do not have the ear of whoever the decision-makers are. I think there have been some worrying examples of that.

Mr PAKULA — Would you not accept, though, that that sort of prohibition could then be extended to other sectors of the community like the example I gave?

Prof. PRIOR — I think there are concerns about the pharmaceutical industries and doctors, which I share. It might depend on the kind of job that they went to — whether it was a laboratory job or a lobbying job. I think it is very hard to find a general rule, but it is of particular importance when we are talking about governments who are making decisions about the lives of the population that they serve. And so, it is partly to do with the level of importance of what is done.

The CHAIR — What do you mean by ‘lobbyist’? Say someone who worked for the Premier and then several weeks later, after retiring, became an AFL commissioner, for example? Or someone who was the Treasurer and then became a director in Macquarie Bank?

Prof. PRIOR — I do not see that as being a lobbyist. That is moving to another position which — —

The CHAIR — I am just trying to get some definitional things here. Do you mean someone who is a registered lobbyist for ABC company or whatever, and that is their job? Or the Institute of Public Affairs or something like that?

Prof. PRIOR — Their job is to influence government in a direction that their group, firm, agency — —

The CHAIR — Is paid for by somebody else — is that right?

Prof. PRIOR — That is how I see it.

The CHAIR — I am just following on Mr Pakula saying why should we be limiting the opportunities of people once they leave the public sector or being an adviser if they happen to go and work for an accounting firm or become a partner in a law firm or work, as I mentioned, for Macquarie Bank, or whatever it might be? You see it more in terms of it specifically being a paid, registered lobbyist?

Prof. PRIOR — Yes — to governments based on payment for pushing a particular point of view.

Ms MUNT — I am interested that a lot of the submissions that have come to us today actually nominate lobbyists as a point of concern in the parliamentary and government process. As MPs we are used to getting a range of groups and people who come to us. I am wondering if the concern is that people think lobbyists have an undue influence and if that is because people feel they do not have access to that sort of influence themselves. Is that right?

Prof. PRIOR — I think it is an issue that people feel they have a lack of access to parliamentarians. On the other hand the realism is there are so many things, so many people and so many issues that you cannot possibly expect to have unlimited access. I am thinking of examples that I have seen and read about of powerful lobby groups who have been representing a point of view which turned out to be wrong and damaging. The government people in question spoke and listened only to that lobby group ignoring other evidence about the issue so that the government goes down a particular road on the basis of a lobby group which may or may not have the right story. Part of this I suppose is about objectivity and part of it is to do with known damage that lobby groups can do.

The CHAIR — This comes back to my suggestion before — how do you define a lobbyist? There can be firms which are specific lobbying firms. There are a number of them but equally I guess the RACV is a lobby group; Trades Hall is a lobby group; VECCI is a lobby group.

Ms MUNT — Mountain cattlemen.

Mr PAKULA — Churches.

The CHAIR — The local church, the farmers federation — are you extending your definition of lobbyists to major institutions?

Prof. PRIOR — I am happy with that breadth of definition of lobbyists and lobbying. I think that the concern is about paid lobbyists coming out of Parliament and people who use their special knowledge to further augment a few, which would not be seen to be objective. As to the issue about the money, I think a lot of the groups you mentioned are people who lobby for the public good, as they see it, rather than being paid, if you like, to sell something.

The CHAIR — So for a Premier, for example, to become then the head of World Vision, would that be seen to be quite appropriate?

Prof. PRIOR — I have never thought of that, but if you agree that World Vision is something which is working for the public good, which is a non-government organisation, which is not dependent on government laws and regulations apart from the usual things — —

The CHAIR — But they would be lobbying the federal government to provide the money for international development.

Prof. PRIOR — Yes, that is a public good issue.

The CHAIR — Any other questions? Thanks very much for that. That was a very useful discussion, and thank you very much for your time and for taking the interest because that is how democracy actually works.

Prof. PRIOR — I think I said in my submission I was impressed that the Victorian government was doing this.

Committee adjourned.